REPUBLIC OF CROATIA

OMBUDSMAN

REPORT ON WORK FOR 2007

Zagreb, March 2008

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.

This year's Report uses a somewhat different methodology as it illustrates the legal spheres to which the complaints relate in more detail. 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 moving from the old to a new data processing system is underway, several errors were observed in moving the data, so there might be deviations in statistics, but they are negligible.

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 legal spheres and the geographical criteria, such as towns, counties and foreign countries.

In 2007, the Office received 1,878 written complaints, which is 223 complaints more than in 2006 (1,655).

Just like in the past, it must be noted that the total 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.

Citizens address the Ombudsman only when they encounter problems in procedures before administrative bodies. The Annual Report on Work gives the impression that the state and level of respect for human rights is quite poor, but that is only part of the real picture. For that reason, this Report should be regarded as a review of the most significant and most numerous violations of human rights that were noted, and of their causes, and not a comprehensive presentation of the state and level of respect for the citizens’ constitutional and legal rights in entirety.

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.

With a view to informing the public about the scope of work of the Ombudsman, a further 10,000 copies of the flyer entitled "What can Ombudsman do for you?" were printed and distributed primarily to state administration offices, social welfare centres and the Regional Offices of the Croatian Pension Insurance Institute.

In order to provide visually disabled persons with easier access to information, the Office of the Ombudsman had the flyer printed in Braille. The flyer was printed as part of the project entitled "Support to the Institution of the Ombudsman", which is being implemented in co-operation with the OSCE Mission in the Republic of Croatia. The aim was to raise the awareness of visually disabled and poor sighted persons of the scope and the manner of work of the Ombudsman. In co-operation with the Croatian Association of the Blind, the flyer was distributed in magazines, which are published by the Croatian Association of the Blind (in 275 copies). The flyer in Braille was also distributed to various associations of the blind, members of the Croatian Association of the Blind, which are 26 in number in all counties (220 copies in all). An audio recording of the flyer was also made (as part of the magazine "HSS-INFO") for visually disabled persons who do not know the Braille, and distributed to the reading public in early December 2007.

Furthermore, to facilitate communication with persons who have difficulties with hearing and speaking, four assistants at the Office are currently attending a course in the language of signs for hearing and speaking impaired persons.

This Report is divided into several parts: review of statistical data on the work of the Office, analysis of work by legal spheres with examples from the practice, visits to the counties of the Republic of Croatia, international cooperation, and, finally, assessments and proposals of the Ombudsman.

The Report of the Ombudsman for 2006 was discussed by the working bodies: Local and Regional Self-government Committee, Committee on Human and National Minority Rights, Judiciary Committee, Committee for Immigration and Committee on the Constitution, Standing Orders and Political System. The Report was then discussed at the (25^{th}) plenary session of the Croatian Parliament, held on 18 May 2007, when it was accepted in a Conclusion by the majority vote of 106 "in favour", 1 "against" and 2 "abstained". The

Conclusion states that the opinions, remarks and proposals from the discussion on the Report, as well as the Ombudsman's remarks, proposals and recommendations from the Report be delivered to the Government of the Republic of Croatia for the purpose of undertaking measures for more efficient work of the competent bodies and bodies with public powers. Finally, the Conclusion imposes an obligation on the Ombudsman to submit a report to the Croatian Parliament within 30 days concerning the number of retired persons who contacted him in 2006 regarding remuneration, i.e. implementation of the Act on the Enforcement of the Decision of the Constitutional Court of the Republic of Croatia of 12 May 1998 and the Act on the Pension Fund, and to explain most characteristic cases and to issue his opinion. The Ombudsman filed the requested report.

PART TWO

STATISTICAL DATA FOR 2007

Citizens address the Ombudsman personally at the Office, by written complaints, and over the telephone.

During 2007, altogether 691 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.

Figure 1 Number of (written) complaints in the period between 2005 and 2007:

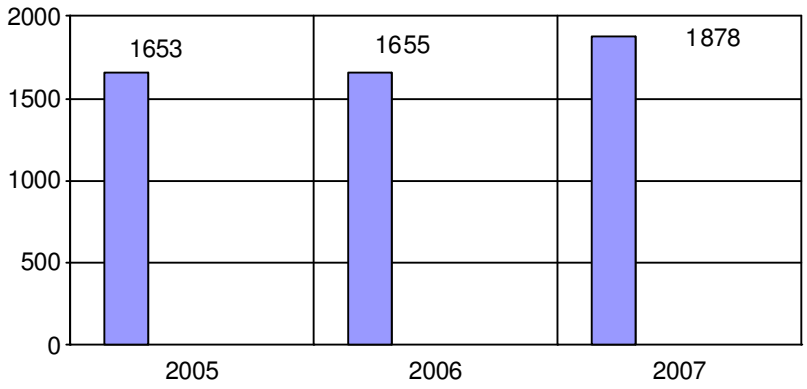


Figure 2 Ratio of settled and unsettled complaints received in 2007:

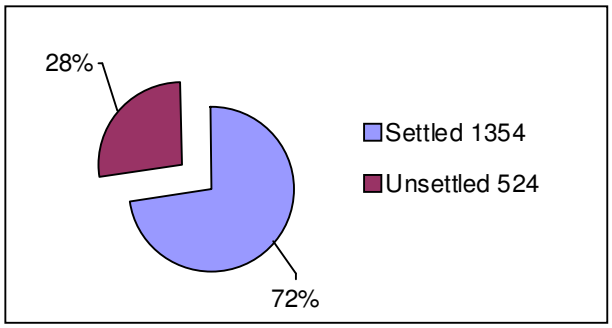
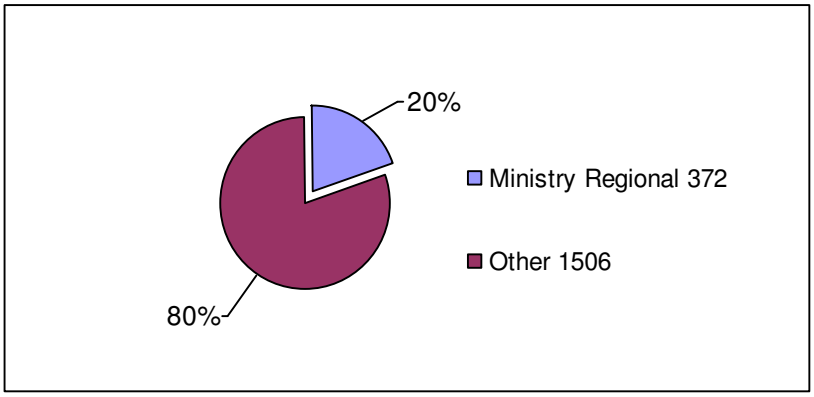
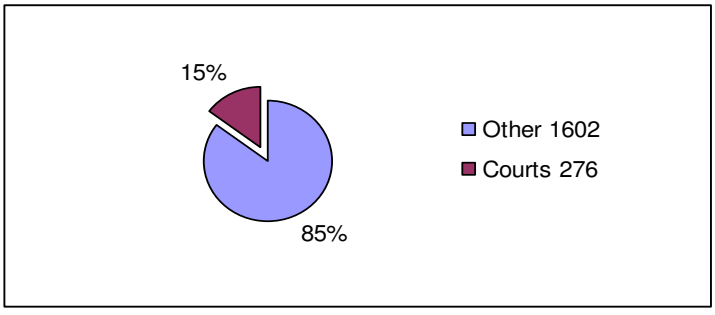


Figure 3 Share of complaints against the work of the Directorate for Exiles, Returnees and Refugees and the Directorate for the Reconstruction of Family Houses with the Ministry of Regional Development, Forestry and Water Management (formerly the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia):



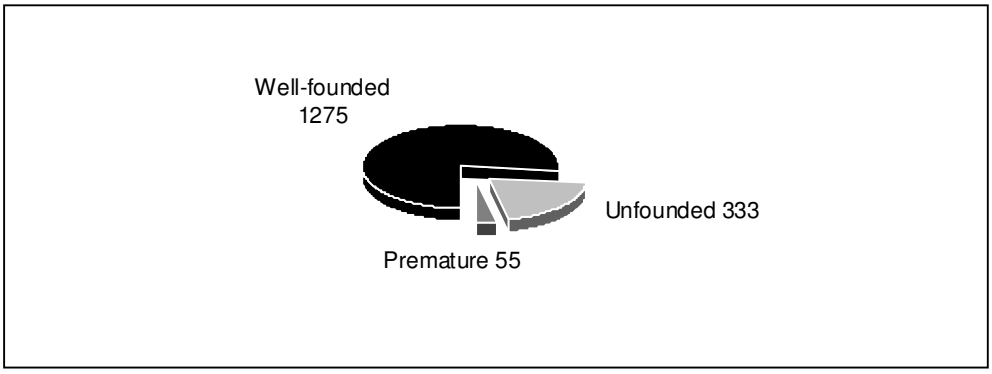
In last year's Report, the share of complaints against the (former) Ministry of the Sea, Tourism, Transport and Development was 19%, while in 2007 it was 20%. Considering that the manner of work of the Ministry did not change in the first trimester of 2008, a similar result can be expected next year, as well.

Figure 4 Of 1,878 new complaints in 2007, 276 were against the work of courts:



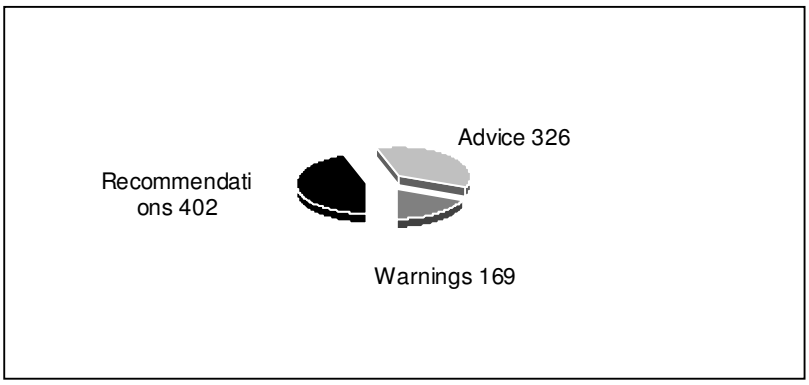
Of altogether 2,068 **settled** cases in 2007 (both from 2007 and previous years), 1,663 were in the jurisdiction of the Office, and 405 complaints were outside its jurisdiction. Figure 5 shows the ratio of well-founded, unfounded and premature complaints from the group of complaints referring to the sphere of jurisdiction of the Ombudsman:

Figure 5



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 some 10 percent 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. Unduly long duration of procedures is the key cause of a large number of well-founded complaints of the Croatian citizens.

Figure 6 Undertaken measures (recommendations and warnings to the bodies and advice to the citizens):



Note: In 899 cases, it was necessary to undertake measures, while in the remaining cases the procedure was concluded immediately after the Ombudsman addressed the competent body. Along with the measures shown in Figure 6, the Ombudsman also sent two requests to the Government of the Republic of Croatia.

Figure 7 Complaints by the cities (showing the share of locations with prison facilities):

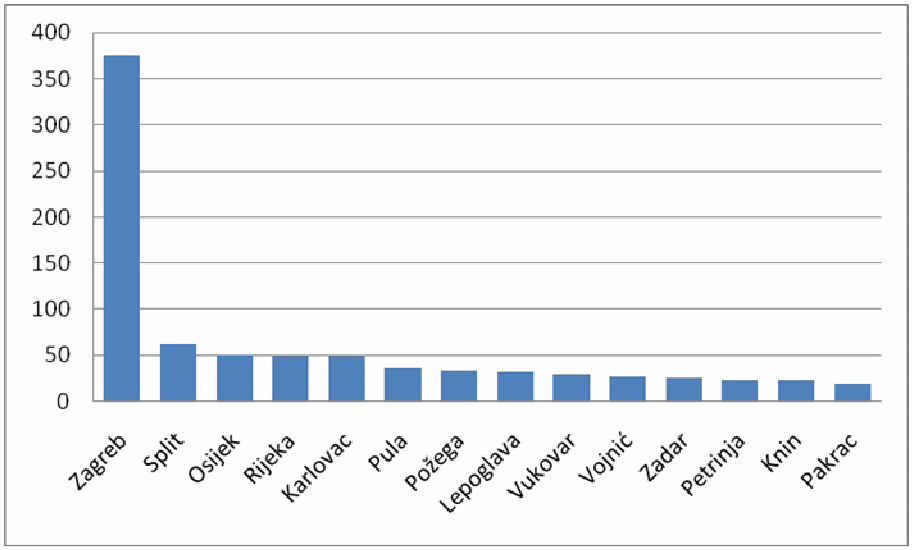


Figure 8 Number of complaints in the pension insurance sphere (2004-2007):

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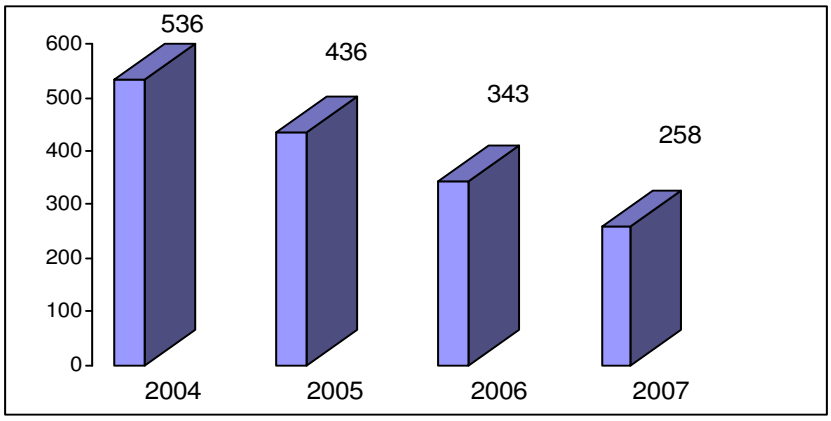

Figure 9 Number of complaints from persons deprived of freedom (2004 - 2007):

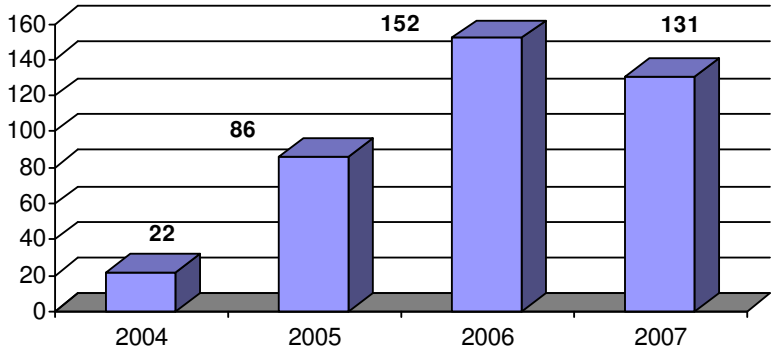

Figure 10 Complaints by states:

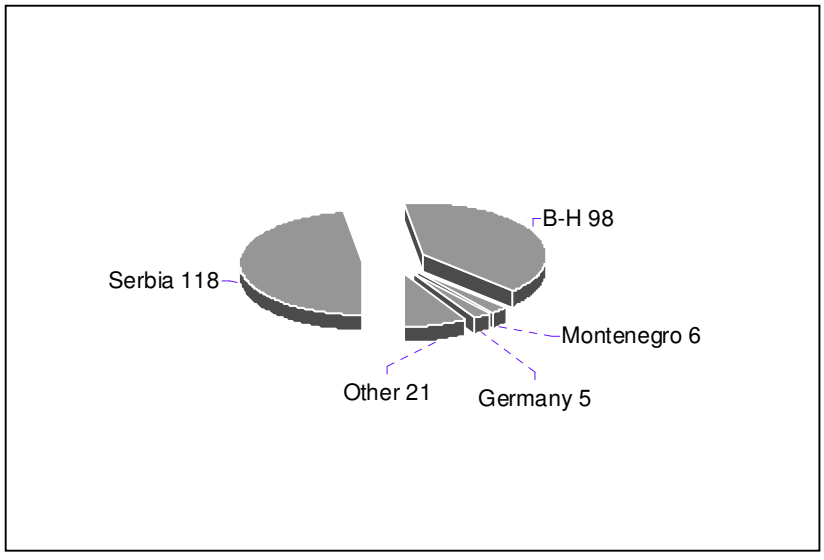

Figure 11: Comparable illustration of complaints by spheres (2005-2007):

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

PART THREE

ANALYSIS OF WORK BY LEGAL SPHERES

Ministry of the Sea, Tourism, Transport and Development

(Reconstruction – settling housing issues – restitution of the temporarily taken over property – damage compensation for the inability to enjoy one's own real estate – status of exiles)

Of altogether 1,878 new complaints filed in 2007, 372 referred to the work of the Ministry of Regional Development, Forestry and Water Management (formerly the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia), i.e. of the following two directorates: Directorate for Exiles, Returnees and Refugees (hereinafter: Directorate for Exiles) and the Directorate for the Reconstruction of Family Houses (hereinafter: Reconstruction Directorate). Of these complaints, 40 referred to the problems related to the restitution of the temporarily taken over property and compensation for the damage resulted from the inability to use one's own property, 117 complaints referred to the procedures concerning settling housing issues, 208 referred to the reconstruction of family houses, and 7 to the acquisition of the status of exile. Since the number of complaints against the work of the Ministry has not decreased for years, with the structure of complaints being the only thing that has changed, and considering frequent irregularities in the work of the abovementioned directorates, the Ombudsman notified the Minister of the Sea, Tourism, Transport and Development of these problems on multiple occasions, and proposed him to get personally involved into solving the noticed problems, and to discuss the disputable issues at a joint meeting, but to no avail.

It is the responsibility of the minister to be aware of the problems pertaining to the work of his services and to take any steps necessary to remedy the situation. Primarily, it is his duty to staff the services to perform tasks within their competence. Although warned about the poor staffing structure in view of the complexity and sheer number of cases, the minister did nothing to resolve the backlog of problems and did not show any interest in co-operation with the Ombudsman.

A letter was sent to the new minister on 25 January 2008, requesting a meeting to discuss the said problems. On 25 March 2008, the Office received a letter by an assistant minister

notifying the Ombudsman that the minister was otherwise engaged and proposing a meeting with the assistant minister.

Of all the ministries, it is this Ministry (actually, only two of its directorates) that endures the harshest criticism for irregularities in its work. Although statistics in the sphere of reconstruction and settling housing issues show a significant volume of investments and a large number of settled cases, there is also a large number of violations of regulations and human rights.

There are different types of violations, and the causes are complex, so they need to be analysed in more detail. This text includes an overview of complaints from 2007, so we use the former title: Ministry of the Sea, Tourism, Transport and Development. Many spheres were within the domain of this Ministry (as evident from its title), so it is our opinion that its complex organisation is one of the reasons for the numerous irregularities observed in the work of the Ministry. This Report will deal only with an analysis of a smaller segment of its work: Directorate for Exiles and Reconstruction Directorate.

Problems in the work of the Ministry of the Sea, Tourism, Transport and Development, i.e. two of its directorates, were also the subject-matter of analyses made by international organisations and bodies (in the reports of the OSCE, European Commission, Human Rights Watch and other organisations for the protection of human rights). In addition, the European Court of Human Rights has already ordered the Republic of Croatia to pay compensation to some of its citizens who had been forced to undergo lengthy administrative procedures and administrative disputes, as pointed out by the Ombudsman in his Report for 2005. It can be expected that an ever-growing number of citizens will file complaints for violations of the principle "within reasonable term", both before national courts and the European Court, precisely because of procedures being conducted before the Ministry concerned.

In view of the fact (presented in earlier reports) that cases concerning reconstruction and settling housing issues mostly involve citizens of Serb nationality, the problem has additional severity.

The problem shared by the two directorates, which is also the most serious problem in their work, is the duration of procedures. It was under these grounds that most cases were settled as well-founded complaints involving human rights violations.

Last year's report reads:

"Property restitution, completion of the reconstruction of houses and speeding up the procedures of settling housing issues are important prerequisites for revitalizing the areas of

special state concern, and for reintegration into the Croatian society of the citizens who have returned or wish to return to Croatia.

The international community has been carefully monitoring the development and the level of respecting human rights, particularly in this sphere, which is evident from several documents referring to the state of human rights in the Republic of Croatia in relation to the process of Croatia's EU accession. It is therefore likely that the Republic of Croatia will be faced with serious objections that will present an obstacle for its joining the European Union."

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

A) Directorate for Exiles, Returnees and Refugees

Complaints within the area of responsibility of this Directorate related to procedures launched further to requests for settling housing issues, restitution of the temporarily taken over property, damage compensation for the inability to enjoy one's own real estate and status of exiles.

Since the manner of work of the Directorate for Exiles, Returnees and Refugees (hereinafter: Directorate for Exiles) did not change since last year's report to the Croatian Parliament, assessments and remarks by the Ombudsman concerning its work in this Report are almost identical.

Along with serious irregularities in the work of the Directorate, there are also poor regulations, frequent amendments, lengthy and non-uniform actions taken by courts and the Constitutional Court of the Republic of Croatia that contribute to the difficult situation in the sphere within the competence of the Directorate, as analysed in the examples shown in further text.

The situation would be much worse had non-governmental organisations not assumed the enormous load of providing support to the thousands of citizens who did not know how to realise their fundamental constitutional and legal rights.

For the said reason, the Ombudsman wishes to point out once again the necessity to urgently adopt a law which would enable those in the socially most vulnerable position to have access to free legal assistance.

The Act on Areas of Special State Concern was amended on several occasions, with wrong enumeration of articles, so it is very difficult to read the text. The final version of the Act, which was published in the Official Gazette, makes referencing even more difficult by wrong

enumeration of articles and the text is not the same as the actual legal text. For that reason, the Constitutional Court of the Republic of Croatia found it necessary to state as follows in one of its cases (Decision: U-I/706/2001, 23 November 2005):

"6) In the procedure of reviewing the well-foundedness of initiating a procedure for the examination of compliance of the disputed provisions with the Constitution, the Constitutional Court established that in view of numerous amendments to the Act on Areas of Special State Concern (OG 44/96, 57/96-corrigendum) it is difficult to follow the text of the law, including provisions found disputable by the claimant. The Act was amended on several occasions (OG 124/97, 73/00, 87/00-corrigendum., 69/01-Regulation on Amendments to the Act, 94/01, 88/02), where the enumeration of articles used to amend the previous legal text was different.

The Constitutional Court holds it is necessary to point out that the final version of the Act on Areas of Special State Concern was published in 2003 (OG 26/03), which makes it even more difficult to follow the text of the law, because the final version contains a completely different enumeration of articles. After publication of the final text, the Croatian Parliament adopted yet another Act on Amendments to the Act on Areas of Special State Concern (OG 42/05) amending Article 14.a (not indicating changes to the legal text), where the final text of the law, published before the latest amendment, does not even include an article marked as 14.a."

Following the said Decision of the Constitutional Court, the Act was amended once more, in 2005 (OG 90/05).

It is obvious that poorly-educated citizens, without adequate assistance, encounter serious problems when trying to realise their rights. It is well-known that even experts find it difficult to find their way amongst numerous amendments to Croatian regulations, so it is even more difficult for the ordinary citizens. Apart from this Act, it is worth noting that final versions of some other laws were also not correct (such as the Criminal Code), so an analysis of the problem should be made and an appropriate solution found.

Another example of a regulation which citizens find difficult to handle is the Act on Administrative Fees, which has countless amendments: OG 8/96, 77/96, 131/97, 68/98, 66/99, 145/99,116/00, 163/03, 17/04, 110/04, 141/04, 150/05, 153/05, 129/06 and 117/07.

The Croatian Parliament should therefore review the possibility of replacing a regulation by a new one whenever a regulation is amended more than two or three times, which would raise the protection of citizens to a significantly higher level.

In an effort to balance the burden of an extra legislative activity on one hand and the legal security of citizens on the other, a solution which would benefit citizens ought to be found.

Settling housing issues

The Act on Areas of Special State Concern regulates settling housing issues as a *right*, but does not include provisions on the procedure for realising the right concerned.

The Act on General Administrative Procedure states 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 regulate by a special law.

Therefore, in procedures of settling housing issues, it is the duty of the competent body to apply the Act on General Administrative Procedure. However, the Directorate for Exiles fails to comply with that duty, although the Ombudsman did warn it on countless occasions over the years and notified the minister, and on several occasions the Central State Administration Office also issued a warning.

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.

Another violation of the provisions of the Act on General Administrative Procedure 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 Act on General Administrative Procedure). Parties try to obtain such a notification through written rush notes or over the phone, but unsuccessfully. They frequently receive a written notification only after the Ombudsman had intervened. The result of such conduct is a threat to the legal security of the citizens.

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 criteria for settling housing issues remain unfinished and non-transparent. The list for settling housing issues is not publicly available, which would be a way to control the regularity of processing requests.

The Croatian Parliament was notified of the foregoing in the Ombudsman's previous reports, but the practice of the Directorate for Exiles remains unchanged.

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 problem is specific to the area of the County of Vukovar-Srijem, and several cases were also recorded in Osijek.

One of the forms of settling housing issues is the lease of apartments. The Directorate for Exiles concludes (standard form) contracts with all tenants. The contracts include a provision that the tenant is under the obligation to pay the reserve means. The parties are offered the contract to sign without the option of objecting to that or any other provision.

It is a fact that the citizen is in a weaker position and that he is forced to accept the contract as offered if he wants to resolve his housing issue.

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, the problem did not end there, as the courts in Vukovar (both the Municipal and County Court) 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. 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.

However, the Constitutional Court adopted two decisions contradicting each other.

In the Decision U-III-8181/2004 of 13 December 2006, the Constitutional Court rejected a request made by the claimant to repeal the judgment of the County Court in Vukovar by which his appeal against the first-instance judgment of the Municipal Court had been rejected. The first-instance judgement had accepted the statement of claim made by "Tehnostan" (as claimant and manager of the building) for the payment of remuneration for maintaining the

building. The Constitutional Court held that the disputed judgment had not violated the constitutional right to equality of all before law (Article 14 of the Constitution of the Republic of Croatia) and that the standpoints expressed in the disputed judgment were legally valid.

In another case (Decision U-III-2691/2007 of 20 February 2008), the Constitutional Court acknowledged the constitutional complaint and repealed the disputed judgment of the County Court, returning the case to the said court for a new procedure. In the explanation of its decision, the Constitutional Court stated that the costs of the reserve means must be paid exclusively by the owners of the apartments, so that the County Court in Vukovar had violated the right to equality of all before law referred to in Article 14 of the Constitution.

The many judgements adopted by the courts in Vukovar shed light on the problem of non-uniform court practice in the Republic of Croatia, as in other parts of Croatia the courts ruled in accordance with the standpoints expressed in the mentioned Decision of the Constitutional Court (2008), therefore in favour of the tenants. The foregoing gives rise to the question of the role of the Supreme Court of the Republic of Croatia and making the court practice uniform.

In accordance with the provision of Article 118 of the Constitution, the Supreme Court of the Republic of Croatia, as the highest court, must ensure uniform application of laws and equality of the citizens.

It is evident from the above case concerning the payment of the reserve means that the role of the Supreme Court was actually assumed by the Constitutional Court, in the procedures to protect the fundamental rights and freedoms of citizens.

An obstacle to the resolution of the said problem lies (and will lie for a while longer) in the provision of the Act on Civil Procedure, which states the limit for filing a review petition with the Supreme Court. Namely, for a party to a dispute to file a review petition with the Supreme Court the amount of the subject-matter of the dispute must exceed HRK 100,000, which was not the case with the reserve means. The amounts concerned in the disputes were up to HRK 10,000, increased by the cost of litigation. It is important to point out that the County of Vukovar-Srijem is the most underdeveloped region in the Republic of Croatia with the most vulnerable group of citizens who are not able to pay for legal fees.

The provision of the Act on Civil Procedure which stipulates the amount of the subject-matter will cease to apply on 15 July 2008 based on the Decision of the Constitutional Court of the Republic of Croatia (U-I-1569/2004, OG 2/07), so it can be expected that protection of the citizens' legal security will improve significantly.

EXAMPLES:

(1) Case description (P.P.-601/06): D.L. owns a house which had accommodated temporary users who moved out in June 2004 when D.L. requested damage compensation for the inability to enjoy one's own real estate. The Directorate for Exiles did not respond before July 2005, stating that she would not receive compensation and failing to provide an explanation. D.L. filed a complaint with the court for payment, and she addressed the Ombudsman in June 2006 asking him to accelerate the procedure.

After the Ombudsman issued a warning that the request of D.L. had been rejected unfoundedly, the Directorate for Exiles informed him that the compensation would be paid.

In November 2007, D.L. addressed the Ombudsman again, complaining against the duration of the procedure further to a request she had submitted in 2004 for the allocation of building material, but with respect to which she could not obtain any feedback.

Undertaken measures: The Ombudsman requested and obtained a statement by the Directorate for Exiles, stating that the request would not be accepted, because the house had been reconstructed. The Ombudsman issued a warning that the matter required a decision to be issued, so that D.L. could file an appeal. The Directorate's response read that the administrative procedure would be conducted subsequently.

Further to the Ombudsman's warning that the Act on General Administrative Procedure does not stipulate a subsequent administrative procedure, the Directorate for Exiles responded that it did not have a sufficient number of staff to handle the number of incoming cases, and at the end: "When the case enters the processing phase, the provisions of the Act on General Administrative Procedure will be applied in full."

Case outcome: Over the period of 4 years, the Directorate for Exiles not only failed to conduct the administrative procedure, but it was also impossible to find out when the procedure would be conducted.

Note: In the matter, it was established that the provisions of the Act on General Administrative Procedure had not been respected and that the rights of a citizen had been violated.

(2) Case description (P.P.-1/08): N.T. from Vukovar requests 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.

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 Act on General Administrative Procedure. However, the Directorate responded that the administrative procedure would be conducted subsequently. Considering that the Act on General Administrative Procedure 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.

Along with the application of the Act on General Administrative Procedure, the Ombudsman also pointed out the problem of interpretation of the Act on Areas of Special State Concern in this matter. Namely, the Act on Areas of Special State Concern grants the right to the settling of housing issues only to persons who do not own / co-own real property. The complainant is the co-owner of a house in 9/108 part (which is basically 9m2), so for that reason the Directorate did not accept the complainant's request. In our opinion, the provisions of the Reconstruction Act should have been taken into account when making that decision.

The Reconstruction Act grants the right to reconstruction of the surface area of 35 m2 per person, and for each subsequent person an additional 10 m2.

Therefore, the Ombudsman recommended that both laws should be viewed together and that in the interpretation of the Act on Areas of Special State Concern the said provision on the surface area (in reconstructing a house) should be taken into account. Thus, a request for the settling of a housing issue should be rejected only if the applicant has 35 m2 (or more) of residential surface area.

The Directorate rejected the recommendation by stating that a person who co-owns real property does not have the right to the settling of a housing issue "where the size of the co-owned share is irrelevant". Therefore, if someone is the co-owner of a house and has got only 1 m2, he cannot exercise his right to the settling of his housing issue.

Case outcome: The Directorate for Exiles did not conduct the administrative procedure, so the case of the complainant is still not closed.

Note: In this matter, it was established that the provisions of the Act on General Administrative Procedure were not respected despite the warning of the Ombudsman and that the Act on Areas of Special State Concern was inadequately interpreted.

In adopting the Act, it was the intention of the Croatian Parliament to regulate the sphere of settling housing issues in such a way that the housing issues of the greatest possible number of citizens (who live in difficult conditions due to no fault of their own) in the areas of special state concern are settled. It is a fact of life that many citizens inherited property in the period

from 1991 until today, but cases where such inherited property is insignificant are controversial. It is unacceptable to exclude a large number of citizens who obviously do not have their housing issue settled from the procedure of settling housing issues by finding justification in formal reasons which are manifestly contrary to the spirit of the law and the intention of the legislator.

We find the standpoint of the Directorate particularly questionable, because in another case the Ombudsman received a statement that the housing issue of an applicant (a bachelor with no family) would be settled as soon as he finds an apartment of 35 m2 in size, which is precisely in line with the mentioned objection of the Ombudsman.

(3) Case description (P.P.-1358/06): Z.L. addressed the Ombudsman by stating that she leased an apartment from a person who had received it for temporary use pursuant to a decision of the competent municipal housing commission, in B., which is an area of special state concern. Z.L. later welcomed to the apartment her daughter and grandchildren, with which the landlord (temporary user) did not agree. For that reason, the temporary user wants her to move out, and he also had the municipal power company cut her supply with electricity. The complainant states that the temporary user wants to purchase the apartment after the 10-year term of use, and she also enclosed to the complaint a copy of the payment slip confirming that she had paid rent in the amount of HRK 1,000.

Undertaken measures: Based on the suspicion that the temporary user was leasing the apartment he had received for temporary use, the Ombudsman submitted the data on the case and requested the Directorate for Exiles to check whether the apartment was actually being leased, 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.

After several letters exchanged with the Directorate, the Ombudsman received a statement which read that a procedure of registering the right of ownership of the Republic of Croatia to the apartment was underway, and that the right of the current temporary user would be settled after that. Such a statement is not acceptable. The procedure for the entry of the right of ownership and the procedure of eviction of a person using the apartment contrary to the decision on temporary use of the apartment have no connection whatsoever, so the Ombudsman warned the Directorate accordingly. He also expressed his standpoint that if it is shown that the apartment is indeed being used contrary to law that it should be vacated as soon as possible and given to eligible persons who need the apartment to resolve their

existential issues. This is particularly so, because there is a large number of citizens in B. who need housing, and the Directorate repeatedly answers them that there is just not enough housing units.

Case outcome: There is no data on actions taken by the Directorate towards the temporary user in terms of the statements and suspicions voiced by the Ombudsman.

Note: The Directorate for Exiles, despite the fact that one year passed since the warning about irregularities in the use of the apartment, shows no agility to examine the irregularities or to pay due attention to the use of the housing fund. This leads to lengthy procedures on the requests filed by other citizens and to suspicions of favouring certain citizens.

(4) Case description (P.P.-1194/07): O.A. submitted a request for the settling of her housing issue through the allocation of building materials, as her house is in poor condition, but she was informed by the Directorate for Exiles that the request was unfounded.

The notice was based on an appraisal which was made by an officer of the Regional Office for Exiles who looked at the house from the outside. The officer has no qualifications in civil engineering.

Undertaken measures: The Ombudsman issued a warning to the Directorate for Exiles, asking the Directorate to conduct an administrative procedure and to establish facts needed to make a decision on the foundedness of the request, subject to the participation of a qualified person to make the appraisal.

Case outcome: No data on actions taken.

Note: The Office of the Ombudsman has several identical examples where construction appraisals are performed by unqualified persons. This Report has already indicated in several places non-implementation of the Act on General Administration Procedure and failure to enable the citizens to file legal remedies.

(5) Case description (P.P.-125/07): The complainant and his family lives in a house with no water, where the roof is damaged and leaking. He states that the family is a social welfare case and that nobody has employment. He asked for additional building materials to repair his house, but he was informed that he would not receive it, because he had a house.

The Office of the Ombudsman has several identical cases.

Such situations occur because numerous families accept any offer of housing made (since they live in utterly unfavourable conditions), and only later realise the true condition of the

structure into which they moved. There were also cases where keys were returned after seeing the structure's true condition.

In accordance with the Act on Areas of Special State Concern, one of the forms of settling housing issues is to allocate a house that is damaged and building materials, so there are no legal obstacles to resolving the problem concerned. Obstacles can be found in the human resources structure, because there is no qualified personnel to determine whether works are indeed needed in the house.

We should point out once again that administrative procedures, which would result in a decision on a particular request, thus enabling the party to appeal, are not conducted.

Undertaken measures: The Ombudsman pointed out on several occasions that the complainants' housing issue had not been settled, because they had a house which did not meet even the most basic requirements, and that the citizens concerned had no means of their own to repair the house. Therefore, the matter does not involve *re*-settling of their housing issue, but conclusion of the procedure of settling housing issues.

Case outcome: The standpoints of the Ombudsman in these cases were not accepted.

(6) Case description (P.P.-594/05). S.V. addressed the Ombudsman in May 2005, complaining against the work of the Directorate for Exiles, after he had already contacted all of the highest-ranking officials of the Republic of Croatia.

S.V. fled Vojvodina in August 1995. In his complaint, he states that based on the decision of the housing commission he received a private family house for temporary use, as evidenced by the minutes on the takeover of possession, and that he then invested funds into making the required works in the house and moved in his own movables. In 2005, the Regional Office for Exiles took over the house and changed the lock on the front door, without making an inventory of the things inside the house and the works performed.

In addition, he states that in 2001 the Directorate for Exiles issued a consent to the allocation of construction land and basic building materials and that in 2003 the Directorate informed him that the consent would be repealed, without issuing an administrative act against which he could appeal.

Further to his objections, the Directorate for Exiles instructed him to initiate a court procedure for compensation of the costs of works he had had in the house and of the value of the movables he had taken into the house.

He addressed the Croatian Bar Association, because he could not afford the costs of an attorney, but he was notified that the Bar Association did not provide free legal assistance in such matters.

Undertaken measures: The Ombudsman's assistant talked to the officials in the Directorate for Exiles and gathered the facts relevant to the case, showing several irregularities in the work of the Directorate for Exiles.

First of all, the takeover of the house was performed by breaking the lock on the entry door, without taking minutes, so the claimant has no way of proving the state of the house before the works were made or prove the presence of his things in the house.

The question of compensation to temporary users who invested funds into necessary repairs on houses they received for temporary use was raised with the Directorate, for the information of the Government of the Republic of Croatia. The Directorate's response consisted in an instruction to the complainant to initiate a court procedure.

Furthermore, in 2001 the Directorate issued a "consent" to the settling of the housing issue (through the allocation of land and building materials), and in 2003 it notified him in a letter that the consent was repealed. The Ombudsman made a warning that it was not in accordance with the Act on General Administrative Procedure to decide on someone's right in the form of a letter, but that it was obligated to issue an administrative act, but the Directorate ignored the warning.

Case outcome: There is no data as to whether the complainant initiated the court procedure after the Croatian Bar Association rejected his request for free legal assistance.

Note: It was established that the Directorate for Exiles was continuing to violate both the regulations and the rights of citizens and failing to follow the procedure laid down in the Act on General Administrative Procedure. Furthermore, in view of the Directorate's negligent conduct, there are unnecessary court procedures.

(7) Case description (P.P.–743/07): R.Č. from Osijek is a former holder of the right of tenancy who submitted a request for the settling of her housing issue through the purchase of an apartment outside the areas of special state concern to the Regional Office for Exiles on 12 May 2004. She sent two rush notes on 20 February and 20 July 2006.

On 3 October 2006, the Directorate for Exiles forwarded a statement to the complainant stating that she had the right to the settling of her housing issue and that she was on the list of priorities, but that there was no apartment available for purchase.

The Office of the Ombudsman received the complaint on 18 May 2007.

Undertaken measures: The Ombudsman requested a report from the Directorate for Exiles concerning the reasons for the duration of the procedure.

Case outcome: In the statement of the Directorate, it is stated that the complainant has the right to housing through the purchase of an apartment. In the response it is stated that a procedure was underway which precedes the adoption of a decision on the recognition of the right to housing. The deadline for its enforcement is the end of 2011.

Acquiring exile status

Complaints in procedures further to requests for acquiring exile status are now few in number (7), but they deserve to be presented in view of the citizens who are one of the most vulnerable groups in the Republic of Croatia and in view of gross violations of the regulations and human rights committed by the Directorate for Exiles.

In certain cases, the Directorate fails to conduct procedures in accordance with the Act on General Administrative Procedure, thus preventing the citizens from using their (both constitutional and legal) right to appeal. In other procedures, the Directorate does comply with the procedure laid down in the Act on General Administrative Procedure, but it is conducted quite negligently, as evidenced by the following two examples.

EXAMPLES:

(1) Case description (P.P.-813/07): L.E. from Zadar addressed the Ombudsman in May 2007, complaining against the work of the Directorate for Exiles which had terminated the exile status of his entire (numerous) family by giving an explanation that their house had been reconstructed and that the test on completion had been performed. The complaint states that the house was not reconstructed and that the exile status should not have been terminated. They filed an appeal to the (then) Office for Exiles and Refugees of the Government of the Republic of Croatia against the act which terminated their status, but it was rejected. Over the next six years, the complainants obtained two identical judgements of the Administrative Court of the Republic of Croatia (in 2000 and 2006). Both were in favour of the complainants, confirming that there was no data in the file on the test on completion and that the Directorate had terminated their status without grounds.

After the first judgement of the Administrative Court, the Directorate (2001) adopted a decision identical to the first one, claiming once again in the decision that the test on completion had been performed (which will turn out to be incorrect, seven years later). In the judgement adopted in 2006, the Administrative Court confirms that there is no such document in the file and repeals the decision, returning the case for a new procedure. So far, the Directorate has not adopted a new decision, which would be in line with the instructions of the Administrative Court, although the Act on General Administrative Procedure (Article 62) states that the Directorate must adopt a new decision within 30 days of the submission of the judgement of the Administrative Court.

Undertaken measures: The Ombudsman requested a statement on the status of the case from the Directorate for Exiles. It is evident from the statement that the Directorate had requested the Reconstruction Directorate on 4 April 2006 to provide a document on the test on completion, but that it did not receive a response.

The Ombudsman sent a rush note to the Directorate for Exiles in December 2007. In its response on 12 February 2008, the Directorate for Exiles states again that it did not receive any answer from the Reconstruction Directorate. The Ombudsman makes a rush note over the phone and is informed in the Reconstruction Directorate that the house was not reconstructed and that there is no document on any test on completion and that the information will be urgently forwarded to the Directorate for Exiles.

Case outcome: The family still does not have exile status. Eight years into the case and after two judgements of the Administrative Court of the Republic of Croatia, there is still no progress, and the 7-member family lives in a leased apartment.

Note: Both directorates are within the same Ministry. In this case, one of the directorates failed to obtain information from the other directorate for two full years, even after two judgements by the Administrative Court of the Republic of Croatia. It is incomprehensible that the Directorate for Exiles would make an untrue statement (that the house was reconstructed) and deny the rights pertaining to exiles without any foundation for eight years.

The Directorate for Exiles in this case adopted a decision on termination of exile status, so the parties had the right to follow the regular legal path to the Administrative Court of the Republic of Croatia, which was not the case in our next example.

(2) Case description (P.P.-1749/07): D. V. from Vukovar addressed the Ombudsman on behalf of her mother and two sisters, asking assistance in the realisation of their rights as exiles. Before the war, the complainants lived in Vukovar. Their house was destroyed in the

war. Reconstruction of the house began in September 2007. So far, the reconstruction is not finished and it is not possible for them to return to Vukovar.

The parties had exile status until May 2007, when the Regional Office for Exiles (Zagreb) informed them verbally that they had lost the status. The complainants then requested both orally and in writing to receive the act (decision), so that they could file an appeal against it, but they did not receive it.

As of May 2007, the complainants have no right to health insurance, and they state that their mother had problems with her health.

Undertaken measures: The Ombudsman requested a statement and warned the Directorate for Exiles and the Regional Office for Exiles about the provisions of the Act on the Status of Exiles and Refugees and the duty to adopt a decision on termination of status. The Act establishes the right of parties to file an appeal against decisions terminating the status of exile.

Following the written warning, it was once again explained to the Regional Office over the phone that the matter involved a violation of human rights and failure to abide by the regulations in force. A representative of the Regional Office presented the reasons why the Centre would not extend the complainants' status: they own an apartment in Zagreb, the daughters are both in school (university) in Zagreb, they are trying to use their status to exercise rights they are not entitled to, they have a passenger car, and the like. The Deputy Ombudsman maintained his standpoint that a decision, which would state the facts of the case, had to be adopted, thus enabling the parties to appeal, in accordance with the Act.

The complainants also addressed the Central State Administration Office in writing, which then requested and obtained a statement of the Directorate, but has failed to take any measures so far.

Case outcome: To this date, ten months after the receipt of the complainants' request, the decision on the exile status has still not been adopted. The Ombudsman is still working on the case.

Note: In the matter it was established that the Directorate for Exiles was violating the rights of the citizens and failing to abide by the regulations in force, even after being warned about the content of specific provisions, thus excluding the possibility of ignorance on its part. Furthermore, under the Act on the Status of Exiles and Refugees status-regulating decisions must be adopted by the Regional Office in Zagreb as the first-instance body, and the Directorate for Exiles is supposed to issue second-instance decisions. In practice, however, the Directorate for Exiles draws up decisions which are then forwarded to the Regional Office

in Zagreb for signing, so basically it is one and the same body that passes the first-instance decision and decides on the appeal.

Restitution of the temporarily taken over property

The property of people who left the Republic of Croatia in 1995, which is located in the areas of special state concern, was taken over by the Republic of Croatia under special regulations and handed over for temporary use to persons meeting the legal conditions. Amendments to the Act on Areas of Special State Concern in 2002 set out several novelties, of which we shall mention only two, the most important ones.

The Act imposes an obligation on the Ministry to file a petition with the state prosecution with a view to the initiation of court proceedings for the eviction of temporary users whose housing issue is settled, where the deadlines for initiating the procedure are short, and court proceedings designated as summary.

Furthermore, the 2002 amendments to the Act also introduce the right of the owner to damage compensation, monthly in an amount of 7 HRK/m2 of dwelling area, for the entire time period their property is not available.

Although there are few such cases, they involve gross violations of human rights.

Until late 2007, the relevant data on restitution of the property could be obtained on the website of the former Ministry of the Sea, Tourism, Transport and Development, but the website is now under construction.

According to the latest data available, there are five cases of restitution of the property.

However, the data should be taken with a pinch of salt, because the data does not include cases where owners themselves are conducting court procedures for the eviction of temporary users.

In accordance with the said Act, whenever a temporary user loses the status (because his house has been reconstruction or his housing issue settled, etc.), the Ministry must request the state prosecution within a specific deadline and under specific conditions to initiate a court procedure for his eviction. Last year's Report shows irregularities in the conduct of the Ministry, which would instruct the owner to initiate a court procedure on his own, thus exposing him to costs, further inconvenience and a lengthy court procedure. In certain cases, the Ministry failed to ask the state prosecution to initiate a court dispute within the deadline, which was done only after the Ombudsman intervened. The number of such cases before

courts is unknown. Although the cases are few in number, the fact that the owners cannot take possession of their property thirteen years after the war ended as a result of the tardiness of the competent body indicates a violation of human rights.

In the court procedures initiated by the owners for the eviction of temporary users, the problem of lengthiness of the procedures and stays of enforcement of judgments has been observed.

The courts adopt the owners' complaints and order the respondents (temporary users) to move out, but subject to a stay of enforcement until alternative accommodation is secured. In some cases, the owners are not able to take possession for a period of over ten years. A discrepancy was observed in this segment between the actions of the Constitutional Court of the Republic of Croatia and of the European Court of Human Rights. The owners asked the Constitutional Court of the Republic of Croatia to repeal judgements in the part staying enforcement. In 2004, the Constitutional Court adopted several identical decisions rejecting such complaints.

All cases share the owners' standpoint that the courts were wrong when they issued a stay of enforcement until alternative accommodation is secured, because the judgements did not set a specific deadline for such stay. Namely, the procedures of reconstruction and settling housing issues last 6 or 7 years. Since the issue of alternative accommodation takes years to resolve, the owners hold that their ownership rights, as guaranteed by the Constitution and international documents, were violated.

The Constitutional Court rejected all such requests by providing an explanation that it did not establish any violations of the claimants' rights and that the decisions of the courts were in accordance with law and duly explained.

The 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 possessionsm, was excessive.

It is interesting to mention an earlier decision of the Constitutional Court (OG 50/2000), adopted in the procedure of reviewing the constitutionality of the provisions of the Act on the Status of Exiles and Refugees, which related to the involuntary evictions of exiles. The Decision, inter alia, revoked the provision of Article 14, paragraph 2 of this Act, which read as follows:

"All procedures concerning the involuntary evictions of exiles shall be discontinued until conditions for their return are created or until, subject to their consent, they are provided with an alternative suitable accommodation in the place where they are settled or in some other place."

In the explanation, the Constitutional Court states that "… this Court has taken into account the circumstances that existed at the time of adoption and implementation of the Act and has concluded that the protection of exiles during the times of war and the procurement of accommodation in the property of other persons was indubitably an interest and a duty of the Republic and that it therefore represented a legitimate purpose for the adoption of the said regulation.

However, although the said restriction imposed on ownership (the right of tenancy, to be more precise) was imposed based on a legitimate aim, according to the opinion of this Court, the restriction is not proportionate to the said aim."

The decision further reads: "The fact that the disputed provision of the Act does not set a calendar date for the duration of the restriction, but sets it only indirectly using the words: 'the involuntary evictions of exiles shall be discontinued until conditions for their return are created or until, subject to their consent, they are provided with an alternative suitable accommodation…' also indicates failure to comply with the principle of proportionality. The uncertainty of not having any definite deadlines is aggravated by conditioning the eviction on the consent of the person to whom the eviction relates, which also indicates that the restriction is disproportionate.

Furthermore, by stipulating compulsory discontinuation of all procedures for the enforcement of legally effective and enforceable court decisions (for an indefinite period of time) is contrary to the principle of the rule of law as one of the highest constitutional values referred to in Article 3 of the Constitution, and thus to legal security. In addition, the foregoing is also contrary to the provisions of Article 14 of the Constitution, which provides for the equality of all before law, because it places one category of persons into a more favourable position than another (the exiles v the owners and the holders of the right of tenancy, i.e. the exiles v refugees or other citizens instructed to move out in a decision of the competent body).

The disputed provisions of the Act prevent the enforcement of legally effective court decisions, thus preventing the owners, i.e. the holders of the right of tenancy from having a fair trial referred to in Article 29 of the Constitution."

It is evident from the said decisions of the Constitutional Court that the issues are complex and that the procedures being conducted by the owners last for years. Therefore, we should bring to mind the decisions of the European Court in Strasbourg concerning the violations of the European Convention for the Protection of Human Rights in cases involving lengthy court procedures, the right to an efficient legal remedy and the right to a peaceful enjoyment of one's possessions. Furthermore, in deliberating the cases, it is necessary to take into account

the standpoint of the European Court (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.

EXAMPLES:

(1) Case description (P.P. 845/07): G.R. owns a farm near Benkovac. For the entire duration of the war, he was in Zadar. His property was taken over and allocated for temporary use in 1996, despite the fact that it had not been abandoned. After years of pursuing administrative and court procedures, and not being able to take possession of his property, he decided to address the OSCE and the Ombudsman.

The complainant notified the Municipality of Benkovac timely in writing that he was living in Zadar; that he was cultivating his land, and he requested that his property be excluded from the procedure of allocation for temporary use. The Municipal Housing Commission, nonetheless, adopted a decision in 1996, ordering the taking over and allocation of the property for temporary use. The land was handed over without minutes on the take-over (which is a component part of any decision on take-over) and the decision was not forwarded to the owner of the property, but he obtained it only at a later date. The decision did include an instruction on the legal remedies available, i.e. that a party dissatisfied with the decision had the right to file an appeal with the Ministry of Justice.

The decision is still in force today.

The complainant (after finding out about the decision) filed an appeal, which was not settled, but the Ministry of Justice informed him that, in view of changes to the regulations, he should address the Municipality of Benkovac. Namely, on 5 August 1998, the Act on Termination of Validity of the Act on Temporary Take-over and Administration of Specific Property, which lays down in Article 2 that the Programme of Return would apply, entered into force.

The Housing Commission in Benkovac adopts a new decision (25 February 2000), annulling the decision on the allocation of agricultural land (1996). The temporary user files an appeal against the decision with the Municipal Court in Benkovac.

The decision of the Municipal Court in Benkovac annuls the decision of the Housing Commission adopted in 2000, with an instruction that a complaint may be filed against the decision with the Administrative Court of the Republic of Croatia. It is interesting to note that

in the same decision of the Municipal Court it is stated that the temporary user had obtained a mortgage loan and that he was raising fruit (although it was expressly prohibited by law to encumber the property of the owner).

On 19 September 2001, the Municipality of Benkovac files a complaint with the Administrative Court (in line with the instruction on the legal remedy available). The Administrative Court rejects the complaint and provides an explanation that the legislator had provided for court protection outside the institute of administrative dispute. Namely, at the time of adoption of the decision of the Municipal Court, the Act on Termination of Validity of the Act on Temporary Take-over and Administration of Specific Property (OG 101/98) was still in force, and the said Act refers to the application of the Programme of Return (OG 92/98), under which the procedures concerned are to be conducted by housing commission in the first instance, and courts in the second instance.

Undertaken measures: The Ombudsman sent a letter to the Directorate for Exiles, asking it to comply with the Act on Areas of Special State Concern and to repeal the decision on the allocation of property for temporary use.

Case outcome: No data on actions taken. After the Administrative Court rejected the complaint, the state of the case remained the same as in 2001 when the Municipal Court had adopted the decision. Therefore, the initial decision of the Housing Commission on the allocation of the property to temporary users is still in force. The Ombudsman will continue to monitor the case.

Note: This case was not complex, and it is special because the take-over of the property should not have happened in the first place (because it had not been abandoned). This example shows irregularities in the work of the housing commissions and difficulties encountered by the owners in the procedures of restitution of the property. In addition, the temporary user encumbered someone else's property by a mortgage, which is contrary to the Act, and the Directorate fails to do the actions required, although it is informed of all the facts. In the decision of the Municipal Court, it is stated that a party dissatisfied with the decision may file a complaint with the Administrative Court, while the Administrative Court dismissed the complaint on the grounds that there was a legal path before the regular court. The entire system of taking over property, returning it and settling housing issues for the users does not function properly, although 13 years passed since the war. There have been numerous changes to the regulations and to the authorisations of the bodies in charge of conducting the procedures, so the citizens cannot find their way through the procedure and

resolve disputes within a reasonable term. In addition, the system enables favourable treatment of persons who obviously do not act in accordance with the regulations.

(2) Case description (P.P.-1188/06): M. and S. D. from K. own a weekend house by the sea, which had been granted for temporary use to persons living in Zagreb, and who use the weekend house on occasion. The complainant requested the Ombudsman to intervene in order to accelerate the procedure of restitution of the property and compensation of damages to which they are entitled, because of not being able to take possession of the house. In the complaint, it is stated that the couple made several requests to the Regional Office for Exiles to organise the eviction. However, each time, received an identical answer: that the persons were dangerous and that the owners should contact the state prosecution.

Undertaken measures: The Ombudsman requested a statement from the Directorate for Exiles concerning the reasons why the complainants had not been enabled to take possession of their property, and the reasons for non-payment of damage compensation. Several letters and seven months later, the Directorate finally submitted the requested statement. In the statement, it is stated that the employees of the Regional Office in Zadar made an on-the-spot check and established the structure to be vacant and locked. In the statement, it is stated that the Housing Commission in Knin had revoked the decision on temporary use on 12 January 2000 and that the complainants opted for the payment of the said compensation in the minutes of 21 August 2003. The Directorate holds that the complainants should be instructed to initiate a court procedure for restitution of the property before the competent court. The Ombudsman, however, failed to agree and he warned the Directorate for Exiles of its erroneous standpoint in resolving the matter.

In accordance with Article 18 of the Act on Areas of Special State Concern, if a temporary user fails to vacate the property on fulfilment of the circumstances stipulated by law, the line ministry must propose to the state prosecution to initiate a court procedure for eviction, and not instruct the owner to do so. In addition, it was also pointed out that the matter of damage compensation by reason of inability to use the property was also not settled, although 4 years passed since the moment of making the request.

Case outcome: The Directorate for Exiles forwarded its response to the Ombudsman, stating that the ministry assumes the obligation to pay damage compensation to the complainants for the time period they were not able to use the property as of 1 November 2002. The complainants were also offered a settlement on damage compensation to sign. Furthermore,

the Directorate for Exiles notified the Ombudsman that it had forwarded documents required to initiate the procedure of eviction of the temporary users to the state prosecution.

Note: This is yet another example of how the housing commissions allocated property for temporary use. It is also an example of the negligent conduct of the Directorate for Exiles towards the owners on one hand and towards the unnecessary spending of the money from the State Budget on the other.

Had the Directorate taken the steps required (as obligated under the Act) six years ago, when it became competent to take over all cases from the housing commissions, and had it repealed the decision on temporary use and (in such cases) requested the state prosecution to initiate a procedure for eviction, the payment of damage compensation from the State Budget would have been avoided and the citizens would have been guaranteed legal security.

(3) Case description (P.P.-505/01): I.K. addressed the Ombudsman in 2001, requesting assistance in the restitution of his property in B., an area of special state concern. In the complaint, he states that family M. lives in his house. They supposedly do not have exile or returnee status and their house in L.O. has been reconstructed (according to the person who connected the house to the power grid).

Undertaken measures: The Ombudsman requested a statement of the Housing Commission in Benkovac. The Commission responded that the reconstruction of the house of the temporary user had not begun. Again, on 26 April 2001, the Ombudsman requested information on the status of the user, but received no answer.

The party addressed the Ombudsman again in March 2007, stating that the court procedure for eviction was underway, that the eviction of family M. had been scheduled three times, but that its had been postponed every time. He enclosed a copy of the minutes taken at the hearing, which includes a statement by the temporary user, M.M., that he had given his house to his son as a gift after the "Storm", and that "uncle and aunt live in it now" and that he "has never received a decision to use the house". He moved into the house arbitrarily, because it was empty, and later he submitted to the authorities a form to register his residence. He did receive remuneration as an exile for six months, but then the remuneration was discontinued.

On 20 July 2007, the Ombudsman sent a letter to the Ministry of Justice, asking it to review why the procedure was taking so long, and he also addressed the Reconstruction Directorate concerning the right to the reconstruction of the temporary user's house, considering that he gave a statement that he had given his house to his son as a gift.

Namely, the Reconstruction Act states that the right to reconstruction may not be exercised by persons who have a house at some other location, which is the case in this matter.

Case outcome: In the statement of the Municipal Court in Benkovac, it reads, inter alia, that the complainant took possession of the house on 29 August 2007.

The Reconstruction Directorate stated in its response that the house of the temporary user, M.M., would be reconstructed by July 2008, without any reference to the fact that M.M. had given his old house away as a gift.

Note: The Ombudsman will request a full answer from the Reconstruction Directorate once again.

(4) Case description (P.P.-1727/04): M.H. is a party in a procedure involving the restitution of movables (a tractor), which was taken over pursuant to the decision of the Commission for Temporary Take-over and Use of the Municipality of Vojnić (Class: 406-01-96-01/48, No.: 2176/18-01-96-01, 27 May 1996) and handed over to G.K. for temporary use. The said person gave the tractor to M.L. and he gave it to A.K., who lives in K. The complainant obtained the data from state prosecution to which the Karlovac Police Directorate, Police Station Vojnić, had filed a report on 9 August 2001 concerning unlawful dealings with the tractor.

He filed the request for restitution of his property at the Municipality of Vojnić, which declared itself non-competent, but did not forward the request to the line ministry, the Ministry of the Sea, Tourism, Transport and Development, so the complainant's attorney forwarded the request. In the notification of the Ministry, it is stated that the procedure for the restitution of movables is not within their competence, but only the restitution of real property. The Ministry did not adopt a decision concerning the request and did not provide any support for its standpoint in the regulations.

In 2004, the complainant addressed the Ombudsman (through his attorney), asking him to provide assistance in accelerating the procedure of restitution of property before the Directorate for Exiles.

Undertaken measures: The Ombudsman requested a statement of the Government of the Republic of Croatia concerning the body competent to decide in this matter. He referred to the provisions of the Act on Areas of Special State Concern, which state that the *Ministry of the Sea, Tourism, Transport and Development is the competent body* (and the Act does not differentiate between immovable and movable property).

The Ombudsman received no answer in two years, so in June 2007, the Ombudsman requested a statement concerning the status of the case. In its response of 17 August 2007, the

Directorate for Exiles states that "… *a session of the Co-ordinating Group for Internal and Foreign Policy of the Government of the Republic of Croatia was held on 31 July 2007, at which one of the items on the agenda was the Proposal for the taking of measures needed to resolve the matter of competence for the restitution of movables. Further to the foregoing, we shall inform you of the conclusions adopted.*"

After three months of waiting for the reply, the Ombudsman reviewed the case file and established that nothing had been done, and the mentioned Conclusions of the Government of the Republic of Croatia were also not found.

The Ombudsman sent a letter to the Government of the Republic of Croatia, requesting it to forward the Conclusions. The reply of the Government dated 3 December 2007, read as follows:

"*Regarding your letter…, herewith we must inform you that the issue of restitution of movables was removed from the agenda of the Co-ordinating Group for Internal and Foreign Policy held on 31 July 2007 at the proposal of the Ministry of the Sea, Tourism, Transport and Development, and therefore no conclusions were adopted.*"

On 4 January 2008, the Ombudsman sent a letter to the Directorate, stating the facts included in the statement of the Government of the Republic of Croatia and requesting that actions be taken urgently to carry out the restitution of the complainant's property.

Case outcome: In response to the letter, the Directorate states: "… *that the issue concerning movables has no legal grounds for realisation. In the State Budget of the Republic of Croatia, there are no funds, so the citizens cannot exercise that right.***"**

Note: This is not the only case in which the Directorate for Exiles forwards statements containing data that is untrue. The rights to restitution of property, recognised by the Act, are not recognised to the complainant. The Directorate's response that the rights of the citizens guaranteed by the Act are denied, because there are no funds in the State Budget, is simply not acceptable.

Compensation of damage to the owners of the temporarily taken over property

Most complaints concerning non-payment of damage compensation are filed because of lengthy proceedings. In some cases, the Directorate for Exiles is to blame, but in others the parties do not receive damage compensation as the result of their own (in)activity (change of residence, failure to provide the required data).

The Directorate frequently does not respond to requests filed by the citizens, after which they address the Ombudsman. As a rule, after the initial "silence of the administration", the procedure is performed correctly.

However, the "silence" of the Directorate in certain cases led to the case being barred by the statute of limitations, where it needs to be pointed out once again that the citizens are mostly uneducated, poor and not able to retain a lawyer.

In some cases, the Office of the Ombudsman observed lack of expertise on the part of the Directorate's staff. The examples involve the temporarily taken over property with several co-owners, where only some of them filed a request for damage compensation, but the Directorate refused to pay by unfoundedly imposing additional conditions. The case (No 4) in further text is a good example.

Considering that restitution of the temporarily taken over property was mostly finalised in the period from 2001 to 2005 and that the statute of limitations is three years, it can be expected that the problem of non-payment of damage compensation will not be the subject-matter of the citizens' complaints.

EXAMPLES:

(1) Case description (P.P.-1067/06): B.J. owns a house in Karin Gornji, which pursuant to a decision of the housing commission currently accommodates temporary users. They live in Zagreb and do not want to hand over the keys to the house, although their status of temporary user was revoked. The complainant asked for the Ombudsman's assistance in the process of restitution of his house and of damage compensation he is entitled to under the Act on Areas of Special State Concern, as the house was not returned to him. For two years, the complainant had been trying to resolve the problem by addressing the Directorate for Exiles and the Regional Office for Exiles, but to no avail.

Undertaken measures: The Ombudsman requested a statement from the Directorate in September 2006, but the Directorate responded (partially) only in February 2007, after a new rush note. The statement reads that the temporary user is in the building without legal grounds, that he lives in Zagreb, that the Ministry ordered him to vacate the premises, and that "*the initiation of a procedure before the state prosecution for his eviction is underway*". The issue of damage compensation was not addressed, so the Ombudsman sent a new letter to the Directorate, after which he received a response that the complainant had been offered settlement.

In November 2007, the complainant notified the Ombudsman that he had checked with the state prosecution and that it had not received any proposal from the Ministry for the initiation of a court procedure for eviction, and so he requested a new intervention. On 5 November 2007, the Office reviewed the case file in the Directorate, which contained no trace of any actions taken to notify the state prosecution. On that occasion, a verbal notification was made that the Directorate had asked the state prosecution to initiate a dispute for eviction, but that the letter was not in the file. It turned out that was not true, but that it was done a month later. Only after the Ombudsman's warning did the Directorate send a letter to the state prosecution in December 2007 to initiate a dispute.

Case outcome: The complainant was offered damage compensation in accordance with the valid regulations, but the complainant refused it and (unfoundedly) asked for compensation for the period before he had submitted the request for restitution, which is contrary to the said Act. The Ombudsman warned the complainant about his erroneous attitude.

The owner has not taken possession of his property, and the court procedure is still not over.

Note: In the case it was established that the competent body had not complied with the deadlines towards the state prosecution to initiate a dispute. From the warning to the Directorate to the initiation of the court dispute, over a year was lost. Damage compensation will have to be paid to the owner from the State Budget.

(2) Case description (P.P.-1707/07): N.N. addressed the Ombudsman, asking him for help in the realisation of her right to damage compensation which is granted to those owners who did not receive back their property inhabited by temporary users based on a decision of the competent commission. She enclosed a letter she had received from the Directorate for Exiles, notifying her that damage compensation would not be paid out, because she had not filed a request for restitution of property, which is one of the legal conditions. Furthermore, she also enclosed a judgement of the competent municipal court adopted in 2006, ordering the temporary user (P.P.) to move out of the house of the complainant, but subject to a stay of enforcement until alternative accommodation is secured for the temporary user.

Undertaken measures: At the request of the Ombudsman, the Directorate for Exiles delivered its statement and further documentation. In the statement, the Directorate for Exiles states that the building is vacant (which proved to be untrue) and that the complainant had not filed a request for restitution. The Ombudsman instructed the complainant to file a request for restitution for formal reasons, so that all conditions foreseen in the Act on Areas of Special

State Concern are met, although the request has no real bearing in view of the fact that there is a legally effective judgement of the court.

The following was established in the case:

- In 1996, pursuant to the decision of the housing commission, the house of the complainant was allocated to the temporary user, P.P.;
- in 2001, the Directorate sends a letter to the Housing Commission of the Municipality of O. asking it to revoke the decision (because the temporary user was not using the house, which later proved to be untrue);
- in 2005, the complainant initiates a lawsuit for eviction of the user and take-over of possession, which ended in 2006 in her favour;
- in the judgement of 2006, it is stated that the respondent (the user: P.P.) recognises that the house is the property of the complainant, but that she cannot leave the house, because her request for settling housing issues is not resolved, as demonstrated by a letter of the Directorate in the file sent to the same court in April 2006;
- the judgement ordered the stay of enforcement until finalisation of the procedure of settling housing issues, therefore there is no specific deadline;
- the complainant initiated an enforcement procedure.

It should also be mentioned that the Directorate notified the Ombudsman in several cases that it plans to finalise all procedures of settling housing issues by 2011.

Case outcome: The Directorate for Exiles notified the Ombudsman that the house of the complainant was empty and that it was not used to live in, of which the complainant was also informed. However, the court established the contrary. An enforcement proceeding for eviction is underway.

Note: In view of the untrue statement of the Directorate that the temporary user was not using the house, the Directorate was obligated (under the Act on Areas of Special State Concern) to request the state prosecution to initiate a procedure for eviction, and not stall the procedure until 2005 and thus force the owner to initiate a civil lawsuit.

It has been pointed out already that the Croatian legal system does not have a response to the requirements and standards set by the case-law of the European Court of Human Rights in Strasbourg.

(3) Case description (P.P.-1345/07)**:** D.G. owns a piece of real property that the Commission for Temporary Take-over and Use of Property allocated to a temporary user in 1996. The

owner filed a request for restitution to the line ministry in 2000, but unsuccessfully, so he submitted a complaint to the court and managed to obtain restitution in 2005.

The owner addressed the Directorate for Exiles on 7 February 2006 with a request for payment of damage compensation that he is entitled to for not being able to use the property. To the request, he enclosed the required documentation. In the request, he asked for payment for the period from the end of 2002 to the moment when the user moved out in 2005.

As the Directorate did not respond to the request, he addressed the Ombudsman for assistance on 14 September 2007.

Undertaken measures: At the request of the Ombudsman, the Directorate for Exiles delivered its statement on the reasons for non-payment of damage compensation. The statement reads, amongst other things, that the owner concluded an out-of-court settlement on 20 February 2007, by which part of the real property became the property of another person, so it is not possible to pay out damage compensation without the power of attorney by the other co-owner.

The Ombudsman warned the Directorate that the new co-owner did not have the right to damage compensation for the time period during which he was not the co-owner in the first place. He warned the Directorate of unnecessary stalling with the payment, and proposed urgent payment of damage compensation to the complainant (as the case would soon be barred by the statute of limitations).

Case outcome: The Directorate for Exiles notified the Ombudsman that it had sent the proposal of a settlement to the complainant, and it can be expected that the case will soon be finalised.

Note: It was established in the case that the complainant's rights had been violated as his property had not been returned at his request, so he was forced to initiate a court procedure. It was also established that the Directorate was delaying the payment of damage compensation for more than two years since the filing of the request. In addition, the party received wrong instructions, which almost resulted in the payment of damage compensation to a person who had no right to such compensation, which the Ombudsman's intervention prevented.

(4) Case description (P.P.- 1259/07): The complainant co-owns a house which was allocated for temporary use. As the house was not returned to her within the legal deadline, she requested the Directorate for Exiles to pay damage compensation to which she is entitled under Article 27, paragraph 4 of the Act on Areas of Special State Concern. The complainant notified the Directorate that one of the co-owners lived in Canada and that he was very ill and

could not communicate (the doctors felt that his condition would worsen further), but the Directorate refused to pay damage compensation nonetheless.

It was the Directorate's reasoning that compensation cannot be paid solely to one co-owner, but to all co-owners together, pursuant to a single settlement contract which must be signed by all. At the same time, the Directorate instructed the complainant (in view of the illness of one of the co-owners) to terminate the co-ownership and to submit a new certificate from the land register, after which she could receive damage compensation. The complainant stated that she was poor and had no money to pay for a lawyer.

Undertaken measures: The Ombudsman warned the Directorate for Exiles of its erroneous standpoint and proposed damage compensation to be paid to the complainant pro rata to her co-ownership share, as she meets the preconditions stipulated by law for damage compensation. Furthermore, the other co-owner did not even file a request for compensation. The Directorate did not accept the Ombudsman's views, but requested an opinion of the state prosecution, thus losing several months.

Case outcome: The state prosecution confirmed the Ombudsman's standpoint and notified him that there were no obstacles that would prevent the payment of a pro rata share of damage compensation to the complainant. The Directorate for Exiles was asked to provide information on further activities in the matter.

Note: In the case, the Ombudsman established that the complainant's rights had been violated by the stalling of the payment of damage compensation and by a wrong instruction to terminate the co-ownership arrangement and to submit a new certificate from the land register. That would have unnecessarily exposed the complainant to a lengthy court procedure and costs, so damage compensation would not have had any point. The said conduct is an example of unnecessary burdening of courts, resulting from unprofessionalism on the part of the competent administration body, and the stalling of the procedure and violations of civil rights.

Non-governmental organisations for the protection of human rights were notified of this case. They also received numerous requests for assistance from persons having the same problem, so it can be expected that the problem will not arise again.

(5) Case description (P.P.–209/06): This case was discussed in last year's Report, but the procedure was not finalised.

M. M. owns a house in K.G. (an area of special state concern, by the sea), which was allocated for temporary use to M.T. in September 1996. The owner filed a restitution request

in February 2003, and in February 2006 he requested the Ombudsman to help him, because the property had not been returned to him.

After the Ombudsman's intervention, the property was returned to the owner, but he was denied the right to damage compensation, so the Ombudsman continued to pursue the procedure.

To his complaint, the complainant enclosed a certificate from the land register and a copy of the postal receipt, showing that the restitution request had been submitted to the Ministry for Public Works, Reconstruction and Construction on 6 February 2003.

Undertaken measures: The Ombudsman requested the Directorate for Exiles to provide a statement on the complaint in the letter of 6 March 2006 (and received no reply) and of 26 May 2006. To the letters, he enclosed a copy of the postal receipt, showing that the owner had submitted the restitution request as a registered postal parcel.

In August 2006 (three months later), the Directorate filed a statement stating that the owner had not filed a restitution request and that the decision of the Commission for Temporary Take-over and Use of Property was terminated in 2003 and that the property had been returned to the owner's possession. The fact that the request was submitted as a registered postal parcel was not addressed in the statement.

After that, the Ombudsman sent a new letter to the Directorate, once again with a copy of the return receipt, as well as a warning that the Directorate had failed to provide a statement concerning the receipt.

He received no answer to that letter either, so on 30 November he sent an identical letter to the Directorate. The Directorate issued a response to that letter more than two months later.

In the reply it is stated that the owner had not submitted a restitution request and that he had taken possession of his property in September 2005 (which is not true, because the minutes on the taking of possession state 16 August 2006, i.e. after the intervention by the Ombudsman).

After it became obvious that the Directorate was trying to evade giving an answer concerning the postal receipt showing that the restitution request had indeed been submitted, the Ombudsman reviewed the case file in Directorate for Exiles.

In the file, the disputable letter (request) of the complainant dated 2003 was found.

In a conversation with an officer of the Directorate, it was established that the Directorate finds such requests invalid, because it is not on a proper form.

The Ombudsman finds such conduct unlawful for several reasons:

- The legislation does not stipulate a specific form for submitting the restitution request.

- The Act on General Administrative Procedure states in Article 66 that the body responsible for receiving submissions is under the obligation to receive any submission.
- The Act on General Administrative Procedure states in Article 68 that if a submission should have a formal deficiency, the responsible body must instruct the party to remedy the deficiency and set a deadline within which the party must do so.

The Directorate for Exiles did not comply with the said provisions of the Act on General Administrative Procedure.

As the Ombudsman's attempts towards the Directorate were not successful, he addressed the minister in a letter, describing in detail the conduct of the Directorate and the reasons why such conduct was unacceptable.

The minister did not respond to the letter, but the Directorate for Exiles.

In the statement it is reiterated that the owner did not file a restitution request and that the form of the request is "laid down" in an instruction which had been forwarded to the housing commissions. The instruction was not published anywhere, and in our opinion even if it had been published the provisions of the Act on General Administrative Procedure should have been applied: the party should have been instructed that the submission was not duly drawn and a deadline for correcting it should have been set.

In the statement, certain facts are stated for the first time:

- that in the case, the address of the house is disputable, so the party's letter (2003) could not be connected with the real property, and
- that there are several persons with the same first and last name.

At the end of the statement, the assistant minister states that the case was handled "*in accordance with the Act.*"

The said statement cannot be accepted either, because it is evident that in each of the documents in the file the same cadastral plot is mentioned (1655/165) and the name of the complainant:

- The card verifying the decision on allocation for temporary possession and use of property,
- Minutes on the taking of possession on the part of the owner of the property, and
- Certificate from the Land Register of the Cadastral Municipality K.

The Ombudsman requested the Central State Administration Office to conduct an investigation. Following the inspection, the Central State Administration Office "… *established that in the realisation of the right to restitution the provisions of the Act on General Administrative Procedure do not apply*." Furthermore, in the statement by the Central

State Administration Office, it reads that the complainant "… *after measures taken, was enabled to realise his right to compensation for damages suffered*."

Case outcome: Finally, on 21 May 2007, a notice of the Directorate for Exiles was received, reading that the complainant had been offered a settlement on damage compensation for his inability to use the property from 6 February 2003 to the eviction of the temporary user.

Note: It was established that the Directorate for Exiles had acted unduly, violating human rights, and in view of the Ombudsman's multiple warnings, it can be excluded that the case involved simply poor knowledge of the regulations.

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.

The data that the number of unsettled appeals in the Reconstruction Directorate has been constant for years speaks plenty about the severity of the problem: on 1 January 2007, there were 13,296 cases, while on 1 January 2008, there were 13,945.

The lengthiness of the procedures conducted by the Reconstruction Directorate has been the cause of complaints to the Ombudsman for years. In 2007, the Ombudsman received 208 complaints (last year it was 207, and in 2005 – 191 complaints). One should bear in mind that the complainants come from rural areas devastated by war, that they are mostly elderly, ill-informed, uneducated and poor, so most frequently they have no way of affording a lawyer and they find out about the role of the Ombudsman years into the procedure.

The Reconstruction Directorate is not trained to perform the task ahead of it. Despite several years' warnings by the Ombudsman to the line ministry (and reports to the Croatian Parliament), there is just not enough staff working on appeals: there are only four of them and they finish around 500 cases per year. In addition, one of the employees is the party to a disciplinary procedure for irregularities in work. The minister was warned about that several times over the years, but did nothing to take any measures to resolve the problem.

In addition, the Ombudsman observed two problems in the work on appeals. The first is the communication between the Reconstruction Directorate and the state administration offices which do not submit the requested data for a year, or even two. The second problem is the work of the commissions for the lists and assessment of war damages, which also do not submit the requested data, in some cases for 4 years. The Reconstruction Directorate sends rush notes to obtain the data, and on several occasions it used the power to initiate disciplinary proceedings, but to no avail. In certain cases, it was recorded that the Directorate requested the Central State Administration Office to make an inspection and to intervene, but that produced no results either.

In several first-instance cases, the Ombudsman requested the initiation of a disciplinary procedure, after which in two cases he was notified of the measures issued. The cases concerned the lengthiness of the procedure, where the officer had filed an appeal of the party to the second-instance body three years, and not 15 days after its submission, as stipulated by the Act on General Administrative Procedure. The appeal was forwarded only after the Ombudsman's intervention.

The Ombudsman also requested the initiation of a disciplinary procedure against an employee of the Reconstruction Directorate for non-performance in several cases, but he was notified that another procedure was pending against the employee in which a mild punishment had been issued (10% of his salary over a period of 6 months), and that the Directorate had initiated an administrative dispute for that reason. Furthermore, the punishment proved ineffective, which is evident from the results of his further work. The Ombudsman requested information whether the previous disciplinary procedure included violations from the list of cases he had indicated in his letter or whether some other cases were concerned, so depending on the answer the Ombudsman will decide on further actions.

The greatest number of appeals submitted to the Reconstruction Directorate concerned objections against the classification of damages on a particular structure. In order to decide on an appeal, it is necessary to obtain an additional report from the commission for the lists and assessment of war damages. The commissions are not very prompt in taking actions.

The commissions fail to submit the data for years, of which the Croatian Parliament was notified in the Ombudsman's earlier reports. It is the county prefects who appoint members of the commissions, so the Ombudsman sends rush notes to the county prefects, but with very sporadic success. The problem is particularly present in the County of Lika-Senj, because of the sheer size of the county. Following his visit to the county, the Ombudsman sent a letter to the minister in October 2007 notifying him, amongst other things, as follows:

"*During our recent visit to the County of Lika-Senj, in the State Administration Office of the County of Lika-Senj we discussed the non-functioning of the Commission for the Lists and Assessment of War Damages, which is under the obligation to establish all relevant facts in the procedures of restitution (mostly appeals). It proved that the problem lies in the fact that the officers refuse to work in the commissions, because of the remuneration for their work, which is set in the Ordinance on remuneration for the work of the members of the commissions for the lists and assessment of war damages of 2 July 1996, which was adopted by the then minister for development and reconstruction of the Republic of Croatia. Holding the amount of remuneration to be inadequate, especially the provision where the remuneration includes the costs of using a private passenger car, we propose that amendments to the Ordinance should be considered to stimulate the members of the commissions.*"

The Ordinance on remuneration for the work of the members of the commissions for the lists and assessment of war damages, which was adopted by the Ministry of Development and Reconstruction of the Republic of Croatia in 1996, stipulates remuneration for the work of the commission in an amount of HRK 50 per structure, while the material and travel costs for the work of the commission are not recognised.

For work in the commission (which must have at least 2 members), each member has the right to HRK 25 per structure. As only the structures in lonely hamlets, sometimes over 100 km away from the seat of the Office, remain to be assessed, in view of the non-recognition of material travel costs and organised transport, it is obvious why the commissions cannot work.

The minister did not respond to the letter or change the Ordinance.

So far, the Ombudsman has recorded a case where the party exercised a legal remedy – a complaint for the silence of the administration with the Administrative Court of the Republic of Croatia (see Example No 7).

It can be expected that the citizens (in view of the number of 14,000 unsettled appeals) will start to file complaints with the Administrative Court for the silence of the administration in a greater number. As the Administrative Court is currently working on cases dating back to 2005, it is clear that will slow down the work of the Court.

EXAMPLES:

(1) Case description (P.P.-629/07): D.T. from V. complains against the work of the Reconstruction Directorate with the Ministry of the Sea, Tourism, Transport and Development, which for six years failed to adopt a decision on her appeal against the decision

of the State Administration Office in the County of Karlovac dated 11 April 2001. The deadline for adopting the appeal is set in the Act on General Administrative Procedure, and is two months after the receipt of an appeal at most. For six years, the complainant sent three rush notes to the Ministry, but failed to receive an answer concerning the status of the file. The Office of the Ombudsman received the complaint on 2 May 2007.

Undertaken measures: On 20 May 2007, the Ombudsman warned the Reconstruction Directorate about the deadline referred to in Article 296 of the Act on General Administrative Procedure, within which the complainant should have been notified of the reasons for the failure to adopt a decision.

Case outcome: In its letter of 18 June 2007, the Ministry notified the complainant that the decision on the appeal had been adopted on 15 June 2007, and that it had been sent to him through the first-instance body.

The intervention was successful. The case is closed.

Note: The Ombudsman established a violation of the Act on General Administrative Procedure and of the rights of the complainant in view of the duration of the procedure.

(2) Case description (P.P.–52/06): The Croatian Parliament was informed about this case in last year's report. In 2001, I. R. submitted a request for the reconstruction and equipping of his house. The competent State Administration Office in the County of Lika-Senj (Service for Physical Planning, Environmental Protection, Construction and Legal-Property Activities) adopted a negative decision, against which I.R. appealed in 2004. The State Administration Office forwarded the appeal and the enclosed case file to the Ministry of the Sea, Tourism, Transport and Development on 27 August 2004, but the case was returned in 2005 for several irregularities in the procedure. The complainant addressed the Ombudsman in 2006 in view of the lengthiness of the procedure.

The complainant does not live in Croatia, because the house is badly damaged, and he complains against the conduct of the official who on several occasions requested further documents to be submitted, although they were already in the file. He adds in his complaint that he travelled to Croatia several times, where because of such conduct he incurred additional costs.

Undertaken measures: At the query to the Reconstruction Directorate, the Ombudsman received a response stating as follows: "Acting by right of supervision, the Ministry returned a significant number of case files on 20 September 2005, among them the case file of I. R., based on the noted illegalities in dealing with a large number of cases, on which the Central

State Administration Office was notified." (It is the matter of 280 case files). It also stated that the abovementioned State Administration Office in the County of Lika-Senj failed to reach decision in the renewed procedure, for which a report on the reasons for this failure was requested. The report was delivered, but it did not contain the relevant data, so the Directorate requested a new one, in its official letter of 13 June 2006, to which it received no response. The Reconstruction Directorate sent on 16 August 2006 an official letter to the head of the abovementioned State Administration Office, in which it stated that oversights were noted in a certain number of cases, and that those made in the case of the complainant in question were unacceptable, particularly as regards stalling the procedure, and it warned of impermissible failure to respond to the Ministry's requests for delivering a statement on the reasons for such conduct of procedure. It also requested from the head of the Office to act within his powers and undertake necessary actions and deliver the statement within eight days.

Five months later, the Reconstruction Directorate informed the Ombudsman that the head of the State Administration Office in the County of Lika-Senj did not yet deliver the requested report, that the Ministry demanded it again and informed the Central State Administration Office on it in order to undertake legal measures in their jurisdiction.

The Ombudsman sent an official letter in February 2007 to the head of the Office (in Gospić) and requested urgent delivery of the statement, with a warning that he would in contrary use his powers from Article 7 of the Act on Ombudsman. In the reply of the head of the Office (March 2007), it is stated that the file was forwarded to the Reconstruction Directorate in Zagreb without the adoption of a new decision, because "there were no instructions for further action and the party did not provide new evidence… and so it was not possible for the first-instance body to adopt a new or a different decision". The head of the Office announced that a disciplinary procedure would be initiated against the official, but we have received no information of this so far.

At a repeated request of the Ombudsman, the Reconstruction Directorate submitted a statement, reading that it was established that numerous irregularities had been committed in the procedure, that certain state administration offices did not have graduate jurists working on legal matters, "that the current staff obviously does not have adequate training and does not apply the legal practice, i.e. they do not remedy the defects and irregularities pointed out in the second-instance decisions for a number of years". Furthermore, it is stated that several working meetings were held with the heads of state administration offices to resolve the matters stated and that detailed written guidelines were issued, but that in certain offices the activities did not produce any results.

In addition, in the statement it reads that the State Administration Office in Gospić was asked to deliver the minutes on the damages to the structure and the delivery note of the (disputed) first-instance act to the party. The response of the Office was that the documents were not in the case file, so in April 2007 the Reconstruction Directorate requested that the party be heard concerning the matter and that the Office should obtain information on the damages from the Commission for the Lists and Assessment of War Damages.

In September, the Ombudsman intervened at the State Administration Office of the County of Lika-Senj during his visit to that county and, once again, in a letter in November 2007, but the data has not been delivered so far.

No data on the actions taken by the Central State Administration Office.

Case outcome: The case has not been concluded yet.

Note: Despite the fact that the Croatian Parliament was notified of this case last year, the competent bodies failed to resolve the matter of restitution for more than seven years. It took four years to obtain information on the delivery of the decision and the minutes on the damages to the structure to the party. It took a year and a half after learning about the irregularities to issue a decision on the disciplinary responsibility of the officer. The Central State Administration Office did not take measures requested by the Reconstruction Directorate. In the procedure, there have been no developments for years and it is yet uncertain when it will be finished. The Ombudsman will continue to take the actions required.

(3) Case description (P.P.-146/07): D.B. from D. addressed the Ombudsman with a complaint against the work of the Reconstruction Directorate, claiming that the Reconstruction Directorate was stalling the appellate procedure concerning the decision of the State Administration Office in the County of S-M., dated back to 2004. The complaint was filed with the Ombudsman on 29 January 2007.

Undertaken measures: The Ombudsman warned the Reconstruction Directorate that it had been under the obligation to resolve the matter of the appeal within 60 days, and following the expiration of that term to notify the party of the reasons for the duration of the procedure and actions to be taken (Article 296 of the Act on General Administrative Procedure).

Case outcome: It is evident from the statement of the Reconstruction Directorate that the Directorate had requested an appraisal of damages to be conducted by the County Commission for the Lists and Assessment of War Damages in the letters of 15 March 2005, 14 February 2006, 23 November 2006 and 15 February 2007.

In the telephone contacts with the Reconstruction Directorate, it was learned that the Central State Administration Office was not responding to their letters in which they were asking for administrative supervision, i.e. that they had not received any feedback on the actions taken.
Note: As the Reconstruction Directorate received no data after over a period of three years, it was proposed to initiate a disciplinary procedure against the responsible person on the grounds of stalling the procedure.

(4) Case description (P.P.-1044/07): Lj.P. from N.G. complains against the Reconstruction Directorate which failed to adopt a decision on the appeal against the first-instance decision of 11 December 2003. The complaint was filed with the Ombudsman on 3 July 2007.
Undertaken measures: The Ombudsman established that in the investigation procedure the appeal was received by the Ministry only on 24 November 2006, therefore almost three years later, although the Act on General Administrative Procedure sets a term for delivery of 15 days.
The Ombudsman proposed to the State Administration Office in the County of P. to initiate a disciplinary procedure to investigate the responsibility of the officer in charge for not having complied with the term of 15 days for the service of an appeal to the second-instance body.
The State Administration Office in the County of P. notified the Ombudsman that a disciplinary procedure had been initiated against the officer who had worked on the case, that he would be punished by a fine for serious breach of official duty and that his work in 2007 would be marked as insufficient.
The Ombudsman proposed to the Reconstruction Directorate to treat the case as a matter of priority.
Case outcome: The Reconstruction Directorate notified the complainant on 25 January 2008 that his appeal would be processed in February or March 2008.
Note: Of the six proposals for the initiation of a disciplinary procedure for irregularities in work filed by the Ombudsman, two procedures were conducted in which the officers concerned were established to be responsible for the irregularities, and measures were issued against them. In other cases, the Ombudsman did not receive any response to his proposals.

(5) Case description (P.P.-100/02): I.M. from G. complains against the work of the Reconstruction Office in the County of Lika-Senj and of the Reconstruction Directorate in a procedure of establishing his right to support and equipping of a house damaged during the war. The request was filed in 1998. The complainant works abroad.

The course of the procedure:

- The complainant submits the restitution request to the Reconstruction Office of the County of L.-S. in 1996,
- in 2001, the Office forwards the file to the Regional Office for Exiles, because it was evaluated that the complainant does not have the right to reconstruction (in view of changes to the legislation), but does have the rights arising from the Act on Areas of Special State Concern (settling housing issues) and notifies the complainant accordingly,
- in 2002, the complainant addresses the Ombudsman who requests data on the status of the file on several occasions,
- from 2002 to 2006, the file is forwarded to the Directorate for Exiles (in Zagreb) and back to the State Administration Office of the County of L.-S. in charge for reconstruction;
- on 6 March 2006, the State Administration Office asks the Directorate for Exiles (Zagreb) to send it the case file,
- the State Administration Office notifies the complainant in the letter of 30 March 2006 that the file was forwarded to the Regional Office for Exiles and that it is now in the Reconstruction Directorate in Zagreb;
- on 29 June 2006, the State Administration Office asks the complainant to visit the Office within 15 days to give a statement on her residence,
- on 8 August 2007, the State Administration Office adopts a decision rejecting the request,
- the complainant files an appeal with the Reconstruction Directorate, which is still unsettled.

Undertaken measures: In the period from 2002 to 2007, the Ombudsman sent eighteen letters and made several interventions over the phone while trying to rush the processing of the case.

Case outcome: No decision on the appeal has been adopted yet. The case is still unfinished even after 10 years and it is not possible to foresee when it will be finished, because the letter of the Reconstruction Directorate of 19 October 2007 notifies the complainant that the appeal will be settled in 2008.

Note: In the period from 2001 to 2007, the case file travelled unnecessarily back and forth from the State Administration Office to the Regional Office for Exiles, then to the Reconstruction Directorate, and back again to the State Administration Office. As the request submitted in 1998 was not settled within the legal term, the Reconstruction Act changed in 2000, and the complainant lost her right to reconstruction, and today she is not able to realise her right to the settling of housing issues. It is difficult to determine who is responsible for the gross negligence at work in this case, because the amendments changed the competence of the

bodies in charge of the procedure. The citizens find it hard to find their way through the regulations both in view of the frequent amendments and lack of timely information on their rights.

(6) Case description (P.P.–1317/06): S.Đ. from D. V. submitted a reconstruction request on 25 November 1999. The State Administration Office in the County of B.-P. issued a negative decision on 25 November 2003.

He filed an appeal with the Reconstruction Directorate within the legal term, but it is still unsettled.

The complainant sent a rush note to the Ministry on 27 October 2006 and a complaint to the Ombudsman on 30 October 2006.

Undertaken measures: In the letter of 2 November 2006, the Ombudsman requested a statement of the Directorate and warned it about the deadline referred to in Article 296 of the Act on General Administrative Procedure, according to which they are obligated to notify the complainant about the reasons why the decision was not adopted.

No response to the letter was received, so the Ombudsman sent three rush notes over a period of six months. On 30 May 2007, the Ministry sent a report to the complainant about the status of the file, stating that it was necessary to present further evidence and that a decision would then be adopted.

On 19 September 2007, the Ombudsman requested a report from the Ministry as to when the decision would be adopted, because the complainant had submitted the reconstruction request in 1999.

Case outcome: On 15 October 2007, the Directorate submitted a report stating that a decision on the appeal would be adopted at the latest within 30 days. Nonetheless, the decision was not adopted by the end of 2007. The case is still unfinished.

(7) Case description (P.P.-928/06): G.D. submitted an appeal in 2004 against the first-instance decision concerning his request for the reconstruction and equipping of his house, which has still not been settled. He addressed the Ombudsman in 2006.

Undertaken measures: In the letter of 28 September 2006, the Ombudsman was notified that in view of a large number of cases they were not able to process the appeal before the end of 2007.

The complainant sent a rush note to the Reconstruction Directorate and after that filed a complaint with the Administrative Court of the Republic of Croatia on the grounds of the silence of the administration.

The Ombudsman set a letter to the Reconstruction Directorate and proposed that a decision be adopted in accordance with Article 32 of the Act on Administrative Disputes, which states, to put it briefly, that the competent body may adopt an administrative act even after the filing of a complaint and then notify the Administrative Court, which then asks the complainant to declare himself whether he wishes to proceed with the complaint or whether he is satisfied with the act adopted.

Case outcome: The Reconstruction Directorate did not respond to the letter of the Ombudsman.

(8) Case description (P.P.-759/07): In the matter concerning his reconstruction request, P.B. submitted a complaint against the decision of the Reconstruction Directorate dating back to 2002, while in 2006the Administrative Court acknowledged and nullified the decision, instructing the Reconstruction Directorate to adopt a new decision.

So far, no decision has been adopted, although the 30-day deadline set in Article 62 of the Act on Administrative Disputes has expired.

Undertaken measures: The Ombudsman requested a disciplinary procedure against the officer of the Reconstruction Directorate in charge of the case and the resolution of the case to be accelerated.

Case outcome: No response has been received so far.

Pension and disability insurance

The Ombudsman received 258 complaints in the legal sphere of pension and disability insurance during 2007

He also undertook actions in another 198 cases from earlier years.

The number of complaints in this sphere decreased compared to 2006, when 343 were received.

Apart from the Republic of Croatia, the Ombudsman received complaints from:

- the Republic of Bosnia and Herzegovina (48);

- the Republic of Montenegro (3);
- the Republic of Serbia (58);
- the Republic of Slovenia (1);
- the Republic of Poland (1), and
- the Federal Republic of Germany (1).

He also acted upon 45 complaints in the sphere of pension-disability insurance in which the complainants requested the rushing of decision-making in the proceedings before the Administrative Court of the Republic of Croatia.

Of altogether 258 received complaints, 197 have been concluded, and 73 are in progress.

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

The Ombudsman mostly intervened with the Croatian Institute for Pension Insurance (hereinafter: HZMO), i.e. with its Central Service (hereinafter: the Central Service).

As a rule, the Central Service regularly delivered the Ombudsman the requested statements. Sometimes after the repeated inquiry about the status of the concrete file with its warning to the lower level competent body of the HZMO.

It can be established from the number of the delivered complaints and the possibility of the competent bodies of HZMO that the Ombudsman's requests were responded to within a relatively acceptable period, along with many regular procedures.

Also, the Ombudsman intervened with the Central Service even in the case of complaints against the first instance body of HZMO, delivering a notification on it to the party. The Ombudsman's intention was to draw the Central Service's attention (as the appellate body) to the obvious problems in the work of the first-instance bodies of HZMO, and in that way help improve the work of HZMO in its entirety. Likewise, in certain segments of the HZMO's activities, particularly placing an emphasis on the need to notify the party about the course of the procedure both in the first-instance and in the second-instance decision-making process.

On several occasions, the Ombudsman forwarded the parties' complaints in administrative-judicial matters to the Administrative Court, in the form of a rush note, i.e. as a proposal to review the possibility of faster adoption of a decision in view of the lengthiness of the total administrative or solely the administrative-legal procedure.

Cooperation was established with the Administrative Court in a way that the Court regularly delivered the Ombudsman responses to his proposals and notifications on its decisions.

The Ombudsman also issued rush notes with respect to the decisions of the Administrative Court, especially in cases in which the overall administrative procedure, i.e. the procedure before the Administrative Court, lasted longer than the reasonable term.

Complaints against the work of HZMO in 2007 mostly referred to:

- excessively long proceedings (both first- and second-instance) in domestic insurance and in the procedure of realizing rights on the basis of international treaties on social insurance;
- delivery of data from the records of HZMO;
- realisation of the rights to disability pension,
- realisation of the rights to family pension;
- payout of the behindhand pensions;
- realisation of the rights to the proportional part of pension, and
- issues related to the Act on the Implementation of the Decision of the Constitutional Court of the Republic of Croatia of 12 May 1998 (OG 105/04).

As regards the cases in which the Ombudsman intervened, the Central Service would either regularly order a lower body to rush the procedure or it would set deadlines for making decisions, and deliver the Ombudsman a copy of the final decision concerning those cases.

In the cases where international treaties on social insurance applied, the number of complainants with the place of residence in the Republic of Serbia and Bosnia and Herzegovina rose in particular, where it was established that foreign insurers fail to deliver properly filled in prescribed documentation. In such situations the Ombudsman would keep monitoring the cases, and request, depending on the need, after the expiry of an adequate deadline for the delivery of properly filled forms by a foreign insurer, a report on the file status.

The problem of cooperation between the competent service of HZMO and the foreign insurance holder (especially from the Republic of Serbia) is evident from the delivered statements.

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 view of the difficulties observed concerning the international treaties, the obligations of the parties in the application of the agreements ought to be defined more closely with a view to protecting the rights and interests of the parties and resolving the matter of unreasonably long procedures for solving such requests.

The Ombudsman feels that the states signatories should be notified of the condition, i.e. the pension and disability insurance holders, with a view to improving the implementation of the signed and ratified Social Insurance Agreements 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, i.e. to consider the application of other administrative agreements and international treaties on social insurance.

Such conduct, i.e. failure to deliver prescribed and/or properly filled forms on the part of foreign insurance holder, i.e. liaison body, lead to the violation of the parties' rights – by stalling the procedures, i.e. failure to reach decisions within the prescribed deadline.

Regarding the mentioned problems, following the Ombudsman's Report for 2006 concerning the implementation of the international treaties on social insurance, the Central Service of HZMO (Sector for the Implementation of International Treaties) forwarded to the Ombudsman a brief report on the problems arising from the implementation of the Social Insurance Agreements between the Republic of Croatia and Bosnia and Herzegovina, and with the Republic of Serbia (the Agreement with FR Yugoslavia).

The report shows that the Ombudsman's interventions in numerous cases resulted in an invitation to talks, which was submitted by the Social Insurance Institute in Belgrade (a newly-formed liaison body in the Republic of Serbia). The idea behind the forthcoming talks between HZMO and the foreign insurance holder is to find a way of speeding up the procedure and of establishing the fastest possible communication between the insurance holders of the states concerned.

The Ombudsman regularly received statistics and information from HZMO. They clearly show that HZMO has a large number of cases to deal with, which indicates that the services, i.e. the persons in charge of procedures, have an increased workload.

Furthermore, based on the work of HZMO, one has to acknowledge the complexity of collecting the documentation needed to ascertain someone's rights. That fact is stated as one of the causes of delays in implementing the procedure (within the legally prescribed term) before the competent bodies of HZMO.

The Ombudsman warned the Central Service on multiple occasions of a series of unsettled cases in which he previously intervened by sending rush notes, and of the need to apply Article 296 of the Act on General Administrative Procedure (i.e. of the duty to notify the party of the reasons for overstepping the deadline for making decisions, i.e. conclusions in the administrative proceedings outside the legally prescribed deadline, and of the actions that would be undertaken).

After receiving 21 complaints concerning the implementation of the Act Implementing the Decision of the Constitutional Court of the Republic of Croatia of 12 May 1988, the

Ombudsman requested the Administrative Court to provide information on the number of complaints and the number of decisions in cases pending before HZMO connected with the implementation of the Act.

Based on the information submitted by the Administrative Court of the Republic of Croatia on the total number of complaints in 2006 (574) and 2007 (163) by 10 January 2008, of the total number of 737 cases, 642 remain unsettled, while 95 complaints concerning the implementation of the Act have been settled.

Briefly, based on the explanation of the judgments of the Administrative Court concerning remuneration, we should state that HZMO is not competent for procedures concerning the justifiability of requests for remuneration and the amount of remuneration with respect to the difference in pensions for the period from 1 September 1993 to 31 December 1998.

Therefore, persons having a legal interest to protect their rights arising from the Act may realise them before a court of general jurisdiction, under the provisions of the Civil Obligations Act and the Civil Procedure Act.

Based on the foregoing, further to the situation that exists in the implementation of the Act, we should point out that in adopting regulations it is necessary to set up an effective legal remedy for the holders of the rights and obligations, i.e. the parties to the procedure, with a view to protecting their rights and legal interests, and to avoid an excessive number of administrative and court procedures.

EXAMPLES:

(1) Case description (P. P. 59/06.): D. P. from Š., B-H, complains against the failure to settle her request for the recognition of her right to old-age pension. The procedure was initiated in the line of duty on 2 April 2002.

Undertaken measures: On 26 January 2006, the Ombudsman requested a statement from HZMO concerning its reasons to stall and delay the adoption of the decision. On 21 June 2007, the Ombudsman received HZMO's statement with a copy of the decision of HZMO, Regional Service in Z. dated 12 June 2007, stating that the complainant's right to the proportional part of pension from the funds of the Croatian pension insurance had been recognised as of 1 May 2002.

Note: It was established that the complainant's rights were violated as the result of the duration of the procedure and failure to abide by the provision of Article 296 of the Act on General Administrative Procedure.

(2) Case description (P.P.-320/07): M. P. from T. in B-H filed a complaint on 28 February 2007 about the failure to have his request for the payout of pensions settled. The request had been submitted on 9 May 2001.

Undertaken measures: The Central Service of HZMO was requested to issue a report on any actions taken to adopt the decision and to provide an explanation of the reasons for the stalling of the complainant's case.

Case outcome: On 4 April 2007, the Central Service issued a notification with a copy of the decision of HZMO, Regional Service in Z. dated 30 March 2007, ordering the payment of old-age pension to M.P. as of 9 May 2000.

Note: In the procedure, the Ombudsman established a gross violation of the complainant's rights as the result of an unduly long procedure and of the competent body's failure to abide by the provision of Article 296 of the Act on General Administrative Procedure.

(3) Case description (P.P.-243/07): On 26 February 2007, the Ombudsman received a complaint from M. B. from D. against the work of HZMO concerning the enforcement of a judgement of the Administrative Court of the Republic of Croatia of 14 December 2006.

Undertaken measures: On 2 March 2007, the Ombudsman requested a statement from HZMO, Central Service, concerning the procedure conducted and the state of the file of the complainant after the adoption of the judgment of the Administrative Court of the Republic of Croatia.

Case outcome: On 12 April 2007, in the enforcement of the judgment of the Administrative Court of the Republic of Croatia, the Central Service acknowledged the complainant's appeal and annulled the decision of HZMO, Regional Service in S. dated 24 December 2001, returning the case to the said regional service for the adoption of a new decision.

Note: Violation of the complainant’s right was established due to excessive duration of the procedure.

(4) Case description (P.P.-1436/06): On 21 November 2006, the Ombudsman received a complaint from U.Đ. from B.L. in B- concerning the failure to have his request for the recognition of the proportional part of pension settled. The request was submitted on 11 October 2002 through a foreign pension insurance holder.

Undertaken measures: On 21 November 2006, the Ombudsman requested a report from the Central Service concerning the reasons for the stalling of the procedure.

Case outcome: The Central Service, Sector for the Implementation of International Treaties on Social Insurance, forwarded a notification with a copy of the decision of HZMO, Regional Service in Z. dated 26 February 2007, recognising the complainant's right to the proportional part of old-age pension as of 1 November 2002 from the funds of the Croatian pension insurance.

Note: Violation of the complainant's right was established due to excessive duration of the procedure.

(5) Case description (P.P.-1432/05): D. M. from B. filed a complaint to the Ombudsman on 9 November 2005 concerning the failure to enforce the decision of the Central Service of HZMO dated 14 August 2004 in the procedure of establishing the payment of pension.

Undertaken measures: On 10 November 2005, the Ombudsman requested a notification about the complainant's claims and actions taken to adopt the decision. On 27 February 2006, the Central Service submitted its statement.

Case outcome: From the statement, and the copy of the decision which was submitted later, it is evident that HZMO, Regional Service in V., adopted a decision on 1 February 2006 after the decision of the Central Service of 16 August 2004 by which the appeal of the complainant was recognised and the decision of HZMO, Regional Service in V. annulled, and the case thus returned to the regional service to have a new decision adopted.

By the decision of the Regional Service in V., on 1 February 2006 the user of the old-age pension, D.M., began to receive her pension as of 1 April 1997, while her request for the recognition of the right to payment for the period from 1 May 1993 to 30 March 1997 was rejected.

Note: Violation of the complainant's right was established due to excessive duration of the procedure.

We should establish that the Ombudsman's co-operation with HZMO in resolving complaints is successful, as evident from a reduced number of complaints.

Still, the competent bodies of HZMO should be cautioned to improve their communication with the parties. In particular, concerning the duty to notify the parties about the progress of the administrative procedure and concerning restrictions in adopting the decision and the state of the files, the solving of which is complex and the procedure longer.

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

In 2007, the number of complaints filed by the Croatian Homeland War veterans and members of their families rose: the Ombudsman received 44 such complaints (whereas in 2006, he received 20).

The complaints primarily relate to the excessive duration of the procedure to establish the degree of disability, the settling of the veterans' housing issues, the establishment of facts needed to realise the right to the shares of joint-stock companies, in particular with respect to the establishment of the time period of participation in the Homeland War. Despite the actions taken by the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, the settling of individual requests exceeds the deadlines laid down by law.

A significant number of complaints related to the excessive duration of administrative proceedings before the Administrative Court and the way of recording data on the ownership of shares in the Fund of the Croatian Homeland War Veterans.

In accordance with his powers, the Ombudsman forwarded the complaints that he received from the parties to the Administrative Court 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 2007, 131 complaints were filed by the persons deprived of freedom, which is slightly less than in 2006, when 149 complaints were filed. The same as in previous years, the complaints mostly related to accommodation appropriate to human dignity and health standards, healthcare, staying in fresh air, work, etc.). To put it succinctly, the rights foreseen in the Act on Serving Prison Sentences and the Act on Criminal Procedure, i.e. the Book on conduct rules in prisons for serving detention. In 2007, the Ombudsman examined the prisons in Karlovac, Rijeka, Pula, Varaždin and the Penitentiary in Valtura.

It was established that the situation in the prisons is almost identical to the situation described in the previous reports of the Ombudsman. A large number of violations, or threats to the rights of persons deprived of their freedom, arise from the overcrowdedness in prisons which is on the constant rise for several years now. In order to gain better insight into the seriousness

of the problem, in late November the Ombudsman requested all prisons to submit data on the number of prisoners, detainees and convicts, and the duration of sentences issued. According to the data submitted, the situation is worrying. Stricter criminal repression after the amendments to the Criminal Code in 2006 should be taken into consideration, as it will most certainly result in an increased number of persons sentenced to unconditional imprisonment.

PRISON	Prisoners[1] (over 6 months)	Detainees	Convicts	Total	Capacity and (occupancy in %)
Bjelovar	**58 (18)**	**34**	**4**	**96**	**53 (181%)**
Dubrovnik	**11 (7)**	**23**	**2**	**36**	**38 (95%)**
Gospić	**130**	**9 +1 retained**	**4**	**144**	**100 (144%)**
Karlovac	**41 (16)**	**21**	**10**	**72**	**36 (200%)**
Osijek	**39 (14)**	**120**	**17**	**176**	**121 (145%)**
Požega	**64 (27)**	**16**	**4**	**84**	**67 (125%)**
Pula	**137**	**75**	**7**	**219**	**140 (156%)**
Rijeka	**56 (13)**	**111**	**4**	**171**	**116 (147%)**
Sisak	**21 (9)**	**34**	**19**	**74**	**58 (127%)**
Split	**61 (13)**	**194**	**8**	**263**	**150/200 (175%/131%)**
Šibenik	**66**	**75**	**2**	**143**	**86 (166%)**
Varaždin	**62 (13)**	**49**	**21**	**132**	**65 (203%)**

[1] *Prisoner* means any person sentenced to imprisonment, because of a criminal offence, serving his prison sentence in a penitentiary or prison, or a person deprived of freedom. *Detainee* is a person against whom the court ordered detention. *Convict* means a person serving a prison sentence, because of a misdemeanour.

Zadar	**8 (1)**	**69**	**2**	**79**	**40/54 (197%/146%)**
Zagreb	**198 + 106 Diagnostics Department**	**456**	**35**	**795**	**582 (136%)**

Concerning the data in the table it is necessary to point out that it refers to the situation on a specific day in late 2007. Along with the number of prisoners, the table also contains in the brackets the number of prisoners who have more than 6 months to serve. Namely, the said data is important, because in accordance with the provisions of the Act on Serving Prison Sentences prisons are used to enforce prison sentences which are issued in the misdemeanour procedure, the measure of detention and the punishment issued in criminal proceedings up to 6 months, while those over 6 months are served in penitentiaries or in prisons which have a department for serving sentences longer than 6 months. Based on the data from the table, it can be concluded that 131 prisoners served prison sentences in prisons which do not have a department for serving sentences. According to a letter received from the Central Office of the Prison System Administration of the Ministry of Justice, decisions on the institution in which a particular prisoner is to continue serving his prison sentence, and which are adopted based on a psychosocial analysis and the proposed individual programme for serving a term in prison, are greatly dependant on overcrowdedness, so that prisoners are sent to any institution that has capacity to provide accommodation, regardless whether the prison in question has got a department for serving sentences longer than 6 months. Of the fourteen prisons that exist in the Republic of Croatia, only four (the Prison in Gospić, Pula, Šibenik and Zagreb) have a department for serving prison sentences over 6 months.

In addition, during the analysis of the data on overcrowdedness stated in the table, one should bear in mind that the data on the capacity of prisons to a great extent relates to the number of persons who can be accommodated in a particular prison (based on the number of beds), where usually the legal minimum of 4 m2 per prisoner is not taken into account. For example, the total capacity of the Prison in Split, according to the data received, is 200, but basically it is 150 based on the legal minimum. Such overcrowding, which in certain institutions is around 200%, causes numerous violations of the rights of prisoners, detainees and convicts and through its continued, alarming growth has ceased to be the problem of only the Prison System Administration, but of the entire state. The Ombudsman finds it is essential to point out the fact that the European Committee for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment (CPT) established that 4 m2 would be an appropriate benchmark, while the European Court of Human Rights confirmed the standpoint, holding that a failure to ensure 4 m2 is a violation of Article 3 of the European Convention (e.g. Case of Peers v. Greece, which involved two prisoners in a room of 7 m2, with no fresh air and too little light, ruled as a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

The effect of overcrowdedness on the prescribed rights must be viewed through the fact that the needs relating to the organisation of work and the needs of persons deprived of freedom have long surpassed the developed systematisation of the staff and of the department. However, it is necessary to point out that according to the representative of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, who attended the round table entitled the "Presentation of the Guidelines for Inspection and Monitoring of Prisons", held on 24 January 2008, the overcrowdedness of the prison system is present throughout Europe.

In terms of violations of the rights caused by overcrowdedness, the violations mostly involve the right to accommodation appropriate to health, hygienic and spatial requirements (Article 14 of the Act on Serving Prison Sentences and Article 113 of the Act on Criminal Procedure). Considering that in the previous annual reports, and the special report to the Committee on Human and National Minority Rights submitted in 2006, the Ombudsman described in detail the violations and the state of human rights in the penitentiaries and prisons, and that the situation has been becoming worse and worse every year, it is not necessary to repeat what has been said already. However, in order to present an illustration of the state in the prisons, it is necessary to present individual examples recorded during the examination in 2007. For example, in the Prison in Rijeka, two prisoners live in a small and quite dark room. The prisoner V.R. suffers from a serious lung disease. The bed below his belongs to I.O., who is incontinent. There is no protection beneath the sheets, so the mattress is completely wet. Staying in such unhygienic conditions is very difficult even for a few moments, so it is unconceivable that a man who suffers from a serious lung disease could live in such conditions. One should take into account that the prisoners stay in their rooms 22 hours a day, and that they can take a shower only 2 times a week, not to mention that they do everything in the described conditions, including eating. The said example must be viewed in terms of the fact that the European Court of Human Rights takes such circumstances into consideration when deciding on a potential violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In the judgment adopted in the case of Testa v.

Croatia (59), it is stated that the Government did not contest that the beds were old and partly broken, the mattresses torn and soiled and that another inmate in the same cell who took heavy sedatives soiled her bed almost every night, which created an unbearable smell in the cell. Under such circumstances, the Court views that lack of space in combination with some other factors has got great weight as a point which must be taken into consideration in determining whether the contested conditions of stay in the prison are "humiliating" from the standpoint of Article 3 f the Convention. However, it is necessary to point out that, after the warning of the Ombudsman, I.O. was moved to the Prison Hospital, because the Prison in Rijeka, as stated in the Report, was not able to provide adequate medical assistance.

The following example is also from the Prison in Rijeka, where 12 prisoners and convicts serve their prison sentences in the basement, in complete dark (although it was around 14 p.m.) and no fresh air. At the entry to the room, we lit the light (two bulbs, one did not work), and the prisoners were looking at us from their beds. In the room, there are prisoners who still have 21 months to serve, so slightly less than two years. Indeed, it is quite justifiable to ask oneself what purpose will be achieved by the serving of such prison sentence? Do individual programmes of serving their prison sentences, in accordance with Article 69 of the Act on Serving Prison Sentences foresee a series of pedagogical, working, health-related, psychological, social and safety procedures appropriate to the characteristics and needs of the prisoners? If it does, what are these measures and procedures, and when and how are the measures and procedures, the objective of which is to achieve the purpose of prison sentence enforcement, being implemented?

In the Prison in Karlovac, there is particularly poor accommodation in Room No 8. The surface area is 25.70 m2. The room accommodates 13 individuals (where a room of twice the size should be provided in accordance with the Act, i.e. 52 m2). Along with six bunk beds, 4 little tables and 6 chairs, and a restroom, there is no place left to even stand, so that it is completely incomprehensible where they put yet another mattress over the night. The room is full of smoke, and the two prisoners who do not smoke find it very hard to endure 22 hours a day in such conditions. It is indubitable that the rights of the prisoners to accommodation appropriate to human dignity and health standards are being violated in the said examples, not to mention Article 74, paragraph 2 which states that each and every prisoner must be provided a separate bed.

Furthermore, the Prison in Varaždin has unacceptably poor conditions in Room No 20, which accommodates 12 persons, both prisoners and convicts. In the said room, there are 10 beds, and two persons sleep on the floor. On the date of the visit, in the Prison there were 7 persons

who did not have a bed of their own, and some of them did not even have a mattress, but they were forced to sleep on an old sponge (Article 74, paragraph 2, which states that each prisoner must be provided a separate bed). Furthermore, in that room there are only 4 lockers, so that the prisoners and convicts keep their things in bags on the floor. There are not enough chairs, so the meals are eaten on the beds. The room does not have a restroom or drinking water, so that they have to bang on the door for the guard to take them to the restroom, and as the guard sometimes does not hear them, there are three large buckets in the room where they relieve themselves. They keep drinking water in used plastic bottles, which is contrary to Article 74, paragraph 6 of the Act on Serving Prison Sentences.

The fact that persons who have 8 months yet to serve live in such conditions aggravates the situation even more. The said examples show that overcrowding in prisons, despite the efforts used by prison management to ensure accommodation in line with the spatial, hygienic and health standards, leads to many violations of the rights of the prisoners, detainees and convicts, such as stay in fresh air for at least 2 hours a day (Article 14 of the Act on Serving Prison Sentences and Article 114 of the Act on Criminal Procedure), the right to one's own bed (Article 74 of the Act on Serving Prison Sentences and Article 35 of the Book on conduct rules in prisons for serving detention), etc. According to the report submitted by the Central Office of the Prison System Administration, the plan is to increase the current accommodation capacity in the Prison in Varaždin by transforming the rooms where prison management is presently located into rooms for prisoners, while the management will move to the loft.

Under Article 23 of the Act on Serving Prison Sentences, it is the job of the treatment sections to implement, supervise, monitor and assess the effect of the individual programmes for serving prison sentences. Therefore, the treatment sections are in charge of achieving the purpose of serving prison sentences. However, in view of the overcrowding and the number of staff in the treatment sections, it is questionable whether the prescribed purpose is achieved at all. To illustrate, we would like to describe the situation in the Prison in Karlovac. Its treatment section has only one employee. On the date of the visit to the Prison, there were 72 persons in the Prison (41 prisoners, 21 detainees, 10 convicts), where against 8 of them security measures had been issued, and one person was subject to psychiatric treatment. It can be concluded that it is unrealistic to expect that a single person in the treatment section, regardless of his commitment and devotion to work, could contribute to the realisation of the purpose of serving prison sentences in any more significant way.

Along with the described violations concerning the conditions of accommodation, the complaints of the prisoners and detainees mostly refer to the provision of medical assistance,

primarily the unavailability and the content and quality of medical procedures. It is necessary to point out that most reports submitted to the Ombudsman state the number of examinations made as an argument in favour of the quality of the medical assistance rendered. However, it is the opinion of the Ombudsman that the number of examination is neither a guarantee nor an indicator of the quality of medical assistance. His standpoint is identical to the standpoint of the European Court of Human Rights. In the judgment in the case of Testa v. Croatia (of 12 July 2007), it is stated as follows: "… the Court considers irrelevant the Government's submission that the applicant had seen a prison doctor on more than fifty occasions since these visits did not provide the applicant with the medical care and assistance indispensable for her particular health condition" (52). Concerning the unavailability of the doctor, we could also mention the example of A.P. from the Prison in Pula who states that in early November 2007 he asked to see the psychiatrist, but he was told that he would be scheduled an appointment in January 2008. According to the report of the prison manager, the causes of the prisoners' complaints arise from the fact that the Prison has only one doctor who works every day in the Prison in Pula and in the Penitentiary in Valtura and that the medical service does not have a medical technician, whose position is occupied by inadequately trained medical staff (?). Concerning medical assistance, it is necessary to point out the opinion of the European Court of Human Rights stated in the judgment in the case of Novak v. Croatia of June 2007 (45 and 46), regardless of the fact that in that particular case the Court ruled that no violation of Article 3 of the Convention took place in view of the short duration of the time spent in the mentioned conditions, where the Court firstly notes that the CPT report, issued after the visit to Zagreb Prison Hospital in 1998, indicates that psychiatric treatment was limited to pharmacotherapy and that there were no rehabilitative or other therapeutic activities (occupational therapy, group therapy, individual psychotherapy, etc.). The Court notes that the Government did not provide information indicating any improvement in this respect and acknowledged the lack of such therapeutic options in Varaždin Prison or any other prison in Croatia. It is undisputed that the applicant received prescription drugs only for his psychiatric condition. It is continued that the Court finds it regrettable that the Croatian authorities have not yet provided adequate treatment for prisoners suffering from PTSD, a very serious and damaging psychiatric condition.

In view of the foregoing, it is logical to expect an increase in the number of complaints to the European Court of Human Rights. In that regard, the Ombudsman finds it relevant to point out the standpoint of the European Court of Human Rights relating to the exhaustion of the national legal remedies in accordance with Article 35, paragraph 1 of the Convention for the

Protection of Human Rights and Fundamental Freedoms, as the condition of permissibility referred to in the judgments against the republic of Croatia. It is stated: "The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness." (Case of Novak v. Croatia) The foregoing indicates that it is necessary to ensure that domestic remedies, which can afford redress in respect of the breaches alleged, are accessible and effective, which will in practice result in the dismissal of the request for impermissibility, thus reducing the number of judgments against the Republic of Croatia.

Other than against the described conditions of accommodation, the prisoners also complain against the duration of the criminal procedure, despite Article 25 of the Constitution of the Republic of Croatia which stipulates that detainees and accused persons have the right to be brought before court within the shortest term laid down by law and either found guilty or innocent within the legal term. For example, S.J. states that he was detained in July 2006 and that no hearings were held before December 2007. Considering that the conduct of the court is not part of the competence of the Ombudsman, in such cases the Ombudsman forwards the complaints to the Ministry of Justice.

The Ombudsman finds that co-operation with the Central Office of the Prison System Administration of the Ministry of Justice and with penal institutions is a good one, although sometimes the reports submitted indicate failure to comply with the requests of the Ombudsman. For example, a prisoner filed a complaint to the Ombudsman, claiming that he was being sexually harassed by other prisoners. He claimed to have notified the management, but that nothing had been done about it. The Ombudsman requested a report, which read that: "… it is completely unacceptable to accuse the Management of the Penitentiary…", where it is probably forgotten that the duty of the Ombudsman is to investigate possible violations of the constitutional and legal rights, so queries made by the Ombudsman cannot be interpreted as "unacceptable accusations". There was also a complaint filed by a female detainee against the employees of the security section. The Ombudsman requested a report, which read that: "… something like that is not true…" Therefore, it is not stated what was done concerning the matter and on what grounds the conclusion of unfoundedness of the complaint was made, but it is simply stated that it is not true. However, the said examples are exceptions, which must be borne in mind in the same way as the fact that the Ombudsman views the prison system

through the prism of complaints or during an examination of the observed threats or violations of the rights of persons deprived of freedom. Therefore, any generalisation and the adoption of general conclusions on the prison system on the basis of an individual case could be wrong and subject to criticism.

EXAMPLES:

(1) Case description (P.P.-225/2007): Z.Ć. from Zagreb filed a complaint to the Ombudsman against the way her daughter A.Ć. was treated in detention. The complainant states that her daughter, who is very sick, which is why she had received chemotherapy treatment, was moved from the Prison in Split to Prison Hospital on 4 January 2007 and from there to the Clinical Hospital Centre for Women's Diseases and Deliveries in Zagreb. As the complainant states, her daughter was tied during the entire night in hospital despite her very serious medical condition and the presence of a judicial police officer.

Undertaken measures: The Ombudsman requested the Prison Hospital to issue a report concerning their conduct towards the detainee. In the report which the Prison Hospital forwarded to the Ombudsman it is stated that the detainee was restrained while being taken to hospital, which is in line with the Act on Serving Prison Sentences. The complainant was notified of the content of the letter. She denied what was stated in the letter, which is why the Ombudsman requested an additional report from the Prison Hospital. In that request, he also mentioned the judgment of the European Court of Human Rights (Case of Mousel v. France (2002)), in which it is stated that, along with other violations in the concrete case, while acknowledging the patient's health, the nature of the treatment and the like, tying to the bed as a security measure is a violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms. In the said judgment, the Court refers to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (Rec.(2006)2 of the Committee of Ministers to member states on the European Prison Rules), which in the rules 68.1 – 68.4 regulates the use of instruments of restraint. The security section of the Prison Hospital forwarded an additional report confirming the statements of the complainant that the detainee was restrained during the night in the Clinical Hospital Centre for Women's Diseases and Deliveries in Zagreb, but explains such procedure in a way that the detainee was restrained for security reasons, i.e. to prevent escape, suicide or self-inflicted injuries. Concerning the standpoint of the Ombudsman, that the matter involved a seriously ill person, the report states that such a statement is "not true

from a security point of view". Regarding the standpoints, the Ombudsman issued a warning pointing out the obvious discrepancy between the first and second reports, the fact that the seriousness of the disease was not the subject of security, but of medical evaluation, the fact that the presence of a judicial police officer should have been enough to prevent escape, self-inflicted injuries or suicide, and the fact that the provisions of the Act on Serving Prison Sentences do not apply to detainees, but to prisoners.

Case outcome: The complainant was notified of the content of the warning. Neither the Prison Hospital nor the Central Office of the Prison System Administration of the Ministry of Justice did not notify the Ombudsman, in accordance with Article 7 of the Ombudsman Act, of the measures undertaken concerning the warning.

(2) Case description (P.P.-1615/2006): A prisoner B.F. filed a complaint to the Ombudsman for non-approval of extraordinary prison pass. The complainant states that his child was born and that he asked for prison pass, but that it was not approved.

Undertaken measures: The Ombudsman requested the prison in which the complainant was serving his sentence to provide a report on the reasons for the failure to approve extraordinary pass. The report states that the competent police station, the social welfare centre and the state prosecution were asked to provide their opinion concerning the prisoner's request. As the opinions were negative, the prisoner's request was not accepted. Bearing in mind the nature of the extraordinary pass that the prisoner had requested, the Ombudsman sent a recommendation to the prison, pointing out the fact that the extraordinary pass was not to be regarded as a benefit, but as a pass on the occasion of a specific situation, which would enable the prisoner and his family to realise the right to family life. Considering that the prisoner's child was born, the conditions stipulated in Article 128, paragraph 1, item 3 of the Act on Serving Prison Sentences for extraordinary pass were realised. The negative opinions of the Police Station Vinkovci, of the social welfare centre and of the state prosecution are not a decisive factor in approving an extraordinary prison pass, but they can be relevant for deciding whether the prisoner's extraordinary pass from prison will be approve subject to escort or without escort by a judicial police officer. Further to the foregoing, the Ombudsman recommended the extraordinary pass to be approved.

Case outcome: Acknowledging the recommendation of the Ombudsman, the prisoner's extraordinary pass and visit to his family was approved.

(3) Case description (P.P.-1408/2005): A prisoner T.K. submitted a complaint to the Ombudsman, because his request to receive a below-the-knee prosthesis was not approved. Based on the medical certificate enclosed to the complaint, it follows that the use of new below-the-knee prostheses is indicated and according to the doctor the prostheses are necessary. However, the Penitentiary adopts a decision not approving the procurement of orthopaedic devices for the prisoner. In the explanation of the decision it is stated that the prisoner was resolving the matter of the prostheses in Osijek last year, during suspension of his prison sentence, but that he committed a new criminal offence, which is why the suspension was recalled.

Undertaken measures: Based on the data from the complaint and the documents enclosed, acknowledging Article 14, paragraph 1, item 7 of the Act on Serving Prison Sentences according to which health care is the right of any prisoner, the Ombudsman sent a recommendation to the Central Office of the Prison System Administration. In the recommendation, he stated that the explanation included in the decision clearly shows that the facts which would be a determining factor in not approving the orthopaedic devices had not been established and that he therefore recommends that the prisoner should receive new prostheses in line with the indications and the doctor's opinion.

Case outcome: Acknowledging the Ombudsman's recommendation, the Penitentiary notified the Ombudsman that the acquisition of the below-the-knee prostheses was under way and that the costs would be borne by the Penitentiary.

(4) Case description (P.P.-1506/2007): S.D. from Zagreb submitted a complaint concerning the health care being provided to her partner I.Z., who is serving a prison term. It follows from the complaint that I.Z. was operated on in 2002 with placement of an anus praeter. The complainant states that I.Z. requested the anus praeter to be closed, in line with the medical findings, but that it was not done.

Undertaken measures: Based on the data included in the complaint and the documents submitted, in line with Article 14, paragraph 1, item 7 of the Act on Serving Prison Sentences, according to which all prisoners have the right to health care, the Ombudsman requested a report. In the report it is stated that the prisoner was manipulating his medical condition and that medical care was being provided in accordance with Article 103 of the Act on Serving Prison Sentences. Medical records were enclosed to the report. However, based on the medical documents, it follows that the doctors had recommended the anus praeter to be closed and that I.Z. has already undergone pre-operative treatment. However, as the opinion of the

surgeon from a hospital outside the prison system reads that "in view of the patient's status (prisoner, long-term sentence), op here only subject to vital indications", the Ombudsman requested a further report from the Prison Hospital about the reasons for not conducting the operation. Based on the submitted report, it follows that the Prison Hospital did not have the human resources or the equipment to make the operation and that the doctors in the Prison Hospital could not use their influence on the medical staff outside the prison system to change their opinion that the operation was not urgent and that it could wait until the prison sentence was over (2014). Acknowledging that the case involved medical issues, the Ombudsman requested that the Ministry of Health and Social Welfare make an inquiry into the matter and submit a report on the reasons why the operation should not be performed, i.e. whether the fact stated in the doctor's opinion relating to the patient's status was a determining factor in making the decision that the operation would be performed only in the event of vital indications?

Case outcome: The investigation procedure is underway.

Construction and physical planning

The Ombudsman monitors the field of construction in terms of complaints against the threats and violations of the rights of citizens during the implementation of administrative procedures for the issuance of location and building permits and the conduct of the building inspection. Physical planning as an independent administrative field is discussed directly only within the framework of procedures which precede the adoption of a spatial plan for the spatial plans of towns and municipalities. However, the field of physical planning is discussed indirectly in cases involving complaints concerning the issuance of location permits and almost each and every case of the issuance of building permits, i.e. construction works, as the citizens mostly voice their objections to the spatial plan at a later stage, when the procedure for obtaining a building permit has already been initiated and/or conducted or when the building inspection procedure has already been initiated.

Altogether 114 new complaints were received in 2007 in the field of construction (the number is on the rise for the last five years), and 10 complaints in the field of physical planning.

Although the new Act on Physical Planning and Construction entered into force on 1 October 2007, all construction cases received by the Ombudsman were reviewed and

discussed in terms of the former regulations: the Act on Physical Planning and the Construction Act. Namely, the new Act entered into force in the last trimester of 2007 and, furthermore, the regulations which ceased to be valid on 1 October 2007 still apply based on the transitional and final provisions of the Act on Physical Planning and Construction (Articles 325 through 334 – *procedures initiated under the provisions… before the entry into force of this Act shall be concluded under the provisions of the said laws and the regulations adopted pursuant to the said laws).*

Regarding construction, of the total number of new complaints (114), 26 relate to location permits, 23 to building permits, where the largest number relates to the implementation of procedures and the work of the building inspection (65).

The citizens file objections against the work of the building inspectorate in terms of the right to a reasonable term for the reinstatement of the legal state of construction, in the event of illegal construction to a reasonable term for the reinstatement of the previous condition. The objections against the excessive duration of the procedure are submitted exclusively against the procedure of enforcement of inspection decisions (namely, the objections filed by the neighbours for failure to enforce the measure of removal over a long period of time, even ten years).

The Act on General Administrative Procedure sets the time limits within which the administrative procedure must be conducted, and the procedure initiated, implemented, completed and enforced by the building inspectorate. The setting of time limits presumes that the citizens are able to protect their rights before the body of state administration in a simple, fast and efficient manner. The complainants addressing the Ombudsman mostly did not realise protection of their rights, because the procedure was unreasonably long, meaning that the mentioned basic principles in the conduct of the building inspectorate were not achieved. Although once construction works are reported, the inspection is mostly performed within the shortest term possible, the decision enforcement, especially involuntary enforcement through another person is mostly not performed immediately, but is postponed beyond reasonable measure.

Over the past several years, the Ombudsman would issue rush notes in such cases, but it was decided that was not effective enough, because the deadlines are missed by several years and there is a large number of such cases. Therefore, in some of the cases the parties were instructed to submit a complaint for illegal actions, although that places a burden (on the already overburdened) judiciary, so this is an example of the way in which administrative bodies generate new court disputes, unnecessarily.

Based on the data gathered from the citizens' complaints, where most complaints submitted to the Ombudsman relate to family construction and construction works around the house, it is evident that the building inspectorate is "overflowing" with notifications of the construction of family buildings, and auxiliary, small commercial and simple structures.

The excessive workload of the building inspectorate placed in view of the notifications of the construction of small structures is not a novelty. The Ombudsman pointed it out in his report for 2005. It was then proposed that the regulations should be amended to alternatively regulate the competence of the building inspectorate for the auxiliary and simple structures in view of their simple construction and/or value ("objects of small value"). The proposal was then explained in detail, and it basically said that the units of local self-administration should be enabled to set up the building monitoring service (building monitor). The proposal aimed to release the engineer of the Ministry from the duty to act in terms of simple construction works and construction with no serious irregularities, which can be remedied immediately, provided that the investor was notified of the irregularity timely by the official person of the local unit.

In the event of transferring part of the inspection competencies to the units of local self-administration, the inspectors of the Ministry could concentrate on timely supervision of the installation of construction products and equipment, supervision of "serious" illegal construction and/or constructions sites where urgent safety measures must also be ensured (stability of the surrounding ground – land-slide sites and falling in, damages to the existing buildings, etc.), and supervision of construction works in protected areas (such as the protected coastal area, parks of nature, cultural and historical units, etc.). The irregularities detected on the residential buildings and the damages caused by construction works in the area of the City of Zagreb in 2007 testify to the fact that the building inspectorate did not perform timely supervision, so the measures are issued as part of an intervention, and not prevention, i.e. those issued to enforce the obligation of the state to protect public interests and the safety of citizens.

The new Act on Physical Planning and Construction does not stipulate the competence of the building inspectorate in terms of the type of buildings and it also does not foresee the possibility of setting up monitoring services in the segment of construction. Therefore, it is necessary to wait for the implementation of the new Act and see the extent of using other instruments to prevent and suppress illegal acts by investors and achieve reasonable duration of the procedure before the building inspectorate.

In his requests, the Ombudsman mostly asks the building inspectorate to make an inspection at the site of construction or to conduct procedures under the right of supervision, so the Ministry does not submit the notification and/or report within 30 days. However, the request to submit the report or statement is not met within 60 and even more days. Therefore, (after 60 and 90 days) it was necessary to issue rush notes. The rush notes had to be repeated once in ten (10) cases in 2007, but also in twenty (20) cases from the previous years, pending inspection proceedings for several years. The rush notes to submit the data had to be repeated twice and more times in 9 cases.

However, it is necessary to point out that in the cases where the Ombudsman requested data, the Directorate for Inspection Activities had to conduct the procedure of re-examination, so that the submitted reports were mostly complete and exhaustive.

Regarding the complaints against building and location permits, the examination is conducted to determine whether in the procedure which preceded the issuance of the administrative decision the construction service took into account and respected the rights of citizens participating in the procedure or whether it committed an omission or some other irregularity. More and more frequently, the complaints also include objections against the conduct of civil servants contrary to the principles of good and professional work.

The protection of the right to obtain a building and construction permit in 2007 was mostly requested on account of the "silence of the administration" of the first-instance body, because the requested permit was not issued within the legal term of 30 or 60 days. The initiation and implementation of the procedure can depend on the will of the official. In accordance with Article 125, paragraph 1 of the Act on General Administrative Procedure, in matters where the procedure can be initiated only further to the request of the party, the moment of initiating the procedure is when the competent body "performs any action with a view to conducting the procedure" (the competent body makes the action by recording) and may not depend on the will of the official. The right to obtain an administrative decision may also not depend on the will of the official, because the law lays down the time limit of 30 days for passing a decision on a duly submitted request for the location and building permit.

An immediate consequence of missing the deadline for the issuance of the location permit by the first-instance body in 2007 is the rejection of the request, because the permit could not be issued in the way it was requested. The primary reason for rejecting a request for the location permit would be changes to the physical plans during the (long) duration of the procedure for its issuance, because a new physical plan entered into force before it was requested.

The question of legal security of the citizens after the submission of a request for the location permit, relating to the requests with respect to which the physical plan changed during the administrative procedure, was finally settled by the Administrative Court. In the conclusion of the property-legal department of this Court, it was stated that administrative bodies should act in a way to apply the regulation applicable at the time of initiation of the procedure when making a decision (location permit), unless stipulated otherwise in a regulation.

The Ombudsman was also asked to provide protection against the nullification of legally effective location permits and the cancellation of building permits. Thus, in a case that was investigated by the Ombudsman, it was stated: "*A legally effective location permit for building a family house was nullified under the right of supervision, while a legally effective building permit was cancelled in the procedure of renewing the procedure for the issuance of the building permit. By placing legally effective administrative acts out of force, by nullifying location and building permits, the complainants are placed in a state of legal insecurity.*"

As opposed to the previous years, when the citizens complained against the excessive duration and stalling of the procedure by the second-instance body, the Ministry of Environmental Protection, Physical Planning and Construction , in 2007 such complaints were filed against the work of the first-instance body, i.e. the work of the service for physical planning and construction of the county offices of state administration, in particular against the branch offices of the county offices of state administration.

Considering that the new Act on Physical Planning and Construction decentralises the issuance of building approvals (major towns, the City of Zagreb and the counties), it will be possible to evaluate whether the newly-competent administrative bodies have managed to reduce the duration of the administrative procedure to an extent which can be regarded as reasonable and to remedy the objection against the "silence of the administration" only in the next reporting period.

Regarding the co-operation of the Ministry of Environmental Protection, Physical Planning and Construction and the county offices, the Ombudsman's requests for the submission of a report or statement concerning particular cases were often not met within the term of 30 days.

Complaints from the sphere of physical planning (10 received in 2007) contained requests for the protection of the right to the local area planning. The citizens were mostly unsatisfied with the local authorities' failure to adopt and integrate into the physical plan their remarks regarding the proposal of the plan, which, in the citizens' opinion, present the local inhabitants' proposals for different planning of the area, particularly of the construction zones in the coastal area. However, such proposals were usually premature in cases where the

citizens did not obtain an answer to the comments made on the proposal of the plan in a public discussion, because the procedure was not over yet. When the comments are made after the plan went through the procedure for the issuance of a consent with the Ministry and was adopted, the comments are late.

EXAMPLES:

(1) Case description (P.P.-183/07): A.V. from R. is in the possession of a legally effective decision of the building inspector on the removal of an illegally constructed building in his immediate neighbourhood dated 1 October 1998. The decision orders H.D. from V. to remove the building, which was erected without a building permit (above the existing garage). However, not only that the illegal investor did not comply with the inspector's orders, but he also proceeded with the works, raising the structure to 3.80 m, closing it, and turning the garage into a living area.

Based on the documents enclosed to the complaint, and especially the photographs (taken in the period from 27 February 2004 to 17 December 2006), it was confirmed that most works were actually performed after the issuance of the order on removal, even after the issuance of the conclusion on the permit to enforce and initiate a misdemeanour procedure against the investor.

Undertaken measures: Considering that in the matter it could be ascertained with sufficient certainty that the works would continue and that the environment was polluted by the construction works, it was proposed to the building inspectorate of the Ministry of Environmental Protection, Physical Planning and Construction to conduct the procedure of enforcement without any delay.

The Office of the Ombudsman received a report of the building inspector that in the procedure of supervision of the construction works the inspection procedure had been initiated in 1998, but that the procedure had become barred by the statute of limitations. However, although it was established that the Construction Act had been violated, the Ombudsman was not informed whether a new inspection decision had been issued.

Considering that further to the complaint the case was being monitored as a case of non-enforcement of a decision on removal, it was pointed out to the Ministry that it could be ascertained with sufficient certainty that the works were continuing, but also that the environment was being polluted, so it was proposed to repeat the procedure of enforcement.

Case outcome: The Ombudsman did not receive any notice of what had been done further to his proposal and he did not receive any notification whether in February 2007 the inspection

procedure for new illegal construction had been initiated in the line of duty (additional works and adaptation).

Note: There is a large number of identical cases in which the conclusion on the permit of enforcement is not implemented for a period of ten years, so it becomes barred by the statute of limitations, where frequently there is also no data on the initiation of a misdemeanour procedure against the illegal builder.

(2) Case description (P.P.-290/07): B.G. addressed the Ombudsman, because he was not able to use the path leading to his house in M. near T., because of an illegal construction made by M.D. from S. According to the complainant, the building inspector registered the illegal construction for the first time on 12 January 1988. However, despite the prohibition of further construction works, issued at that time, the construction works continued.

According to the data from the decision on removal, on the plot marked as cadastral plot no. x and y, cadastral municipality M., the following was built without the required building permit: a building size 8.50 x 8.20 m, height 7.00 m (P+1+attic), septic tank dimensions 2.50 x 2.00 x 2.00 m, a concrete wall of stone length 11.00 m, height from 0.90 to 1.50 m. Part of the building (surface area 219 m2) was built on the plot path of the Municipality of M.

The enforceability of the decision on removal is stated in the conclusion on the permit of enforcement of 29 December 2003. However, the illegal investor did not perform the order of the building inspector of 2003 and so far has not borne any consequences in view of trespassing and usurping a publicly owned land by the illegal construction.

Undertaken measures: Considering that the removal has supposedly still not been done, the building inspection was asked to provide data on the measures taken against the investors and data on the earliest time limit within which the implementation of the procedure of administrative enforcement can be expected.

Case outcome: Unknown, because the requested report was not submitted even after a rush note. The Directorate for Inspection Activities was warned about its obligation and duty to co-operate with the Ombudsman.

(3) Case description (Number: P.P.-36/07 and 1648/06): The Ombudsman was addressed by the adversarial parties V. K. from Z. and S. A. from P. Both complaints (neighbours) relate to the construction of a residential building in the cadastral municipality Di.. Ko.. by the investor V. K., and they include objections against the work of the State Administration Office in the County of Z. and the Ministry of Environmental Protection, Physical Planning and

Construction. The parties voiced their objections against the work of the Ministry in relation to the implementation of the second-instance procedure and the actions taken by the building inspector.

S.A. filed a complaint against the construction works being performed by the neighbour V.K., because of a violation of his right to peaceful enjoyment of property and an excessively long administrative procedure, while V.K. filed a complaint, because of the renewal of the procedure of his legally effective location and building permits, the length of the procedure for the re-issuance of the building permit, and the more favourable treatment of the other party and his unequal position in the said procedures.

At the time when V.K. filed the complaint, the Ministry had already conducted an examination of the complaint of S.A. The procedure in the case of S.A. was completed by adopting the standpoint that the duration of the procedure for the building permit of V.K., which lasted for seven years and is still not over (the proposal for the renewal of the procedure of the final location and building permit of 26 June 2000), was excessive and unreasonable, and as there are no special extraordinary circumstances which would justify it, in this case the right to receive timely and effective protection was also violated. Although the Ministry conducted the procedure several times until 2007, it did not resolve the matter, but made the whole matter complex and/or insufficiently clear (for example, to enforce the second-instance decision, the first-instance body requested a special instruction, so the procedure lasted four and a half years).

V.K. explains in his complaint that the capacity of a party in the administrative disputes conducted for the residential building of his neighbour S.A. is not recognised, although the right is recognised and guaranteed in the Act on General Administrative Procedure to any interested party. The duration of the procedure for obtaining a building permit for his residential building, which began as the result of nullification of the permit after it had already become legally effective, is not a consequence of the complexity of the matter, but it occurred as the consequence of three or four procedures by the bodies of the first and second instance. He also considers that one of the reasons is the incorrect conclusion of the second-instance body about the state of facts, i.e. the changed assessment of the subject matter at hand: the building permit and the state of facts determined in the supervision of the building inspectors. Non-recognition of the capacity of a party in the first-instance procedure and the changed assessment of the Ministry concerning the matter (the building permit was confirmed, and then nullified; in the first inspection procedure, no material violations of the rights were

determined, subsequently it was determined that a law was violated), V.K. holds that he was placed directly into an unequal position.

While discussing the complaints, it was determined that the appeals and the administrative complaints contributed to the duration of the procedure. However, it remains unclear to what extent it was determined in the presented individual administrative matters that the construction was contrary to the public interest (degree of construction, distance from the border, requirements essential for the building) or to the private interest of the parties to the procedure. The foregoing is an important fact for the implementation and completion of inspection procedures (enforcement of the measure of removal). Namely, all circumstances indicate that the persons are basically in very similar situations in terms of compliance with law and that the parties are trying to resolve their mutual relations in an administrative, instead of a court procedure. In view of incomplete data, because we could not obtain it from the state bodies, it remains unclear whether the investor V.K. was placed in a position which was materially different from the position of the other party in the administration and inspection procedure (the reasons for nullifying the building permit, determining the state of facts of the building K. and the state of the plot A., inspection measure…, non-performance of the procedure concerning the last administrative dispute K.).

Undertaken measures: The Ministry of Environmental Protection, Physical Planning and Construction was asked to explain the questions which the Ombudsman could not answer, because of insufficient data, needed to make a decision on the violation of the complainants' legal rights.

Case outcome: In the case of S.A., it was evaluated that the procedure was indeed excessively long. In the case of V.K. for the nullification of the legally effective administrative acts and unequal relationship, the requested data with a statement was not delivered.

(4) Case description (P.P.-554/07): A. D. holds that her rights were violated by construction works on the border, and her right to peaceful enjoyment of property by non-performance of the procedure of administrative enforcement of the decision on removal. The building concerned is an auxiliary building of the neighbour (basically a garage).

According to the complaint, the illegal investors did partially enforce the inspection decision. By removing (only) the walls, i.e. by not performing the decision on removal in its entirety, the purpose of the structure was later modified (into a terrace).

Undertaken measures: The Ombudsman requested a statement concerning the objection that the contractor of the Ministry of Environmental Protection, Physical Planning and Construction he did not comply in the manner and within the deadline stated in the conclusion on the permit of enforcement of 4 January 2005.

Case outcome: Considering that in the procedure of supervision conducted further to the Ombudsman's request, it was determined that the decision on removal was performed only in part, the procedure of involuntary removal continued with a view to removing it in full.

The procedure was concluded by accepting the Ombudsman's proposal. The complaint was evaluated as well-founded.

(5) Case description (P.P.-1489/05): The reason why T.G. addressed the Ombudsman is a request for legal aid in resolving the matter of entry of an old family house in the land register. The unsolvable problem T.G. encountered is the deletion of the burden – the recordation that the house does not have a building and use permit, where the recordation was made solely because he could not enclose a certificate of the Cadastral Office that on 15 February 1968 the house ha been registered on the plot as already built. Namely, in view of the purpose of building a new house, the funds for construction works were supposed to be obtained through a commercial loan (based on a mortgage on the parents' house).

Before he requested the protection of his rights by the Ombudsman, he had addressed the county service for construction, asking it to issue the certificate of legality and usability of the structure. After he could not obtain the certificate, he addressed the Ministry of Environmental Protection, Physical Planning and Construction. In addition, he established that the archives of the Central Office of the State Geodetic Administration does not have aerial photographs of the area for the period preceding 1968 (Croatian geodets supposedly made the photos of the area in 1974). The Office for the Cadastre and Geodesic Affairs in Z. did not obtain any decision either.

He managed to obtain an aerial photograph taken in 1967 (from the Military Geographical Institute in Belgrade, Serbia). However, the document belongs to a foreign state and institution, and the State Geodetic Administration responded, I quote: "*The State Geodetic Administration may not certify or approve the use of the aerial photograph.*"

T.G. still does not have any solution to his problem and does not have instructions about the way in which he can obtain a valid document as valid proof that the family house existed on the plot before 15 February 1968 and that it should be regarded as legal construction.

At the same time, he is resolving the matter of obtaining a location and building permit for the construction of a new residential building for his family. The location permit was not issued within a reasonable term, so because of the stalled procedure for the location permit he is now in a situation where he has suffered a direct injury as the result of the work of state administration. Namely, at the time when he could submit a request for the building permit for the first time, he was forced to pay water fees (as of 16 February 2006, the building permit cannot be issued without a certificate on the payment of water fees).

Undertaken measures: The procedure of investigation was conducted first with the State Geodetic Administration. It was established that further to the Ombudsman's queries the Ministry of Environmental Protection, Physical Planning and Construction, the State Geodetic Administration and the Ministry of Justice adopted a singe standpoint regarding proof required to make an entry into the land register of a building built before 15 February 1968. In the reply to the Ombudsman, the State Geodetic Administration explains the legal grounds under which it is not competent to decide the issue of the time of construction and to determine the authenticity of the aerial photograph, and issues an instruction to initiate a procedure before the municipal court.

As all the circumstances indicated the existence of a justified suspicion that the immediate violation of the rights of the complaints was committed in the procedure of the service for physical planning of the county state administration office, the procedure was continued before the Central State Administration Office with a view to investigating the fact whether the procedure of obtaining the location permit had been prolonged unnecessarily. The Ombudsman requested an opinion by the administration inspectorate concerning the reasons for not resolving the matter further to the request for the issuance of the location permit. At the same time, a statement concerning the objection/request for possible compensation of damages (in the amount of the water fees) was also requested.

During the procedure before the Ombudsman, it was established that the county state administration office had not complied with the instruction of the Central State Administration Office either, and thus, by negligence, omission and improper work, placed the Central State Administration Office in a position of non-performance of its duties within the meaning of Article 11, paragraph 3 of the Ombudsman Act. The provisions of Articles 11 through 13 of the Code of Ethics for Civil Servants were also violated.

The Ombudsman proposed that the authorities should perform direct supervision in the administrative matter and notify the Office of the Ombudsman of the established facts and the findings and opinion of the administration inspector, and of the undertaken measures.

Case outcome: The Administrative Inspection Department with the Central State Administration Office established that the deadline for issuing the location permit had been missed: the first step in the procedure was done eight months after the receipt of a duly submitted and complete request for the issuance of a location permit, while the permit was issued nine months after the receipt of the request. However, according to the opinion of the administrative inspectorate, there are no reasons to initiate a disciplinary procedure against the civil servant, because there were no objective conditions for the implementation of the procedure in accordance with the Act on General Administrative Procedure, which would be within the term of 60 days (an insufficient number of civil servants in relation to the number of received requests for the issuance of permits).

In the procedure before the Ombudsman, it was decided that the objection included in the complaint relating to the excessive duration of the procedure was well-founded, because despite the duly submitted and complete request for the issuance of the location permit the provision of Article 218, paragraph 1 of the Act on General Administrative Procedure and the provision of Article 39 of the Act on Physical Plan were violated. The duration of the procedure for the issuance of the location permit resulted in the issuance of the permit after 16 February 2006, meaning that the request for a building permit could not be submitted earlier, but only at the time when an additional condition of the payment of water fees had to be met to obtain a building permit. However, even when there is a direct causative connection between the violation of rights and tangible and/or intangible damages, the Ombudsman could not proceed with the procedure, because he cannot discuss the objection of compensation of damages (court jurisdiction).

Civil matters

Complaints from the field of civil matters, although not numerous (37 in 2007), are very different in terms of their content. They related to the convalidation of the entry of marriages, the re-establishment of the state registers, first names, the entry of births, marriages and deaths in the state registers, and the issuance of excerpts and certificates from the state registers.

We found out from the statement provided by the state administration office in the County of Lika-Senj, requested further to a complaint filed with the Ombudsman, that the state registers

in the Registry in Donji Lapac, and in some other offices in the same county, had gone missing or had been destroyed in the military-police action "Storm", and that they were still not re-established. In accordance with Article 51, paragraph 1 of the Act on State Registers, any state registers that were destroyed or gone missing had to be restored without any delay. As more than 17 years passed since the military-police action "Storm", the Ombudsman requested a report of the Central State Administration Office concerning the number of missing or destroyed state registers in the Republic of Croatia and concerning the procedure of their restoration.

A Croatian citizen who by marrying a foreigner assumed a last name consisting of more than two words filed a complaint with the Ombudsman for a violation of her right to use her personal name. The complainant had to chose two words in the last name she would use in all legal transactions (for example, when obtaining a passport) as Article 2, paragraph 4 of the Act on Personal Names states that the first and last name that a particular person uses in legal transactions may contain at most two words, respectively. As the content of the complaint relates to several cases, the Ombudsman asked the Croatian Parliament to amend the Act on Personal Names. He proposed that the amendments should stipulate exceptions to the provision of Article 2, paragraph 4 of the Act on Personal Names, i.e. cases in which the first and last name that a person uses in legal transactions may contain more than two words, respectively.

The Central State Administration Office supported the Ombudsman's proposal and assumed the obligation to draw up a working text with proposed amendments to the Act.

In four cases, the Ombudsman helped the complainants to have the entry of marriage convalidated by issuing a recommendation to the state administration office in the County of Sisak-Moslavina and the state administration office in the County of Vukovar-Srijem.

EXAMPLES:

(1) Case description (P.P. – 1473/07): J.K. from B.K. addressed the Ombudsman. In his submission he states that on 7 April 1995 he married D.P. and that the marriage was entered in the register of marriages under the ordinal number 2 for the registry area M.G.

The complainant states that further to his request for the issuance of a certificate from the register of marriages, the Registry Office in S. issued a certificate with a view to establishing the fact of marriage through the Municipal Court, considering that his marriage cannot be convalidated as there was no official person present at the time of contracting it.

Undertaken measures: Concerning the complaint filed by J.K., the Ombudsman issued a recommendation to the Registry Office in S. in which he states, amongst other things, the opinion of the Office for Legislation of the Government of the Republic of Croatia (dated 22 November 2006) concerning the convalidation of marriages concluded between 1993 and 1997 in the areas of the Republic of Croatia that were under the protection of the United Nations.

It stated in its opinion that the administrative bodies had to take care in the convalidation procedures that administrative acts were coordinated with the Constitution of the Republic of Croatia, Constitutional Act on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia and the laws of the Republic of Croatia. The (Government) Office holds that when implementing the provision of Article 1 of the Act on Convalidation, the administrative body needs to consider the administrative act which is the subject of convalidation, both from the aspect of the laws that were in force in the Republic of Croatia at the time the deed was passed and from the aspect of the valid legal decisions.

Between 1993 and 1997, marriages in Hrvatsko Podunavlje were concluded before a registrar, although the presence of a councillor appointed by the assembly of the municipality was a necessary prerequisite for the existence of marriage in accordance with Article 28, paragraph 1, item 3 of the Act on Marriage and Family Relations, which was at that time in force in the Republic of Croatia.

Along with other legal prerequisites for the existence of marriage, the Act on Family from 1998 and the provision of Article 24, paragraph 1, item 3 of the currently valid Family Act (from 2003), stipulate that it is sufficient for the marriage in civil form to be contracted before a registrar.

Marriages contracted before the reintegration that satisfied other legal prerequisites, except for the absence of a municipal councillor, meet the currently valid legal prerequisites for the contraction of marriage in the civil form. Therefore, the Office for Legislation of the Government of the Republic of Croatia considers that “non-convalidation” of these marriages would be contrary to the goals that the Act on Convalidation aimed to achieve, with serious consequences for the status of people, their property and children born to those marriages.

We believe it is necessary to point out that the Office for Legislation of the Government of the Republic of Croatia, pursuant to Article 25, paragraph 1 of the Act on the Government of the Republic of Croatia, is authorised to issue expert opinions to the central bodies of state administration in connection with the application of laws and other regulations.

After receiving the opinion of the Office for Legislation of the Government of the Republic of Croatia, the state secretary of the Central State Administration Office sent an official letter to the offices of the state administration in the Counties of Osijek-Baranja and Vukovar-Srijem, in which he emphasized that all the marriages contracted in Podunavlje were considered valid, as they were not contrary to the positive regulations of the Republic of Croatia.

Further to the foregoing, and pursuant to Article 7, paragraph 1 of the Ombudsman Act, the Ombudsman issued a recommendation that the request of J.K. for the issuance of a certificate from the register of marriages should be accepted and that the Ombudsman should be notified of the measures undertaken in connection with the recommendation within 30 days.

Case outcome: The Registry Office in S. notified the Ombudsman that further to his recommendation it had convalidated the entry of the complainant's marriage.

Note: For a period of over a year, the Ombudsman expressed his standpoint that facts recorded in the registers are not acts, and that they are not subject to convalidation, as only the acts are. Any person who holds that a particular fact recorded is disputable should initiate a court procedure. Facts entered in the registers may be changed only pursuant to court judgments.

(2) Case description (P.P. – 1217/07): The Ombudsman was addressed by Mrs Ana-Marija Z., née R., from Z. The complainant states that she was born on 1 March 1981 in M., Bosnia and Herzegovina. The data on her birth is entered in the register of births maintained for M., under the ordinal number 601 for 1981. Her first name Ana-Marija is recorded in the relevant section of the basic entry in the register of births.

Further to an excerpt from the register of births issued in Bosnia and Herzegovina, on 31 July 1998 the complainant was entered in the register of births for the registry area Zagreb under the ordinal number 00792. All the date recorded, including the data on her personal name Ana-Marija, is identical to the data in the register of births of Bosnia and Herzegovina.

On several occasions, the Registry Office Z. issued certificates to the complainant concerning the facts entered in the register of births. To the complaint, she enclosed birth certificates issued in 1998 and in 2005, where the data on her personal name reads Ana-Marija.

On 7 July 2007, the complainant married F.Z. In order to register the marriage, she requested a birth certificate. In the relevant section of the birth certificate issued on 22 August 2007, the personal name is listed as Ana Marija. The complainant states that it was explained to her that under the Act on Personal Names two words in a name, and two words in a last name may not be connected with a dash. As the same Act on Personal Names was in force when she was

entered in the register of births in the Registry Office Z., when her personal name Ana-Marija was recorded, the complainant holds that at the time of issuing the birth certificate the registrar violated her right to use her personal name.

Undertaken measures: The Ombudsman forwarded a warning to the Registry Office Z. In the letter, he stated:

"*Article 42, paragraph 1 of the Act on State Registers stipulates that excerpts from the state registers and certificates are issued concerning the facts recorded in the state registers as documents of permanent value. In accordance with the said provision, a birth certificate must include data on one's birth which is recorded in the sections of the main entry in the register of births. As the said section in the register of births states the personal name Ana-Marija, it is this data that should have been indicated in the birth certificate.*

Pursuant to Article 7, paragraph 1 of the Ombudsman Act, the Ombudsman wishes to point out that the provision of Article 42, paragraph 1 of the Act on State Registers was violated. Please notify the Ombudsman of the measures undertaken further to this warning within 15 days."

The Office for General Administration of the City of Z. stated in its statement that the Registry Office C. had issued the birth certificate in accordance with the written instructions of the Central State Administration Office, which is the body in charge of monitoring the implementation of the Act on State Registers and the Act on Personal Names. The instruction, which was forwarded to all registry offices in the Republic of Croatia, requires expressly that the first or last name recorded in the state register with a dash should be stated in the excerpt from the state register without a dash.

The City Office for General Administration points out that in its work it also encounters numerous complaints from citizens whose identity was changed because of the instruction of the Central State Administration Office, but that it may not act contrary to the instruction of its immediate superior.

On 4 October 2007, the Ombudsman requested the professional opinion of the Croatian Language Institute which was not received at the moment of writing this report.

Case outcome: The case is underway.

Status-related rights (citizenship, aliens)

The Ombudsman received 51 complaints relating to the acquisition of Croatian citizenship and the acquisition of an approval for either temporary or permanent residence in the Republic of Croatia; most related to the excessive duration of the administrative procedure. Based on the received complaints, the Ombudsman established that the procedure for acquiring Croatian citizenship usually lasts two years. It is important to point out that the answers that the Interior Ministry provided to the queries made by the Ombudsman did not include specific notifications of the reasons, because of which the decisions had not been adopted and of the actions to be taken to adopt them.

EXAMPLE:

(1) Case description (P.P.-1574/05.): Mrs D. V. addressed the Ombudsman (13 December 2005) on behalf of her son Ž. V., complaining against the actions of the Assistant Interior Minister, Mr. Ž. K.

She stated in her complaint that it was the matter of stalling the procedure on the request for her son Ž.'s acquiring the Croatian citizenship. The request was filed in 2002 to the Embassy of the Republic of Croatia in Belgrade. In the mid 2003, the Interior Ministry requested that the request be supplemented, which Ž. immediately did, but he still did not receive the decision.

His mother therefore addressed the Ombudsman for help.

D. V. believes that the Interior Ministry should have reached decision a long time ago on the basis of Article 11 of the Act on Croatian Citizenship, since she is a Croatian citizen, emigrant from the Republic of Croatia to the Republic of Serbia. As she did not receive the decision, the complainant contacted the Interior Ministry, where she was told that her request was positively decided on and that it was only to be signed by the Assistant Interior Minister Ž. K. The complainant stated that the Assistant Minister did not return the decision to the clerk, but he kept it for over one year.

Undertaken measures: On several occasions, the Ombudsman requested a statement from the abovementioned Assistant Minister on the case status and the reasons for which it was not settled within the deadline set by the Act on General Administrative Procedure, in his letters of:

- 23 December 2005,
- 24 March 2006, and

- 30 May 2006,

but he received no response to either of them.

As the Assistant Minister failed to deliver the requested response to the Ombudsman by November 2006, the Ombudsman ordered his advisor to gain direct insight into the Interior Ministry's case file, which she tried to do on 27 November 2006, with advance announcement.

The check-up of the case records confirmed that the case file contained the draft decision and was awaiting the Assistant Minister's signature.

She did not gain insight into the case file as it was at the office of the Assistant Minister, who was not available.

It was therefore agreed that the Assistant Minister would be informed on the attempt to gain insight into the case file and the Ombudsman would be immediately notified of the case status.

The Assistant Minister, Ž. K. said over the telephone that a number of actions needed to be undertaken in the case of Ž. V., that the decision was drafted and that it would be delivered to the client "these days" via the Croatian Embassy in Serbia.

The complainant addressed the Ombudsman again on 30 January 2007, and informed him that she still did not receive the decision. The Ombudsman sent another warning to the Assistant Minister Ž. K. against excessively long duration of the procedure, with the invitation to deliver his statement on the reasons for which this case was not concluded yet, and on the actions that would be undertaken to solve it.

The Ombudsman received the Interior Ministry's response on 27 February 2007, which did not even mention the Ž. V. case, but informed the Ombudsman on the request of a Mrs. D. V. (not of the abovementioned complainant).

The Ombudsman addressed the Interior Minister in a letter (of 28 February 2007), informing him of the case and asking him to issue a prompt statement concerning the undertaken measures. He received no reply to the letter, so in June 2007 he issued a rush note.

Case outcome: In July 2007, the Ombudsman received a copy of the decision rejecting the complainant's request.

Note: No information on the initiation of an administrative dispute. The complainant's right was violated in this case as the result of the duration of the first-instance procedure which lasted over five years, and the legal and reasonable deadline for adopting an act on the request of a party was also missed.

Labour relations of state and local officials

1. Violations of rights out of labour relations of state and local officials

The complaints from the sphere of labour relations of state and local officials during the reporting period referred to violations of the rights in procedures connected with the admission to civil and local service, termination of service, re-assignment, disposal of employees after dissolving a body or post, and disciplinary procedures.

Frequent changes to the civil servant-related legislation, applied to the status and rights of civil servants, affect the violations of the state and local officials' rights, not to mention numerous ambiguities and inconsistencies.

The Act on Civil Servants and Employees (OG 27/01) ceased to apply to civil servants and employees as of 1 January 2006, i.e. on the entry into force of the Act on Civil Servants (OG 92/05, 107/07). This act is still applied to local officials and employees, and to civil service-related procedures, initiated under the former Act, which are still not over. Although the Act on Civil Servants stipulates a time limit of six months for the adoption of the implementing legislation, not all of the regulations have been adopted so far, which causes further uncertainties concerning the application of the Act, as pointed out by the Ombudsman in his report for 2006. The complaints that the Ombudsman received during the reporting period from the civil servants and employees of the state administration bodies and other state bodies, employees at the bodies of the local and regional self-administration units, armed forces and security services.

2. Rights violations in the implementation of the Act on Civil Servants

The Act on Civil Servants states that the issues of public competitions for admission to civil service and the realisation of the rights, obligations and responsibilities arising from civil service will be regulated by the Government of the Republic of Croatia through regulations, and other implementing and special regulations (such as the Salary Act).

The failure to pass the complete implementing legislation and uncertainties concerning the implementation of certain provisions in the procedure of admission to civil service laid down in the said Act had an impact on the violations of the complainants' rights and their inequality before law.

2.1. Procedure of admission subject to the consent of the head of the body in which the selected candidate works

According to the submitted complaints, the procedure of admission and the implementation of public competitions for admission to civil service laid down in the new Act on Civil Servants and its regulations places candidates from the ranks of civil servants into an unequal position in terms of the availability of work posts under equal conditions. Candidates from the ranks of civil servants suffer serious consequences on account of the incomplete regulation of the procedure of admission and in view of the uncertainties in its application.

Under Article 46 of the Act on Civil Servants, if in the procedure of admission to civil service further to a public competition the selected candidate works in another state body and has the status of civil servant, the decision on re-assignment must be adopted (without a decision on admission), subject to a written consent to re-assignment by the head of the body in which the servant works.

In the application of the said legal provision and in an attempt to shorten a very complex procedure, it often happens in practice, based on the complaints filed with the Ombudsman, that no decisions on the selected candidate from the ranks of civil servants are adopted, although that is laid down in the general regulations on the administrative procedure (subsidiary application of the Act on General Administrative Procedure).

The public competition for admission is further complicated by the procedure of obtaining the consent to re-assignment of the head of the body in which the selected candidate works, so it is uncertain how to complete the procedure, whether under the regulations of the public competition and assignment of the selected candidate or by re-assignment. Therefore, in practice the selected candidates are frequently instructed to terminate their service by mutual agreement.

It is the selected candidates from the ranks of civil servants who frequently have to bear the consequences of such illogical legal situations.

As a case in point, we wish to single out a case where the complainant participated in the public competition for admission to civil service and on account of the described uncertainties in the application of Article 46 of the Act on Civil Servants, and following suspension of the public competition in which she participated as a civil servant from another state body, contrary to the prescribed reasons, ended up by losing her job in civil service for an indefinite period of time in the state body for which she used to work.

It is necessary to remedy the described legal uncertainties to prevent further violations of the rights of those participating in public competitions as the result of the failure to adopt a decision on the selection of the candidate and as the result of the consent (to re-assignment) by the head of the body in which the selected candidate from the ranks of civil servants works. Furthermore, the said procedures violate their fundamental constitutional rights – the availability of jobs under equal conditions.

2.2. Incomplete applications of candidates in the public competition

The complainants stated in their complaints that they had not been asked to testing, because their applications had supposedly been incomplete, thus denying them the right to participate in the public competition for admission to civil service.

In the investigation procedures conducted, the bodies referred to the provisions of Article 8, paragraphs 3 and 4 of Regulation on announcement and implementation of public competition and internal announcement to the civil service (OG 8/06 and 8/07). According to that provision, incomplete applications filed by candidates are not reviewed, and persons who submit incomplete applications to a public competition may not be regarded as candidates.

The Ombudsman indicated the subsidiary application of the provision of Article 68 of the Act on General Administrative Procedure, and the administrative court practice and the standpoints of the Administrative Court of the Republic of Croatia clearly indicating such subsidiary application. According to the stated practice, candidates may not be excluded from further progress of the public competition, and their applications may not be dismissed as incomplete, unless they were asked to supplement their applications within a specific time limit.

The Ombudsman holds that in the administrative procedure, including the procedure of admission to civil service, a regulation may not exclude subsidiary application of Article 68 of the Act on General Administrative Procedure. Therefore, under the provisions of Article 8, paragraphs 3 and 4 of the Regulation on announcement and implementation of public competition and internal announcement to the civil service, the candidates may lose the status of registered candidate only if the actions laid down in Article 68 of the Act on General Administrative Procedure were made first.

Any deviation from the provision in the procedures of admission to civil service is a violation of the rights of registered candidates and may be a reason to review the adopted acts and the conducted public competition.

2.3. The status of employees in state bodies

According to the Act on Civil Servants, the status of employees and the procedure of contracting employment in state bodies is regulated by the general employment regulations (Employment Act) and the Regulation on the classification of jobs and salaries of the employees of the Government of the Republic of Croatia, which has not been adopted yet.
However, as the said Regulation has not been adopted, it is not possible to regulate the status, the rights and the obligations of the employees in employment contracts, as indicated in the general employment regulations, or through the issuance of decisions under previous regulations, which ceased to apply to the employees.
Thus, the preconditions for the implementation of review of the legality of the adopted acts deciding on their rights, or the adequate protection of the rights are not in place, especially if the employees are denied certain rights or in the event of termination of employment.

3. Excessive duration of the procedures for failure to comply with the judgments of the Administrative Court of the Republic of Croatia

The complaints against the violations of the rights in the procedure of re-assignment due to service needs, putting officials at disposal due to dissolution of a body or post, termination of service, and other violations of the rights connected with civil or local service also partly referred to the excessive duration of such procedures in view of the consecutive failure of the bodies to comply with the judgments of the Courts.
Such conduct serves to avoid compliance with the judgments and mandatory instructions of the Court ordering remedial actions to be taken concerning the identified unlawful acts.
The violations of the rights particularly refer to the complaints of the civil servants in procedures connected with the application of the (former) Act on Civil Servants and Employees, which ceased to apply to the civil servants, but is still used to govern civil service-cases initiated and still open.

In addition, the new Act on Civil Servants introduces the second-instance procedure. In the second instance, appeals in civil service-related matters are now decided by the Civil Service Committee of the Government of the Republic of Croatia as an independent body, and not by the head of the body who adopted the first-instance decision, as stipulated in the former civil service-related legislation in the Republic of Croatia.

Although changes to the competent body always refer to all administrative matters within the administrative sphere in question, including cases governed by former substantive laws, according to the opinion of the Central State Administration Office and the practice of the Civil Service Committee, in civil service-matters not concluded under the (former) Act on Civil Servants and Employees, after nullification of the decision in the administrative dispute before the Administrative Court of the Republic of Croatia, it is not the Civil Service Committee that decides, but the same head of the body whose decision was nullified.

The explanation is based on the fact that the Act on Civil Servants and Employees stipulates that the legal remedy against the decision on civil service-related matters is an objection, and not an appeal.

However, the objection as a legal remedy in civil service-related matters has all the characteristics of an appeal, and administrative disputes against decisions on the objection were and are initiated before the Administrative Court of the Republic of Croatia, so the reasons for the standpoint are not altogether clear. Furthermore, in the administrative procedure, in view of the uniformity of the administrative procedure concerning the same type of administrative matters, it is not possible for two different bodies having subject-matter jurisdiction to be competent at the same time, and for the same reasons that is not laid down in the transitional and final provisions of the Act on Civil Servants, which refer to the application of the former substantive law.

As far as we are aware, there is still no administrative court practice on that, but the practice from the period when the Act on Civil Servants and Employees began to be applied to local officials in 2001, and the former Act on Administration continued to apply to the initiated, but not yet finished cases, is well-known. At that time, the subject-matter jurisdiction of the court changed, so that the Administrative Court of the Republic of Croatia was competent to decide on civil service-related matters in local self-administration, and no longer the court of general jurisdiction. At the time of the change of the subject-matter jurisdiction in initiated, but not yet finished cases, it was not the formerly competent court of general jurisdiction that made decisions, but the Administrative Court of the Republic of Croatia, regardless of the

application of the former Act which stipulated the competence of the court of general jurisdiction.

The standpoint that in civil service-related matters, after nullification before the Administrative Court of the Republic of Croatia, it is the same head of body that decides, and not the Civil Service Committee, mostly violates the rights of the complainants. That is so, because the decisions passed do not change in any material respect in relation to the nullified decisions, regardless of the fact that the previously adopted decisions had been nullified before the Administrative Court of the Republic of Croatia or pursuant to the decisions of the Constitutional Court of the Republic of Croatia two or more times.

At the same time, based on the conducted investigation procedures further to complaints in cases in which, through the application of the new Act on Civil Servants, the appeal was decided on by the Civil Service Committee, the Ombudsman established that the decisions passed by the heads of body were being nullified for the violations of laws. The legal force behind the final decisions of the Committee as an independent second-instance body provides better protection to the rights of civil servants, while the sued body may work on proving any violations committed in the procedure before the Civil Service Committee, before the Administrative Court. At the same time, it can be expected that the sued bodies will not venture into administrative disputes if by the nullification of their decision before the Civil Service Committee the violation of the rights of civil servants was obvious, so there will be less disputes before the Administrative Court.

4. Violations of the rights – failure to pass the Act on Local Officials and Employees

The Act on Civil Servants and Employees of 2001 still applies to the persons who work in municipalities, towns and counties, although it cannot be used to address completely all peculiarities of the procedures for admission of officials and employees to the administrative bodies of the units, and especially the procedure of appointment and release of the heads of the administrative bodies who have the status of official and can, at the same time, be members of the authorities.

The organisation and powers of the individual bodies of the municipalities, towns and counties are quite specific, especially in terms of stipulating powers for adopting the ordinance on the internal order of the administrative bodies and the individual acts on admission and other rights and obligations of the officials and employees.

That creates a different practice in the application of the Act on Civil Servants and Employees, which indubitably leads to the violations of the rights of officials and employees in the units of local and regional self-government. That serves to create conditions for certain changes in terms of human resources, and especially the heads of the administrative bodies after local elections and other similar reasons.

The violations of the rights still occur most frequently in the procedures of appointment and release of the heads of the administrative bodies of local and regional self-government and the disposal of employees after dissolving a body or post, in view of fictitious changes to the decisions on the organisation of the administrative bodies and the ordinance on internal order.

Therefore, the Ombudsman still holds it necessary to adopt a good-quality official-related legislation appropriate to the creation of preconditions for a professional and responsible local service, protected against poor and unclear legal solutions on the status, rights, obligations and responsibilities in the local service. Until the adoption of the special law, it is necessary to use more intensive administrative and inspection supervision, and through professional opinions ensure a more consistent application of the Act on Civil Servants and Employees, despite the large number of municipalities and towns in the Republic of Croatia.

5. Individual kinds of the civil servants' and local officials' rights violations

5.1. Transfer of officials due to service needs

According to the complaints submitted to the Ombudsman, the procedures of transferring officials due to service needs were conducted contrary to the provisions of the Act on Civil Servants and Employees, which applies to the initiated, but not yet finished procedures of transfer of civil servants.

In the conducted investigation procedures, the Ombudsman established rights violations, arising from the fact that the decisions on such transfer did not include an explanation of the service needs. The legislator prescribed the conditions and the procedure for establishing the facts as regards the service needs in order to prevent the misuse of the notion of transfer to the detriment of officials. A transfer that is contrary to those conditions and the procedures, represents a violation of the complainants' rights and a reason to dispute the decision, which is confirmed by the administrative court practice in numerous administrative disputes.

Most of the complaints in the sphere of officials' relations that the Ombudsman received referred to the violation of the rights in the procedure of transferring the police officials, for the reason of service needs. Pursuant to Article 102 of the Act on the Police, provisions of the Act on Civil Servants and Employees, in the part by which transfer is not regulated by this special Act, apply to the procedure of transfer for the service needs within the same qualifications level, and pursuant to the subsidiary application of the Act on General Administrative Procedure, the service needs must be explained in the decisions on transfer.

Based on the conducted investigation procedures, the Ombudsman established that the decisions on the transfer of police officials, after consecutive nullifications before the Administrative Court of the Republic of Croatia, and more and more frequently before the Constitutional Court of the Republic of Croatia, now do formally include explanations, but not within the meaning of the enforcement of the judgments of the Court. Disciplinary proceedings against the officials are now initiated more and more frequently, precisely at the time of the implementation of appellate and other procedures connected with transfers or the submission of complaints to the Ombudsman. The outcome of the disciplinary procedures is termination of civil service. The Ombudsman warned the sued bodies about the violations of the civil servants' rights, especially that disciplinary procedures against officials, because of the submission of complaints, cannot be initiated and conducted.

In the investigation procedures that he performed, especially in the event of transfer of police officials, the bodies concerned mostly did not accept the proposals to re-evaluate the decisions on transfer. In the event of initiation of disciplinary procedures, because of the submission of complaints connected with the transfer, the Ombudsman warned the bodies concerned, and in one case the Ombudsman contacted the Committee on Human and National Minority Rights and the disciplinary procedure against the complainant was suspended.

The Ombudsman also points out the problems pertaining to the application of the former substantive law to civil servants in terms of the subject-matter jurisdiction for the adoption of the decision after nullification of the decision further to the judgments of the Administrative Court of the Republic of Croatia, because the decisions are adopted by the same heads of bodies, and not by the Civil Service Committee.

In such cases, the decisions adopted have the same content, and the procedures are long in view of the repeated nullifications, and have no bearing on remedying the violations of the rights.

5.2. Putting officials at disposal due to dissolution of a body or post

Complaints against the violations of legal rights in the procedure of putting officials at disposal and termination of service, after dissolving bodies or posts in the bodies of the state administration or local and regional self-administration, pursuant to the provisions of Articles 103 to 107 of the Act on Civil Servants and Employees, referred to the civil servants in connection with the application of the former Act, and to the officials in the administrative bodies of local and regional self-government, to whom the Act still applies.

Rights violations (in 2007, just like in the previous year) referred to the inability to reassign complainants after dissolving bodies or posts. The complainants state that they could not successfully prove the violations of the rights, although after the changes to the organisation of the bodies there were other vacant posts to which they could have been reassigned. The reasons would mostly be incomplete explanations included in the decisions on putting the non-assigned officials at disposal, especially the fact of the inability of reassignment.

The investigation procedures conducted by the Ombudsman found that after the changes in the Ordinance on internal order, the defending bodies only declaratory confirmed the inability of reassigning those officials.

In terms of the nullification of the decisions which did not include an explanation of the inability of reassignment, and partly in view of the decisions of the Constitutional Court of the Republic of Croatia, the administrative court practice in relation to the previous period, began to change. In view of the different practice in the same legal situation, the complainants did not exercise their right to the protection of their rights before the Administrative Court in the same way.

In the cases of putting the security services' officials at disposal, apart from the failure to establish the fact on the inability of reassignment, these decisions were not delivered to the Government of the Republic of Croatia, due to the realisation of the right to reassignment or transfer to another body in the disposal period, i.e. to the Central State Administration Office, which performs those activities on behalf of the Government of the Republic of Croatia.

The opinion of the Central State Administration Office, according to which such conduct leads to the violations of the rights of the officials during the disposal period, supports the abovementioned.

State officials put at disposal can be transferred and reassigned to another body that indicates the need to fill in vacancies, on conditions established by the Act on Civil Servants and Employees. They can realize this right only if decisions on disposal are delivered to the

Government of the Republic of Croatia, i.e. to the Central State Administration Office, which was not the case with certain complainants.

Pursuant to the Act on Civil Servants and Employees, local officials are put at disposal of the government of their unit and they realize the right to be reassigned to the same or other administrative body during the disposal period, if there is a need for filling in vacancies, and the complainants meet the conditions for those jobs.

The structure of the local and regional administrative bodies of municipalities, cities and counties was frequently changed in accordance with the changes of this field and the needs related to organising administrative bodies on which those units independently decide by the representative body's decisions.

However, those changes were often *pro-forma* with one goal – to create formal prerequisites for the reassignment of officials by passing a new ordinance on internal order, which, after the change of authority in power in local elections, aimed at changing the structure of the employed in the administrative bodies, and not the real changes in their structure. Many irregularities occur for these reasons in the procedures of disposal and termination of service, particularly of the heads of the administrative bodies of those units with the status of officials for indefinite period.

Changes in the structure in this way cause the violation of legal rights of officials, but also bring into question permanent and professional service to the benefit of the citizens.

The practice of the Constitutional Court of the Republic of Croatia confirms the stated standpoints concerning rights violations in procedures involving putting at disposal and termination of service, as several judgments of the Administrative Court of the Republic of Croatia and decisions on disposal of non-reassigned officials and termination of the state service upon the expiry of the disposal period were nullified.

5.3. Violations of the right of priority in employment of the Croatian Homeland War veterans

Cases involving violations of the right of priority employment of the Croatian Homeland War veterans and members of their families under the Act on the Rights of the Croatian Homeland War Veterans and Members of their Families mostly referred to erroneous establishment of the state of facts concerning the right of priority employment of the Croatian Homeland War veterans under equal conditions. The consequence of such conduct was the denial of the right of priority employment of the Croatian Homeland War veterans.

However, in those cases where the facts were correctly established, and the veterans did meet the eligibility criteria stated in the tender documents with the right of priority employment under equal conditions in the bodies of state and local administration, and other public services, the public competitions were nullified to avoid admission of such applicants.

The Ombudsman intervened by issuing a warning to the bodies concerned concerning the violation of the right, as was the case with a complainant who worked for a police administration under several consecutive fixed time employment contracts, but did not manage to realise her right of priority in the procedure of public competition for admission for an indefinite term. The intervention was successful.

Problems concerning the realisation of the right of priority employment of the Croatian Homeland War veterans appear in procedures conducted by the legal persons vested with public powers or legal persons in which the state is a majority owner, and which are governed by the Employment Act.

Namely, after the amendments to the Employment Act, in employment procedures it is no longer necessary to submit a notification to the candidate with whom it is planned to conclude an employment contract. Based on the said reasons, the Croatian Homeland War veterans' attempts to exercise their rights before the employment inspectors of the State Inspectorate were thwarted, in view of the fact that the request for the protection of the right may be submitted precisely within a specific term of the date of receipt of the notification of the candidate's selection.

Without a notification on the intention to establish employment with the selected employee, the Croatian Homeland War veterans may not submit a request to the employment inspector in view of the violations of the right of priority employment, and after conclusion of the employment contract with the selected employee, the right may no longer be exercised.

The Ombudsman holds that all legal persons referred to in Article 35 of the Croatian Homeland War Veterans and Members of their Families must act in accordance with the said Act and submit a written notification concerning the selected candidate.

In view of the doubts that the State Inspectorate encounters in procedures of protecting the right of priority employment of the unemployed Croatian Homeland War veterans after the mentioned amendments to the Employment Act, the Ombudsman held a working meeting with the representatives of the State Inspectorate and the ministries competent to deal with employment relations and the rights of the Croatian Homeland War veterans. At the meeting, it was concluded that the competent bodies should submit an appropriate query for the interpretation of the provisions of the two laws or an initiative to amend the Employment Act,

with a view to removing the obstacles to the realisation of the rights of the Croatian Homeland War veterans.

EXAMPLES:

(1) Case description (P.P. 114/07): The complainant M.M. from Z. filed a complaint against the violation of her rights in a public competition for admission to the civil services as administrative clerk. At the time of filing her application for the post, she had an indefinite term employment contract at the Municipal Court in Z.

After testing, the complainant was ranked first. Based on her complaint, she was the one selected from the list of applicants. In good faith, the complainant filed a request for amicable termination of the indefinite term employment contract at the Municipal Court in Z. and had a medical examination done at her own cost.

However, the public competition was then suspended, and the complainant lost both jobs.

Undertaken measures: At the request of the Ombudsman, in the inspection by the Central State Administration Office it was established that the complainant had indeed ranked first after testing and that the public competition was then suspended contrary to the reasons laid down in Article 45, paragraph 6 of the Act on Civil Servants, i.e. the reasons to suspend a public competition for admission to the civil service. A written deed concerning the selection of the complainant was not adopted, although that can be concluded from the course of the procedure and the draft decision.

With respect to the decision suspending the public competition, the administrative inspectorate declared itself non-competent, because it is not authorised to take measures concerning such type of decisions.

Case outcome: The case was formally concluded before the competent bodies concerned. Along with the fact that there are no concrete acts based on which effective rectification of the violation of the complainant's right in the public competition could be requested, the Ombudsman would also like to warn that the legal provision stipulating that a decision on admission does not need to be adopted concerning the selection of a candidate who has the status of civil servant in some other state body, but only a decision on re-assignment, which in practice results in the adoption of a wrong conclusion and in doubts as to whether it is necessary to adopt the selection of the candidate or not, also had an impact on the violation of the complainant's right. The candidates who have the status of civil servants thus receive no written act as proof of selection. Therefore, the Ombudsman will initiate amendments to the

regulations on civil servants with a view to remedying the causes of the said and similar violations of the rights, but also to ensure appropriate protection in the event of non-compliance with the Act.

As the complainant did take actions to have the request for amicable termination of her service at the Municipal Court re-examined in order to protect her rights, the Ombudsman will issue a recommendation to have the procedure repeated in the line of duty, since the reasons for dismissing the proposal as premature were rectified, with a view to protecting the rights of the complainant who lost a steady job.

(2) Case description (P.P.- 806/07): B.T. from Z. filed a complaint with the Ombudsman against a violation of her rights in the procedure of termination of her employment with the Ministry of Defence.

According to the complaint, the Ministry of Defence, pursuant to the Decision of the Government of the Republic of Croatia dated 14 December 2005, established a company "Pleter – usluge" d.o.o. In accordance with the Agreement on the Take-over of the Staff of 3 January 2007, the said company took over the employees found working on the posts which were the subject-matter of take-over.

The complainant, as stated further, did not consent to the agreed form of take-over by the said company, and after that was not re-assigned to another vacant post within the Ministry, although, according to the complaint, there were vacancies for which she was eligible.

Further to the foregoing, the body concerned adopted a decision of 20 March 2007 terminating her employment, because under the said Decision of the Government of the Republic of Croatia there were no vacant posts to which she could be assigned. At the same time, on 19 April 2007, her appeal was rejected as unfounded, thus violating her legal rights, as indicated in the complaint.

The complainant submitted a complaint to the administrative inspectorate of the Central State Administration Office and another one to the Ombudsman.

Undertaken measures: The Ombudsman forwarded the complaint to the Central State Administration Office. According to the report on the actions taken (dated 3 August 2007), the Central State Administration Office declared itself non-competent to conduct administrative and inspection supervision in the case of the complainant.

The Central State Administration Office finds the reasons for its non-competence in Article 138 of the Act on Civil Servants (OG 92/05, 142/06 77/07 and 107/07), under which the employees fall within the scope of the Employment Act, which excludes the possibility of

administrative supervision or inspection supervision by the administrative inspectorate of the Office.

Case outcome: The Ombudsman pointed out both in writing and at the meeting with the representatives of the Central State Administration Office that it was necessary to have the said Regulation urgently drawn up and forwarded to the Government of the Republic of Croatia to be adopted, with a view to removing the obstacles to full and complete protection of the rights of the employees in the bodies of state administration.

Note: The legal void leads to violations of the rights of complainants in cases before the Ombudsman, but also of other employees in state administration. Neither the earlier regulations nor the general employment regulations do not stipulate protection of the employees' rights.

(3) Case description (P.P. - 936/05): In 2005 and 2006, the Ombudsman acted further to the complaints filed in the case of K.Đ. from Z., which had been forwarded to him by the Croatian Parliament Committee on Human and National Minority Rights and the complainant himself.

The complainant filed a complaint against a violation of his constitutional and legal rights by unlawful re-assignment and the related denial of his right to promotion to a higher rank, and against a violation of his other rights, and as the result of the failure to serve a decision the denial of the right to timely administrative court protection.

In the conducted investigative procedure, the Ombudsman did not establish a violation of any rights with respect to which he was authorised to take action, and so he notified the complainant accordingly, instructing him to file a complaint with the Administrative Court of the Republic of Croatia.

However, at the time of acting further to the complaint, a disciplinary procedure was initiated against the complainant and on 3 May 2007 the Ombudsman was asked to deliver the complaint and the documents enclosed to the complaint.

The motion to initiate a disciplinary procedure states that the reason to initiate the disciplinary procedure against the complainant is the content of the complaint sent to the Ombudsman, by which he had committed a disciplinary offence, i.e. serious breach of official duty.

In accordance with his powers laid down in the Constitution of the Republic of Croatia and the Ombudsman Act, the Ombudsman told the body concerned that as the person authorised by the Croatian Parliament to act further to the citizens' complaints regarding violations of their rights before state and other bodies vested with public powers, he is obligated to protect

the content of the complaint, and in particular the manner in which the complainants address the independent institution in the protection of their rights. With the aim of protecting the rights in the case of the complainant, the Ombudsman did not deliver the requested documents, although the disciplinary court insisted.

Undertaken measures: The Ombudsman notified and warned the body concerned on several occasions in relation to the protection of the complainant's rights in connection with the submission of the complaints to the Ombudsman and the Croatian Parliament Committee on Human and National Minority Rights.

However, as there was still reason for justified concern that the disciplinary procedure against the complainant was being conducted because of the complaint, and the body concerned did not take act further to the issued warnings, the Ombudsman notified the Croatian Parliament Committee on Human and National Minority Rights on 13 August 2007 in accordance with Article 7 of the Ombudsman Act.

Case outcome: The Croatian Parliament Committee on Human and National Minority Rights notified the Government of the Republic of Croatia in a letter of 18 September 2007, after which the disciplinary procedure was suspended. The Ombudsman was not informed about the outcome of procedures that the complainant might have conducted in connection with the re-assignment and other rights arising from the service.

(4) Case description (P.P.-1551/07): The Ombudsman received a complaint of T.Č. from Z. against a violation of the complainant's right in a procedure of re-assignment for the service needs, followed by termination of the civil service.

The body concerned had adopted a decision on the complainant's re-assignment, against which she filed an appeal to the Civil Service Committee. Based on the decision of the Civil Service Committee, the decision re-assigning the complainant was nullified.

Instead of enforcing the decision of the Civil Service Committee nullifying the decision on re-assignment, the body issued a decision terminating her civil service on the grounds of unjustified absence, stating that the decision had been duly delivered to the complainant and that she had not appeared at work on the specified day.

Furthermore, the body concerned de-registered the complainant before the expiration of the time limit for an appeal against the decision on termination of the civil service, i.e. its finality, thus causing further violations of her rights, despite the subsequent nullification of the decision on re-assignment before the Civil Service Committee.

The complainant addressed the administrative inspectorate of the Central State Office, which warned the body of the irregularities, and in particular of the fact that the complainant's right to salary, health and pension insurance were denied before the finality of the decision on termination of the civil service.

The body still refused to enforce the decision on the Committee nullifying the decision on re-assignment, and after the adoption of the decision nullifying the decision on termination of the civil service, that decision, as well.

The body filed a complaint to the Administrative Court of the Republic of Croatia against the decision of the Civil Service Committee nullifying the decision terminating the complainant's civil service, and continued to refuse to enforce the decision and register the complainant, although it was obligated to do so, regardless of the complaint filed.

In view of the complaint filed with the Administrative Court of the Republic of Croatia, the body delivered to the Civil Service Committee a motion for stay of enforcement of the decision until the conclusion of the administrative dispute.

In deciding on the motion, the Civil Service Committee issued a decision rejected the said motion, after which the criteria were met to register the complainant and to re-establish the state as before the adoption of the decision on the termination of the complainant's civil service and re-assignment.

Undertaken measures: During the procedures the Ombudsman delivered a complaint of its conduct to the body and to the administrative inspectorate of the Central State Administration Office, requesting a statement of the actions taken.

Later, based on his findings concerning the progress of the procedures, the Ombudsman requested the body over the phone to deliver a copy of the decision of the Civil Service Committee, by which the decision on re-assignment and the decision on termination of the civil service were nullified, and also a copy of the complaint to the Administrative Court of the Republic of Croatia, against the said decision of the Civil Service Committee, and also the motion for stay of enforcement until the conclusion of the administrative dispute.

The body ignored the request of the Ombudsman made over the phone. In a letter of 12 December 2007, the Ombudsman warned the body of a violation of the right by further non-enforcement of the final decisions of the Civil Service Committee, and in particular by the failure to register the complainant and to pay out the unpaid salaries, thus grossly violating even the complainant's fundamental human rights. The final decisions must be enforced, and according to the provisions of the Act on Administrative Disputes, the conditions for stay of enforcement in the case of the complainant were obviously not met.

Case outcome: Through the co-operation of all competent bodies, the decisions on re-assignment and termination of the civil service were nullified. According to a notification received from the body concerned, the complainant is now registered, she received the unpaid salaries and she is exercising her right to work at the post from which she had been moved.

Local self-administration

The Ombudsman received complaints against the violations of the citizens' rights before the competent representative, executive and administrative bodies of the local and regional self-administration.

The complaints referred to the realisation of the constitutional rights to local self-administration, local and regional elections, the convocation of the sessions of the representative bodies, especially in circumstances where the sessions are convoked by the state secretary with the Central State Administration Office, the right of representation of minorities in the representative body and the procedure of issuing a vote of no confidence to the mayor.

Concerning the said complaints, there were procedures of administrative supervision before the competent bodies and administrative disputes before the Administrative Court of the Republic of Croatia, so the Ombudsman did not venture into the investigative procedure within his powers, and he was notified or learned of the undertaken measures either directly from the complainants or through the media.

Other complaints referred to violations of the citizens' rights through general and individual acts from within the scope of work of local and regional self-administration, in particular municipal activities, concessions, lease of agricultural land and local taxes.

1. Violations of citizens' rights by general acts in local self-administration

Violations of the right that the citizens reported refer, above all, to general acts passed by representative bodies of those units from the sphere of municipal activities, especially the prices of utility services (such as water and garbage removal), utility fees and utility contributions, concessions for the taxi-service and local public transport within the units, and

local taxes, with respect to which the citizens have the duty to perform certain obligations or realise rights or legal interests.

The second part of the violation of the citizens' rights refers to the acts passed by the governments. The governments as executive bodies are not authorized to pass general acts, but only those on the enforcement of general acts of their representative bodies or on the enforcement of laws, for which they are authorized to pass implementing acts. However, judging by the citizens' complaints, the governments also pass acts prescribing the citizens' obligations, which have the characteristics of general acts, although they are not authorised to adopt them.

The procedure of supervising the legality of these general acts is conducted by the county offices of state administration, individual central state administration bodies in charge of supervising the administrative sphere to which the content of the general acts refers, and the central state administration office for local self-administration, i.e. the Central State Administration Office.

However, the Ombudsman established in the investigative procedures that he performed that the performance of regular supervision of the general acts is not sufficiently effective.

1.1. The State Cadastral Survey

In his report for 2006, the Ombudsman pointed out that the local self-administration government units were adopting decisions, although they lacked the authority to do so, laying down citizens' obligations to pay the costs of the state cadastral survey. The outcome of the procedure was concluded with a report that the decision had been passed by the former government that was no longer in power, instead of taking actions because it had been passed by an unauthorised body, and at the same time through supervision investigated the passing of the same type of decisions in other local self-administration units in the Republic of Croatia. The foregoing would have fulfilled the purpose of the supervision of the legality of the general acts passed by the units of local self-administration, i.e. the supervision of the implementation of the Act on Local and Regional Self-administration, and the protection of citizens' rights.

The said standpoint was confirmed in the new Act on the State Survey and the Real Property Cadastre (OG 16/07), which expressly states that the decisions concerned are

adopted by the representative bodies of the units of local self-administration (and not their governments).

However, the question why the local self-administration prescribes that the citizens are to bear the cost of funding the state cadastral survey, instead of it being funded from its own budget, still remains open.

The Ombudsman further states that the local self-administration may not impose obligations on citizens in its general acts, unless expressly provided by law, such as local taxes, utility contributions, utility fees and other municipal activities, with respect to which, along with the content and powers, the law also sets out the standards within which the units may lay down specific citizens' obligations.

In 2007, the Ombudsman received a new complaint with the same content. In view of the conduct of the competent bodies described in the previous case, the investigative procedure cannot be successfully aimed at the welfare of protecting the citizens' rights, so for this reason the issue is once again discussed in this Report.

1.2. The prices of utility services

The citizens continued to report violations of their rights in view of the prices of utility services, especially water and garbage removal, based on the price-lists for such utility services issued by the utility legal persons, with the consent of the governments of the local self-administration under the Act on Utility Economy and other special regulations.

According to a notification submitted to the Ombudsman by the competent ministries for the utility economy and price management (control), and the State Inspectorate, there is still no consistent price formation for the utility services or the related price management (control) in accordance with the Act on the Utility Economy and the Consumer Protection Act, where the service is delivered by one supplier, i.e. without market-bound price formation in the case of two or more suppliers of one and the same service. In terms of garbage removal, the local self-administration has still not ensured the conditions for calculating the quantity-based price, as stipulated in the Consumer Protection Act.

The complaints also referred to the violations of citizens' rights in cases where they did not receive the required utility infrastructure under the Act on the Utility Economy and the adopted programmes, although they paid the utility contribution. As under the conditions laid down by law the citizens may exercise the right to the repayment of the amounts paid as

utility contributions if the self-administration fails to build the foreseen utility infrastructure, the complainants were notified accordingly.

1.3. Concessions for the taxi-service and local public transport

The complainants report the same or similar irregularities in the decisions and procedures for the award of concessions for the taxi-service and local public transport within the areas of responsibilities of the units. In the administrative sphere concerned, there are numerous cases where public competition procedures for the award of concessions, the implementation of such procedures, and the protection of the participants against various forms of illegal acts, are not properly handled.

The procedure of supervising the legality of the decisions on concessions as general acts adopted by the local self-administration under special laws, which is performed by the line ministry, is also not efficient.

The complainants and other parties involved know little of the authorisations and the procedures, and when the line ministry performs the supervision, the unit fails to abide by the measures to adjust the examined decisions. Individual acts on the award of concessions further to public competitions are not nullified if a supervision was performed and irregularities identified in the decision based on which they were adopted, which practice violates the rights of those participating in the procedures.

Further to citizens' complaints, the Ombudsman issues warnings within his powers, and will continue to do so, with a view to protecting citizens' rights before these bodies. However, it is an indisputable obligation of the competent bodies of state administration to take more effective measures in the implementation of supervision.

The procedure of supervising the legality of these and other general acts conducted by the bodies of state administration competent for the implementation of special laws from specific administrative spheres is not regular and is mostly missing, so citizens, although uneducated, are frequently forced to initiate the constitutionality and legality review procedure before the Constitutional Court of the Republic of Croatia, although it is the duty of the state to provide for the supervision of the legality of such acts, and thus the protection of its citizens.

In that regard, the Ombudsman points out the need to ensure more consistent implementation of administrative supervision in accordance with the procedure and powers for its implementation laid down in the Act on Local and Regional Self-administration and special

laws, based on which the local and regional self-administration adopts general and individual acts, especially so if the general acts are adopted by the governments without authorisation and if the acts lay down citizens' obligations not expressly permitted by law.

Social welfare

In 2007, the Ombudsman received 70 complaints from the sphere of social welfare, which include complaints from the field of protecting the rights of persons with disabilities.

Most cases from this field referred to the realisation of the right to more permanent forms of financial aid or to extremely low amounts of such financial aid. In view of similar complaints, in his report for 2006 the Ombudsman pointed out that the base for social welfare payments, which is established by the Government of the Republic of Croatia, had not increased since 2001 and that a uniform base should be introduced for all social welfare supports and set at an appropriate level which would condition its continuing change. Namely, the base for social welfare supports is 400 kuna (around 53 euro), and it has not been increased since 2001, although the total state budget for the period of 2001 – 2007 has been increased by 128.57 percent (the total state budget for 2001 amounted to some 49 billion, and some 112 billion for 2007).

Having adopted such a standpoint, in 2007 the Ombudsman proposed in the procedure of introducing amendments to the Social Welfare Act that the said base should be adjusted at least once in two years in relation to the relative line of poverty, which is published by the State Statistics Bureau, and that it may not be lower than 25% of the amount of the relative line of poverty (which is around 500 kuna). That is in line with the Social Welfare Support Reform Strategy 2007-2008 (PAL II) and the signed Joint Memorandum of Social Inclusion of the Republic of Croatia. Furthermore, comments made by the European Committee of Social Rights on the First Report on the Application of the European Social Charter – Article 13 (social welfare) also refer to the amount of permanent aid, especially for singles.

An increase of the base for social support payments is set out in the Programme of the Government of the Republic of Croatia for the period 2008-2011.

The complaints referred to the excessive duration of procedures or to other violations of procedural provisions. The Ombudsman sent recommendations to social welfare centres that they could initiate procedures in the line of duty, especially if the parties were the elderly and

the infirm. As a rule, social welfare centres acted further to the Ombudsman's recommendations. Good cooperation with social welfare centres and timely submission of reports and documents must be pointed out.

In relation to the previous years, the number of complaints referring to social housing is on the rise. The complainants were mostly from the area of the City of Zagreb. Their housing issues are unsettled, although they live in extremely difficult social and health-related circumstances. The families mostly include several members with many children, and they live without any sanitary or other living conditions. Although they are listed on the Final List for the award of a city apartment for lease outside the order of priority, in view of the unavailability of the housing units for the purpose in question, their housing issues remain unsettled for many years. Families with many children who are subject to eviction or moving out find themselves in an even more difficult situation, because they face family separation. It is the opinion of the Ombudsman that the unfavourable social and housing status cannot be a valid reason to separate children from their families and to subject them to the chaotic experience of eviction.

Based on an analysis of the complaints, it can be concluded that the most pronounced problems in this sphere are the amounts of aid in the social welfare system that are too low, as well as poor implementation of the social programmes of local self-administration, especially connected with social housing.

EXAMPLES:

(1) Case description (P.P.–17/07): The Ombudsman was addressed by SGO (an association) on behalf of R.G. from Đ., an elderly woman of poor mobility, no income and dependant on the assistance of her kind neighbours. In the complaint, it is stated that the social welfare centre did not initiate an investigative procedure for the recognition of the right to assistance and care payments in the line of duty, although the required documents had been gathered.

Undertaken measures: Having reviewed the complaint and obtained the statement and documents from the competent centre, the Ombudsman intervened by issuing a recommendation to have the procedure for the recognition of the right to assistance and care payments initiated, because the said person met all the conditions (payments for assistance and care, assistance and care in the house, help with feeding, and the like). He also recommended that Articles 146, 147 and 148 of the Social Welfare Act (which are procedural provisions used to facilitate participation of the elderly and infirm in the procedure by, for

example, obtaining documents, taking their statements in their homes) be applied and an appropriate decision passed after the conducted procedure.

Case outcome: The social welfare centre complied with the recommendation and issued a rush note to the body of expertise in the first instance to issue its findings and opinion. The party was also granted one-time aid and offered the services of assistance and care in her home.

(2) Case description (P.P. 1103/07): The Ombudsman was addressed by M.M from S.D., stating that in September 2006 she had filed a request to the municipality for the payment in the amount of 3,000 kuna as one-off aid for her newborn, but that she received no decision or payment for a period of one year, although she knows that other parents received the aid. She filed a complaint to the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity, which requested to be notified of the undertaken actions.

Undertaken measures: Having reviewed the complaint, the Ombudsman intervened urgently by making a telephone call, and requested a statement from the head of municipality in a letter, especially concerning the excessive duration of the procedure.

Case outcome: A successful intervention. The Ombudsman received a response that by mistake the conclusion approving the payment of one-off aid had not been realised and that further to the Ombudsman's intervention the amount of 3,000 kuna had been immediately paid out to the complainant.

(3) Case description (P.P. -574/07): The Ombudsman received a complaint from the Association of Roma Women "A Better Future" concerning a family Š.R. from Zagreb who were supposed to be evicted within 10 days. The family is in a particularly difficult social situation, with four young children. Representatives from the social welfare centre Z. were present at three scheduled evictions, which were nonetheless successfully postponed. With a view to preventing the separation of the children from their family, the social welfare centre is helping them through material aid, counselling and recommendations, but it cannot settle the housing issue, because the matter is within the competence of the City of Z.

Undertaken measures: The Ombudsman recommended to the City Office for Health Care, Labour, Social Protection and War Veterans that the family receive housing, referring to the rights guaranteed by the Constitution of the Republic of Croatia, the Convention on the Rights of the Child, the European Social Charter and the Convention for the Protection of Human Rights and Fundamental Freedoms. The said Office issued a recommendation to the City

Office for Property-related Legal Affairs and the Property of the City of Zagreb to have the housing issue settled, but the housing issue was not resolved. The Ombudsman then recommended to the offices, to the Central State Office for State Property Management and the Ministry of the Sea, Tourism, Transport and Development to help the family and pointed out the obligations laid down in the National Programme for the Roma and the Action Plan of the Decade of Roma Inclusion 2005-2015, especially the obligations from the field of housing – the involvement of Roma families into the social programmes of settling housing issues. The units of local self-administration would thus be included in the fight against discrimination and poverty of the Roma.

Case outcome: Although the unit of local self-administration, in this case the City of Zagreb, has specific obligations in the application of the Action Plan, the Ombudsman received a reply that the family R. was not on the list of persons waiting to have their housing issue settled through the award of a city apartment, because they had not applied to the previous competitions, and they also did not meet the criteria for the award of a city apartment outside the list with the order of priority. The Central State Office for State Property Management did not provide an apartment to the family, because "the apartment that is the subject-matter of the eviction is not owned by the Republic of Croatia", although in the Action Plan, in the implementation of the measure laid down in item 2.2, it is stated: "to enable the award of abandoned objects owned by the Republic of Croatia for use, in cooperation with Roma councils and associations". The Ministry of the Sea, Tourism, Transport and Development, Directorate for Displaced Persons, responded that the family could submit a request for settling housing issues in the area of special state concern and that in making the decision they would take into account the Ombudsman's recommendation. The Ombudsman notified the Association of Roma Women "A Better Future" accordingly and recommended that the family R. should receive instructions as to what to do next, because Roma associations should also cooperate with the said bodies on the realisation of the Action Plan.

(4) Case description (P.P. -1510/04): The Ombudsman received a complaint from O.S. from Zagreb in 2004, and then several times in 2007. The complainant is a single mother of four, three of them under age (triplets). They the triplets have developmental difficulties, and that is why the complainant has to take advantage of the right to work half of full working hours. They used to live in a wooden house with no electricity and water, in almost impossible conditions for what was then four children under age. That is the reason why in 2002 she moved into a cellar without legal foundation to do so. In 1998, the complainant had filed a

request to receive a city apartment for lease. In 2004, because of the drawing-up of a "new" list, she "lost" a more favourable position on the list for the award of an apartment. They now live in extremely difficult health and social conditions, under permanent threat of being evicted from the premises.

Undertaken measures: The Ombudsman recommended to the City Office for Management of the Property of the City of Z. to provide housing to the complainant outside the final list with the order of priority, because she had children with developmental difficulties. As the problem of housing was not resolved, in 2006 the Ombudsman recommended to the minister of the family, veterans' affairs and intergenerational solidarity to use her power to help the family by procuring housing form them. The recommendation was forwarded to the mayor and the social welfare centre in Z. As the complainant's problem with housing was not resolved, but she only received a notice that she had been included in the "list of persons awaiting the settling of housing issues through the award of an apartment outside the final list with the order of priority" and that it was not possible to predict when she would receive an apartment, the Ombudsman requested the mayor of the City of Z. to use his personal influence to resolve the matter and thus end their long struggle to receive a city (social) apartment. As the outcome of the procedure is not visible from the response of the city office, the Ombudsman requested an urgent response concerning the settling of housing issues.

Case outcome: The City Office for Property-related Legal Affairs and the Property of the City notified the Ombudsman once again that it was difficult to predict when the housing issue of the family S.O. would be settled, because the tempo of resolving housing issues depended on the number of housing units available for award.

Protecting persons with disability

Further to invitations received from associations that promote the rights of persons with disabilities, representatives of the Office of the Ombudsman participated in many round tables, fora and workshops.

At the said activities, the discussions involved problems encountered by persons with disability, while the problem of architectural barriers in front of state and public services, and hospitality companies and shops, was particularly singled out, i.e. that in certain places the positioning of ramps was inadequate and contrary to the regulations and that the problem was

not supervised by anyone. A frequent problem was the excessive duration of administrative procedures, especially second-instances, slowing down the realisation of their rights. Implementation of the regulations was slow and poor, for example the Act on Employment and Professional Rehabilitation of Persons with Disability, as well as international treaties. In the health care, the problem is the procurement of orthopaedic tools and medical rehabilitation. It was pointed out that there were 280 pieces of legislation that regulated the rights of persons with disability and that it was therefore necessary to regulate (codify) the field, which would make it easier for this group of citizens to become acquainted with their rights.

Two associations of persons with disability complained against the difficult social position of persons with disability and discrimination against them in terms of the manner in which their disability had occurred, as well as the need to take measures to equalise the rights with the same name within the competence of different systems in all bodies of state administration competent for the rights of persons with disability. It was pointed out that it would be necessary, in the event of the same degree of disability, but different causes of such disability, that the amount of income should be of approximately the same scope.

Furthermore, a group of parents complained to the Ombudsman holding that the implementation of deinstitutionalisation would violate the human rights of their children – the right to institutional care, which provides 24-hour quality and appropriate care. However, the official data shows the contrary. Persons with a higher degree of disability who need a lot of and very particular kind of help are most frequently institutionalised. The process of deinstitutionalisation is slow, and it is also a question whether the parents of institutionalised persons with disability are adequately informed about the manner and the time period of implementation of the process. As the quality of life of persons with disability greatly depends on the accessibility of services which would satisfy their needs, it is necessary to ensure stronger support in the environment in which they live, especially in rural areas. It is also necessary to ensure to all persons with disability the same access to such services throughout the territory of the Republic of Croatia.

In individual procedures, the Ombudsman's recommendations are not processed promptly. For example, further to a complaint from N.T. from S. and from a number of associations of persons with disability filed in 2005, the Ombudsman recommended to the minister of health and social welfare to amend Article 9 of the Ordinance on the rights of the parents of children with serious development difficulties to a leave of absence or to work for half of full working hours with a view to caring for the child. The Ombudsman also proposed amendments to

Articles 3 and 4 of the Ordinance to enable all parents taking care of children with serious developmental difficulties to exercise the rights regardless of their employment status (employees, traders, independent or professional work, and the like), in accordance with the standpoint provided in the explanation of the Decision of the Constitutional Court (OG 19/02). It follows from the notification received from the minister of health and social welfare that they had received a large number of complaints against the Proposal of the Ordinance on amendments to the mentioned Ordinance; that they would take them into consideration and then finalise the procedure of adopting the Ordinance. It is the opinion of the Ombudsman that the procedure is excessively long. For that reason, he issued rush notes in 2007, but the Ordinance has still not been adopted.

EXAMPLES:

(1) Case description (P.P. –1026/07): The Ombudsman was addressed by Mr F.K. from Šibenik. He is a person with disability. He states that he had submitted a request to the city government to remove the architectural barrier to the building in which he lived. The complainant states that he did not request a ramp to be positioned there, which would require more funds, but only 4-5 steps to reduce the 45-degree incline, as that would make his access to the building in which he lives easier.
Undertaken measures: The Ombudsman requested a statement from the Town of Šibenik and drew its attention to the obligations of local self-administration laid down in the national strategies and regulations, and in particular in the Ordinance on ensuring the accessibility of buildings to the persons with disability and reduced mobility (OG 151/05). The Town of Šibenik acknowledged the recommendation of the Ombudsman and reconstructed the steps, adjusting them to suit the complainant's requirements.
Case outcome: The intervention was successful.

(2) Case description (P.P. –783/07): The Ombudsman was addressed by Mrs D.K. from Zaprešić who stated that she had been established to have a 60% physical disability, but that she still could not exercise her rights in the system of pension insurance, social welfare and health care, other than exemption from the payment of residence fees. She points out that, citizens with the identical physical disability do not receive the same treatment in the exercise of their rights and that that was not in line with the ratified international documents.

Undertaken measures: The Ombudsman requested the deputy prime minister of the Government of the Republic of Croatia and the minister of the family, veterans' affairs and intergenerational solidarity to issue a notification on the implementation and follow-up to the measures included in the National Strategy of Equalization of Possibilities for Persons with Disabilities from 2007 to 2015 and the Declaration on the Rights of Disabled Persons (especially items 6 and 14), referring to the constitutional principles and international documents. He also recommended the adoption of a standpoint concerning the differences between persons with disability who have the same degree of disability and to level the rights to a level which could not be regarded as discriminating.

Case outcome: The Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity forwarded an urgent and extensive reply, which, amongst other things, states the activities and measures conducted in accordance with the national strategies and the regulations which regulate the type of physical disability and the percentages of such disability, but do not explain whether the regulations differentiate between persons with disability who have the same degree of disability regardless of the cause of the disability.

Family-legal protection and guardianship

In 2007, the Ombudsman received 18 complaints from the sphere of family-legal protection and guardianship and 5 complaints relating to the field which were within exclusive court jurisdiction.

In the sphere of family-legal protection, the complaints referred to the work of the social welfare centres during the court proceedings related to reaching decisions on which of the parents an underage child should live with and to determining the way and time of the child’s meeting and spending time with the other parent, or to out-of-court procedures to take away the right to parental care. As the new 2003 Family Act narrowed down the administrative competence of the social welfare centres in this sphere, the number of complaints also decreased. In the procedure of evaluating complaints, it can be seen from the submitted statements and documents that the social welfare centres usually act promptly by investigating cases and taking measures to protect the child's rights, while the opinions/proposals are done according to the principles of team work in line with the valid regulations.

However, the examples of incorrect and improper conduct of certain social welfare centres refer to the procedures of issuing the consent to dispose with the child's property. In accordance with Article 261, paragraph 1 of the Family Act, subject to the consent of the social welfare centre, parents may alienate or encumber the property of their child under age to ensure support, medical treatment, education or to pay for some other important needs of the child. In certain cases, the social welfare centres do not provide sufficient protection of the child's interests. Any requests made by parents to contract a mortgage against property owned by their child under age or to sell their property in order to pay for the needs of the entire family or to initiate projects of their own should not be accepted.

In the sphere of guardianship, the Ombudsman received complaints from persons with ward status who were dissatisfied with the conduct of the social welfare centres or their guardians. There was a number of complaints which were basically submissions with incomprehensible content and unargumented claims, showing that the complainants are dissatisfied with the fact that they have ward status and that they are convinced that the Ombudsman can represent them. Although the institute of guardianship over adults restricts their fundamental human right to self-determination, the purpose of the institute is to protect their rights and interests.

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. For example, every 3 years the social welfare centres must request the primary health provider to issue a report on the health of the ward. The data is important to monitor the ward's health and evaluate whether the guardian take proper care of his health. In the event of permanent improvement in the health of the ward, the social welfare centre should initiate the procedure of restituting his business capacity, either partly or in full.

At a round table organised by the Croatian Helsinki Committee a question arose whether the line ministry collects the said data from the social welfare centres. It was concluded that there was no official data on the subject. In addition, at the Human Rights Co-ordination in the County of Zadar, it was pointed out that the homes for mentally infirm adults and the social welfare centres should co-operate more closely in the field of monitoring the health of the wards in terms of the reasons for revoking their business capacity and to possibly initiate procedures for either partial or full restitution of their business capacity. Furthermore, the question of voting by persons deprived of business capacity also arose in view of the lack of co-ordination in the laws which regulate the area, i.e. their unclear electoral status.

EXAMPLES:

(1) Case description (P.P.–219/06): The Ombudsman was addressed by L.K. from K.N. (who is serving a prison sentence) regarding a problem she had in meeting and spending time with her children B. and V. In the complaint, she states that she would see them once or twice a month while she was in custody, always a judicial police officer present. However, she did not see her children since her transfer to the Penitentiary in P.

Undertaken measures: The Ombudsman requested the social welfare centre S. to issue a statement. From the statement and the documents enclosed to the statement it follows that the centre had filed a petition with the competent court for revoking the right to parental care of B. and V., and a petition for the issuance of an injunction to prohibit meetings and spending time with the children until finalisation of the procedure of revoking the right to parental care. The expert team of the centre explains the proposal as necessary to protect the interests and welfare of the children, since they evaluated that in view of the new circumstances concerning the way in which the meetings and spending time with the children would have to be organised they might have negative impact on the psychological and physical development of the children.

Case outcome: The Ombudsman notified the complainant accordingly and instructed her that she had the right to free professional legal aid and to a legal instrument to protect her rights, which she could use to protect her legal interests in the court procedures, in accordance with Article 14, paragraph 1, item 6 of the Act on Serving Prison Sentences, or to address the Croatian Bar Association in Zagreb, asking them to appoint a lawyer to provide free legal aid.

(2) Case description (P.P. –246/06): The Ombudsman was addressed by Mrs M.M. from Osijek concerning the protection of the rights and well-being of her grandchildren, I. and M.B. from Osijek, both under age. The complainant points out that the father, M.B., had obtained an approval of the Osijek Social Welfare Centre to sell the real property co-owned by I. and M.B. in 1/3 parts each, and to conclude a purchase and sale contract in the form of a notarial deed, provided that the father contracts a time deposit with respect to part of the funds generated through the purchase price (EUR 18,666.66 to each child), subject to the entry of a clause "prohibition to withdraw without an approval of the social welfare centre". He then obtained through the same centre the right to dispose with the said funds for the purchase of land and the construction of a new house.

Undertaken measures: The Ombudsman requested the social welfare centre to issue a statement. From the statement, it is evident that the father of the children, M.B., had deceived the social welfare centre based on a forged document – an excerpt from the land book department, into believing that the real property he had given as a gift to his daughters was unburdened (although there is a lien in favour of the Republic of Croatia – Ministry of Defence entered against it). The land book department with the Municipal Court in Osijek filed criminal charges against him. M.B. initiated a procedure with the Central State Office for State Property Management to delete the lien entered against the real property, with simultaneous transfer to another piece of property, but the outcome of the procedure is long and uncertain. The Ombudsman thus recommended to the Ministry of Defence and Social Welfare to review the possibility of initiating an extraordinary legal remedy, i.e. nullification of the decision approving the disposal of the deposited funds of the children under the right of supervision, because the decision had been adopted as a consequence of an impermissible act – deceit, especially as the decision does not specify the obligation of M.B. – the presentation of the real property as a gift to M. and I. B. without any burdens (deceit, that he had done it already). However, the Ministry issued a statement that the rights and interests should be protected primarily by mutual agreement with the father, and only in the event of failure to reach such an agreement, to renew the procedure. The Ombudsman drew the attention of the Ministry that they, as the body of supervision, should follow further progress of the procedure. The social welfare centre notified the Ombudsman (with a copy to the Ministry) that it had given the approval to conclude the deed of gift to M.B., in the form of a notarial deed, by which he presents the real property to his daughters as a gift, although burdened. The Ombudsman requested a statement by the Ministry regarding such conduct by the centre, especially the possibility of the occurrence of uncertain circumstances (for example, failure to

approve transfer of mortgage or inability to repay the debt by the father as the result of loss of regular income, etc.) which might cause damages to I. and M.

Case outcome: The Ministry of Health and Social Welfare did not issue a new statement.

(3) Case description (P.P. –641/07): The Ombudsman was addressed by Mrs A.M.C. from Zagreb, who is the will administrator of the late V.R.-P., concerning the illegal conduct of the Z. Social Welfare Centre, Office M. She states that the office passed illegal decisions in December 1999, injuring the then under age M.P. and K.P. They actually lost the right of ownership to the apartment in Z., over which they had a registered right of co-ownership, each a part of 1/4, although they should have owned it each on her own pursuant to the Deed of Gift of 1994, which the land book department with the Municipal Court in Z. did not register for unknown reasons. For that reason, the complainant filed a complaint to the president of the land book department, and criminal charges.

Undertaken measures: The Ombudsman requested a statement from the Ministry of Health and Social Welfare and recommended that administrative supervision be performed of the said office, in accordance with Article 170 of the Social Welfare Act, and to establish whether the preconditions for application of items 2, 6 and 7, paragraph 1, Article 171 of the Act (nullification, revocation or changes to the decision of the social welfare centre) are met. In procedures involving the approval of alienation or encumbrance of property of underage children, the social welfare centre must take into account the well-being and protection of the interests of the child, so it was requested that it provide a statement concerning the non-performance of item II of the decision of 30 December 1999 (the obligation of the father in providing indemnification to his children under age) and the undertaken actions. As the ministry did not submit the statement within the requested term, the Ombudsman issued a rush note, warning it that it was obligated to co-operate with the Ombudsman and to submit reports and respond to queries at his request. The Ombudsman received a reply that the recommendation would be accepted and that administrative supervision would be performed, and that the report on undertaken actions would then be forwarded. They pointed out that in view of the excessive workload of the employees of the Social Welfare Directorate and the understaffing of the Section for Administrative Supervision they were not able to comply with the recommendation within term.

Case outcome: The Ministry of Health and Social Welfare performed the supervision and established that the disputable cases had gone missing from the archives and that a full review of the legality of conduct was not possible. However, it was evaluated that there had been

illegal conduct, and based on a conversation with the employees it was established that no control had been done whether the father had met his obligation (by buying a housing unit for each daughter). It was pointed out that through its actions in 2007 the Z. Social Welfare Centre had partly influenced the reduction of material damages incurred by the children, because the father had presented to his daughters as a gift, to each ½, a 4.5-roomed apartment he co-owns in ½ part.

(4) Case description (P.P.–1622/07): The Ombudsman was addressed by S.K. from Š. who stated that his wife, B.V. from Z., was a mentally incompetent person deprived of business capacity and placed under the immediate guardianship of the Z. Social Welfare Centre. In the period after being deprived of business capacity, several social workers at the office acted as guardian to his wife. He also points out that a divorce procedure had been initiated, which lasted for a number of years, but that the procedure was suspended. During the marriage their son M. (born in 1995) was born, who has uninterrupted residence in Z. The complainant's wife, B.V., as protected lessee, used the apartment until the Z. Social Welfare Centre placed her in the Home for the Mentally Infirm. The Ministry of Defence, the owner of the apartment, further to a notification of the social welfare centre informing the Ministry that their ward had been institutionalised, evaluated that the need to lease the apartment ceased permanently and offered the complainant to conclude a new lease contract. As the complainant owns a house in the area of the County of V.-S., he was offered a lease contract under the freely agreed rent which is significantly higher than the previous protected rent.
Measures undertaken: The Ombudsman promptly requested a statement from the Z. Social Welfare Centre and the Ministry of Defence both over the phone and in writing. Namely, in this case the authorities did not take into account that it was possible for the circumstances to change, especially that the complainant's wife's condition could improve, that the family circumstances could improve in a way for the husband to assume the care and even guardianship, and that the definition of "permanent accommodation" under the Social Welfare Act does not necessarily mean lifelong accommodation in an institution. Therefore, the Ombudsman recommended to the Ministry of Defence, with a view to protecting the interests of the complainant's wife and son, that the complainant, as the legal representative of his son M.V., who is under age, should be offered a lease contract, and that the status of protected lessee should pass to M.S., his son. The representative of the Ministry was extremely helpful and the complainant was indeed offered a new contract.

The Ombudsman received an extensive statement from the Z. Social Welfare Centre showing that they had taken a number of actions with a view to protecting the interests of the complainant's wife. In view of the wife's health, it is currently not possible to end her accommodation in the institution. However, the centre received the Ombudsman's recommendation on actions to be taken if the circumstances were to change.

Outcome: The intervention was successful.

(5) Case description (P P. – 1483/06): The Ombudsman received a complaint from Z.S. who is currently serving a prison sentence. He states that at the age of 9 he was expelled from Baranja, and that the B.M. Social Welfare Centre placed him in numerous institutions as a minor without parental care (under immediate guardianship). He complained that he did not receive the shares that he was entitled to as an exile person although at the time he was under the guardianship of the social welfare centre.

Undertaken measures: The Ombudsman obtained a statement from the Directorate for Exiles, the B.M. Social Welfare Centre and the Regional Office for Exiles in O.

It is evident from the statements that the complainant had exile status from 1992 to 1997. In 1997, his exile status terminated in the procedure of re-registration of exiles, because his legal representative and guardian – a social worker at the social welfare centre did not attend the re-registration. Thus, the complainant did not have continuity in the duration of his legal position as exile and returnee and could not exercise his right to the shares.

In accordance with Article 3 of the Ordinance on the review of the personal charts of exiles, returnees and refugees (OG 94/96), it was parents or legal representatives and guardians who could submit a request for changes to the personal charts for children under age. The social welfare centre in B.M., as the guardian, and the Regional Office for Exiles in O., as the body competent to terminate the status of exile and to recognise the status of returnee, did not co-operate sufficiently. That is the reason why the complainant did not acquire the right to free shares while he was under age and under the guardianship of the centre.

Case outcome: The complainant was instructed that as an adult person with business capacity he should decide whether he was going to initiate a damage compensation procedure against the B.M. Social Welfare Centre, and he was informed about the limitation period on monetary claims.

Conduct of the police officers

There is a noted rise in the number of new cases with respect to which the Ombudsman acted regarding the conduct of the police officers. In 2005, he received 14 complaints, in 2006, he received 28, and in 2007, he received 52 complaints. However, although when compared to some other fields within the Ombudsman's competence that is a relatively small number of cases, the tendency of growth, as well as almost daily headlines in the press, and co-operation with the Interior Ministry (and especially the Department for Internal Control), indicate the necessity to take certain measures and activities with a view to realising the conditions in which the illegal action of the police officers or the exceeding of police officers' authorities will be reduced to the lowest possible extent.

As emphasised by the Ombudsman in his previous reports, there is the need to set the standards for examining citizens' complaints from Article 6 of the Police Act. Transparent and effective procedures accessible to all citizens should be an imperative for any state in which the rule of law is the highest constitutional value. Concerning the said problem, on several occasions the Ombudsman issued recommendations to the Interior Ministry. In their latest report issued in early 2007, the Interior Ministry notified the Ombudsman of the consultations conducted within the organisational units and of the establishment of a working group to draw up a proposal of the rule book on internal supervision, with a view to reviewing the possibility of regulating the problem within the framework of the existing legal solutions, i.e. finding other options, such as amendments to the Police Act, and it was stated that they would notify the Ombudsman of all further activities taken regarding the problem concerned. Considering that the Ombudsman did not receive any notice of the progress made by the working group or of the fate of the previously made working drafts of the Ordinance on processing reports and the Ordinance on internal supervision, it can be concluded that no substantive progress has been made in prescribing the way of examining citizens' complaints.

There are plenty of reasons because of which it is necessary to prescribe the procedure of examination. One of them arises from the content of the reports which the Department of Internal Control forwards to the Ombudsman. All reports on the conduct of the police officers state that the use of coercive means was legal, but they do not state the established facts based on which the claim is made and what actions were taken in the procedure of examining the complaint. In certain cases, the Department of Internal Control did not examine the legality of conduct at all, but simply forwarded the Ombudsman's request to the police station concerned,

after which it would send to the Ombudsman several official notes along with a passing sentence. Such conduct does not permit a leap of faith as to the justifiability of the claims on the legality of the police officers' conduct. Furthermore, in almost all cases, it was observed that either a motion for the initiation of a misdemeanour procedure or criminal charges are filed against the complainants, while any physical injuries of the complainants are caused by a fall or some other form of "clumsiness", based on which it follows that there is no connection between the injury and the use of coercive means. The reports of the Interior Ministry thus read: ".. to block a blow from O.Š., he raised both arms, which is when O.Š.'s body and the hands of the police officer made contact, and then O.Š. fell to the ground. When he fell, O.Š. hit his head and suffered an injury…" (in the Varaždin General Hospital, it was established that O.Š. had suffered a serious life-threatening physical injury). Or in the case of two secondary school graduates: "… in line with their legal powers, the police officers of the Intervention Police Unit applied only the means of coercion – physical force, where Mr I.S. did not suffer any physical injuries, and Mr M.K., being escorted out of the tram, as the result of resisting arrest, hit his head against the tram door and suffered a physical injury in the nose area…", and also: ".. a police officer takes hold of his jacket in the shoulder area with his left hand and drags him out of the vehicle, which is when M.M. hits his head against the door of the vehicle…". The arguments stated as decisive for the review of the legality of conduct are sometimes very unconvincing: "… considering that the police officer is denying the statements by P.G. on inappropriate conduct, we find no elements of his disciplinary responsibility…"

Along with the foregoing, the Ombudsman holds that the prescribing of the procedure for the examination of citizens' complaints follows from Article 129 of the Police Act, which states that the minister of the interior was obligated to adopt a rule book on the performance of internal supervision and control within six months of the entry into force of the Police Act. When passing the rule book, it is necessary, as stated in the previous reports, to ensure the participation of citizens, which will indubitably contribute to the strengthening of citizens' confidence in the police work.

It is not necessary to point out that the cases in which not all doubts as to the illegality of the conduct of the police officers are removed create a negative impression resulting in citizens' unjustified distrust towards the police in general. The foregoing also makes the work of the police officers harder, because it creates in them the sense of insecurity and pressure. It is beyond any doubt that such an additional burden in what is already an extremely stressful job is counterproductive, at least. As an example, we may state the standpoint of the Croatian

Police Trade Union, voiced at the press conference held in 2007, when on the occasion of the tragic death of a young man from Bjelovar, who died as the result of injuries suffered through the hands of a police officer, that numerous police officers who use coercive means on a daily basis feel under tremendous pressure because of the media witch-hunt, as they fear that their interventions may later be interpreted as abuse of authority, which makes their work harder. Such standpoints indubitably speak in favour of the thesis about the necessity of removing even the slightest doubts as to the procedure of examining citizens' complaints, which will surely contribute to the strengthening of citizens' confidence in the police, which performs its job very successfully both in terms of suppressing domestic and international trade in narcotic substances, human trafficking and in many other segments.

Last year, the Ombudsman reviewed several holding facilities in randomly selected police stations. The visits were organised as the result of the fact that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated in several of its reports after visiting the Republic of Croatia that holding facilities on police premises were inappropriate. During the visits, it was established that in certain police stations the conditions are completely unacceptable. For example, in the Police Station in Karlovac, the two rooms that are used as holding facilities are completely dark, very cold, with no heating, no video surveillance, running water, etc. However, it was also established that there are holding premises which meet all spatial, hygienic and health-related accommodation requirements (such as the Police Station in Ivanec).

EXAMPLE:

Case description (P.P.-998/07): J.B. filed a complaint with the Ombudsman against the conduct of the police officers at the time of issuing a subpoena. According to the complainant, on 1 March 2007 at 6 a.m. two police officers came to his house and served him with a written subpoena for the purpose of giving a notification. However, in the written subpoena it was stated that the complainant had to appear at the police station on 1 March 2007, therefore on the very same day at 6 a.m. With his consent, the police officers drove the complainant to the official premises.

Undertaken measures: The Ombudsman requested a report from the police administration on its conduct in the matter. In the report, the police administration states that it did identify certain omissions in the misdemeanour processing and examination, but that there were no illegal actions concerning the subpoena. Based on the submitted data, the Ombudsman issued

a recommendation to the Department for Internal Control showing that that the accumulation of regular (Article 11 of the Ordinance) and extraordinary (Article 13 of the Ordinance) methods of issuing a subpoena is indubitably not in the spirit of the Act.

Case outcome: The Department for Internal Control forwarded the recommendation to the police administration, so that the conduct would not be repeated. The complainant was notified of the content of the recommendation.

Health insurance and health care

In 2007, the Ombudsman received 29 complaints from the sphere of health insurance and 20 from the sphere of health care.

Health care

The received complaints varied by their contents, and they referred to the procedure upon the request for opening private practice, the procedure of granting lease for certain parts of the health care centres and pharmaceutical health institutions, the rights in the realisation of health care, such as the right to confidentiality, the right of access to medical records, to the quality and content of health services. Based on the number of complaints reporting violations of the rights arising from health care, it can be concluded that the patients are becoming more and more aware of their rights.

There was a large number of complaints that referred to rights violations or the possibility of rights violations concerning the confidentiality of the data on the patients' health.

In that regard, the Ombudsman was addressed by the president of the Section for Psychosocial Methods of Treating Psychoses of the Croatian Medical Association, who filed a submission drawing the Ombudsman's attention to the problem of learning about one's diagnosis from the sick leave report form. The doctors of general/family medicine face a similar problem, as when a patient of theirs asks them to do so they enter codes in the sick leave report form which do not actually correspond to the actual disease that was diagnosed. Namely, based on the code under the International Classification of Diseases (ICD) which is entered in the sick leave report form, the employer has access to the diagnosed diseases of his employees.

In Article 120 of the Ordinance on the rights, conditions and the method of realising the rights arising from obligatory health insurance, it is stipulated that the code of the initial and final diagnosis of the disease must be entered in the sick leave report based on the International Classification of Diseases, Injuries and Causes of Death. Considering that the ICD is a public document, the patient's diagnosis becomes accessible to a large circle of persons who do not participate in his treatment. The said article is contrary to Article 25 of the Act on the Protection of the Rights of Patients which guarantees the patient's right to the confidentiality of all data referring to his health in line with the regulations on keeping the professional secret and on the protection of personal data.

Further to the foregoing, the Ombudsman recommended to the Croatian Health Insurance Institute to align the Regulation on the rights, conditions and the method of realising the rights arising from obligatory health insurance with the provisions of the Act on the Protection of the Rights of Patients.

The director of the Croatian Health Insurance Institute notified the Ombudsman that he would review his recommendation and notify him of the final outcome in writing.

The Ombudsman also received a submission connected with the structure and functioning of the Central Health Information System for Primary Health care. A question was posed whether, apart from doctors who are obligated to keep everything they learn about a patient's health as a doctor's secret, the data is also accessible to other persons, for example those maintaining the software.

Health insurance

The Ombudsman received 29 complaints from the health insurance sphere in 2007.

In the implementation of the National Strategy for the Development of Health Care 2006-2011, the Croatian Parliament passed a package of health insurance laws in July 2006. The said laws are the Act on Obligatory Health Insurance, Act on Voluntary Health Insurance and Act on Employees' Health care, which will become applicable as of 1 January 2008.

The Act on Obligatory Health Insurance was amended several times before being passed, and so was the Ordinance on the rights, conditions and the method of realising the rights arising from obligatory health insurance.

Despite the fact that the said regulations are now applied for over a year, based on the received complaints it is evident that the insured persons primarily have problems concerning the issue of the scope of their rights arising from health insurance.

Most complaints referred to the realisation of the right to financial compensation, the amount of financial compensation, the payment of compensation, the realisation of the rights to use medicinal products that can be found on the primary and supplemental list of medicinal products of the Croatian Health Insurance Institute.

The Croatian Health Insurance Institute reacted to the recommendations and responded to the queries of the Ombudsman within the time limit set, and the answers were comprehensive and specific.

EXAMPLES:

(1) Case description (P.P. – 1209/07) The Ombudsman was addressed by P.K., MPharm, from L. In her submission, she states that by the decision of the Ministry of Health and Social Welfare of 17 July 2007 her request to open a private practice in a private pharmacy in Š. was rejected. The complainant's request was rejected, because she did not meet the conditions regarding the number of persons insured through obligatory health insurance for the establishment of a second pharmacy in the area concerned.

It is important to point out that the Ministry of Health and Social Welfare adopted the decision on the establishment of the first pharmacy in the area, Pharmacy K., on 16 July 2007, only a day before the adoption of the decision rejecting the complainant's request.

Although the complainant and Z.K. submitted the requests on the same day, 20 March 2007 (the complainant filed at 8:32 hrs., and Z.K. by registered mail at 00 hours, 1 minute and 18 seconds), the request of Z.K. was approved, because it was submitted 8 hours and 32 minutes before the complainant's request. It is important to mention that the opinion of the Croatian Chamber of Pharmacists which all applicants must obtain under Article 139, paragraph 1, item 9 of the Health Care Act was ignored.

The commission in charge of issuing opinions concerning the opening of pharmacies with the Croatian Chamber of Pharmacists reviewed the requests of the complainant and Z.K. at their session held on 21 April 2007. At that session, the complainant received unanimous support for the establishment of a private practice P.K., and Z.K. received a negative opinion. In the opinion it is stated that under the Ordinance on the work of the commission for issuing opinions concerning the opening of pharmacies with the Croatian Chamber of Pharmacists,

The Chamber must also issue a professional opinion. In that sense, the complainant, establishing her first pharmacy, received priority in opening a pharmacy in Š.

The complainant's request to establish a private practice in Š. was rejected despite the positive opinion of the professional organisation, the Croatian Chamber of Pharmacists. Quite to the contrary, the establishment of a private practice was approved to Z.K. who had received a negative opinion from the Croatian Chamber of Pharmacists, but who submitted her request on the same day 8 hours and 32 minutes before the complainant. Therefore, time had more impact on the decision made than the professional opinion of the Croatian Chamber of Pharmacists.

Undertaken measures: The Ombudsman requested the minister of health and social welfare to submit a statement concerning the case within 30 days, in which he would state the reasons because of which the opinion of the Croatian Chamber of Pharmacists was not acknowledged and the reasons why only the time difference in filing the request was taken into account, especially as the criterion is not stipulated in any of the regulations which govern the opening of private practices.

In the statement received from the minister of health and social welfare, it is stated that the Health Care Act obliges parties to obtain an opinion of the Croatian Health Insurance Institute and the Croatian Chamber of Pharmacists on the justifiability of opening a pharmacy in the primary network of the health activity, but that the opinion is not binding for the health minister. Furthermore, that the opinions are only part of the documents which must be enclosed to the request.

Regarding priority, the minister states that the general legal principle of granting priority to the request that is received first is applied, provided that in terms of other criteria the requests are equal.

Even after the statement, the Ombudsman holds that in the said decisions, in view of the state of facts that was established, the reasons do not refer to such a decision as given in the explanation. Therefore, on 10 December 2007, he sent a recommendation to the Central State Administration Office to conduct supervision in the implementation of the general administration procedure in the said cases.

Case outcome: Unknown. The Central State Administration Office did not notify the Ombudsman of the measures undertaken further to his recommendation.

(2) Case description (P.P.–477/07): The Ombudsman was addressed by Mr. D.T. from Z. who reported a violation of the right to access to his medical records. In the submission, the

complainant states that he worked as a security guard in private protection for R.V.R. – uslužne djelatnosti d.o.o. from Z. His employer sent him for an extraordinary medical examination for the performance of the activities of security guard in private protection on 27 February 2007. The examination was performed in the Health Care Centre of the Interior Ministry in Z. on 28 February 2007.

During the examination, it was established that the complainant was not fit to perform the activities of a security guard based on Article 8, item 67 (alcoholism and dependency on drugs) of the Ordinance on the method of determining the general and special health ability of guards and security guards in private protection.

The complainant states that his test results were negative to both drugs and other opiates. He requested to see the medical records, so that he could file a timely request for an examination in the second instance at the Croatian Institute of Occupational Health. He points out that his request was not complied with, which is why he could not request a second-instance examination to be made. The complainant believes that the Health Care Centre of the Interior Ministry violated his right of access to the medical records, as laid down in Article 23 of the Act on the Protection of the Rights of Patients.

Undertaken measures: Pursuant to Article 11 of the Ombudsman Act, the Ombudsman Requested the director of the Health Care Centre of the Interior Ministry to promptly issue a statement concerning the claims of Mr D.T., so that it could be established whether his right of access to the medical records had been violated or not.

In the statement of 27 April 2007, the director of the Health Care Centre of the Interior Ministry stated: "*Considering that the employer also ordered the examination, and paid for it, the medical certificate was forwarded to the employer. If the person examined would like to submit an objection to the second-instance commission of the Croatian Institute of Occupational Health, the said institution will ask for the medical records in the line of duty."*

On 17 May 2007, the Ombudsman sent the following warning to the Health Care Centre of the Interior Ministry:

"It follows from your statement that you violated the provision of Article 11, paragraphs 4 and 5 of the Ordinance on the method of determining the general and special health ability of guards and security guards in private protection at the detriment of the complainant. Article 11, paragraph 4 of the Ordinance lays down that the appraisal made by the Commission (certificate) must be forwarded to the authorised legal person, the Croatian Institute of Occupational Health and to the security guard in private protection. Paragraph 5 of the same article lays down the right of the persons referred to in the previous paragraph to

file a request for an examination before the second-instance commission of the Croatian Institute of Occupational Health within 15 days, counting from the date of delivery of the appraisal. Therefore, who makes the payment for the examination is not a criterion used to determine to whom the appraisal of the Commission should be forwarded.

By the failure to send the appraisal of working capacity to the complainant, you denied him the right to submit the request for an examination before the second-instance commission of the Croatian Institute of Occupational Health. If the complainant does not know the reasons why the Commission decided that he was not fit to work as a security guard, he simply cannot state the facts in the request for an examination before the second-instance commission, because of which he holds the said reasons to be unfounded. We wish to point out that Article 18, paragraph 1 of the Constitution of the Republic of Croatia guarantees the right to appeal against individual acts adopted in the first-instance procedure.

Further to the foregoing, and pursuant to Article 7, paragraph 1 of the Ombudsman Act, the Ombudsman wishes to warn you about a violation of the right of the complainant referred to in Article 11, paragraphs 4 and 5 of the Ordinance on the method of determining the general and special health ability of guards and security guards in private protection. Please notify the Ombudsman of the actions taken further to this warning within 15 days."

Case outcome: With respect to the warning of the Ombudsman, the director of the Health Care Centre of the Interior Ministry sent a notification that in accordance with Article 11, paragraph 4 of the Ordinance on the method of determining the general and special health ability of guards and security guards in private protection she had forwarded to the complainant the certificate of his health capacity as a security guard in private protection.

(3) Case description (P.P.–440/07): The Ombudsman was addressed by K.Č. from Z. In her submission, she states that on 13 March 2006 she concluded an employment contract with the Private Practice for Physical Therapy and Rehabilitation from D.S. In May 2006, the complainant was hospitalised for health problems. She was diagnosed as having multiple sclerosis. In view of the treatment and rehabilitation, the complainant is now on sick leave, but the employer is not paying salary compensation. On two occasions, he just handed to her the entire salary amount of 3,200 kuna. As the employer violated the right of the complainant to salary compensation under Article 93 of the Employment Act, the complainant addressed the Ombudsman.

Undertaken measures: Pursuant to Article 7, paragraph 1 of the Ombudsman Act, the Ombudsman issued a recommendation to the State Inspectorate, i.e. its Service for

Supervision in the Field of Employment and Protection at Work, to investigate the statements from the complaint and, based on the facts established, to take measures within its competence.

The State Inspectorate notified the Ombudsman that further to his recommendation it had performed inspection supervision. In the supervision, it was established that the employer did not give the complainant the calculations of salary compensation for the period from July to December 2006, in accordance with the provision of Article 91, paragraph 1 of the Employment Act. It was also established that he did not pay out the salary compensation for the period from January to April 2007. The senior inspector filed a motion against the employer for the initiation of a misdemeanour procedure with the competent misdemeanour court.

As it was also established that the employer paid out the salary compensation to the complainant for August and September 2006 in cash, the senior inspector notified the Ministry of Finance of a well-founded reason to believe in violations of the tax regulations.

The Ombudsman sent a letter to the complainant, notifying her of the manner and time limits within which she can exercise protection of her rights.

Case outcome: Unknown. The complainant did not address the Ombudsman again.

Housing relations

The authority of the administrative bodies for settling relations in the field of housing ceased after revocation of the institute of the tenancy right (following the entry into force of the Act on Apartment Lease in 1996). Through gradual termination of the authority of the administrative bodies to settle relations in the field of housing and through termination of the tenancy right, it was expected that the number of citizens' complaints against the work of the administrative bodies for violations, threats and loss of the right to apartment would decrease.

However, the complaints in the field of housing still account for the most significant part of the work of the Ombudsman. In 2007, he received 41 complaints (as compared to 2006, when he received 44).

The citizens address the Ombudsman to settle housing issues and to regulate relations arising from the use of the apartment, and most frequently they request legal aid in relation to the acquired tenancy right, so that they could acquire the right to purchase it and acquire the

status of protected lessee. The citizens also seek protection in view of the irregularities resulting from the way of prescribing certain relations between the owners and apartment users.

The issue of the rights of protected lessees in private apartments and the owners' rights to such apartments was particularly investigated within the field of housing relations. The complaints mostly include a direct objection against the work of the Ministry of Environmental Protection, Physical Planning and Construction because as a competent professional state body it has not proposed a way of regulating the relations between the lessors who are natural persons and protected lessees (tenants who had acquired the tenancy right to private apartments).

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 are still not regulated, and it is still not settled in court practice whether the lessor who is a natural person is obligated to ensure an alternative apartment to the protected lessee in the event of termination of the lease contract.

Concerning this issue, the Ombudsman was also asked whether it is justified to permit the eviction of a tenant who was found in the apartment of a natural person as the tenancy right holder in December 1974 (Act on Housing Relations) and who was regarded as a person with a settled housing issue until November 1996, i.e. until the entry into force of the Act on Apartment Lease (through the entry into force of the former first Act on Housing Relations, the possibility of acquiring the right of tenancy to apartments owned by natural persons was terminated).

In discussing the said complaints, 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.

The Constitutional Court does not have the authority to rectify the inequality in the application of the Act on Apartment Lease which occurred on termination of validity of the repealed legal provision, because it is not up to the Court to adopt a decision on a right which is not settled (still, more than nine years later). The Constitutional Court issued a special report on the incompleteness of the Act on Apartment Lease and warned the Croatian Parliament accordingly (June 2007).

Further to the constitutional complaint and request for the protection of legality, the Constitutional Court and the Supreme Court concluded that if the owner of an apartment plans

to move into the apartment himself or plans that his descendants, parents or persons he is obligated to support move in, stay of enforcement must be issued, because the method of implementation cannot be determined. Eviction of a protected lessee without the possibility of determining the method of enforcement would cause harm to the protected lessee, which would be difficult to repair.

On the other hand, the apartment owners are trying to take possession of the apartment through complaints for the obstruction of possession (by the protection of possession after termination of the apartment lease contract).

It follows that court practice regarding this issue is very diverse, because although the highest-ranking state courts issue stays of enforcement, the evictions of protected tenants still take place and they then remain completely unprotected.

The uncoordinated standpoints at the lower-court level, and the adopted standpoints of the lower and higher courts, arise from the fact that different legal bases are used to generate court protection.

Considering that the right of the owner to move into his own apartment is not governed by the provisions of the Act on Apartment Lease, but that in view of the incompleteness of the said Act the protected lessees are also unprotected, because they are in a state of legal insecurity and under permanent threat of eviction from the only home they have, the relations between lessors and lessees must be regulated without any delay.

Both parties have the right to protect their constitutional and legal rights, so the interference by the state is a measure which is in this case essential in a democratic society and very much socially needed.

By issuing a warning against the failure to permit any further delays in adopting the standard, it is not our intention to prejudice the way in which the issue should be regulated, meaning that it cannot be and should not be expected in advance that the requirements of the owners and the requirements of the protected tenants will be accepted to the maximum extent.

Regarding the issue of the apartment owners moving in, it was observed that the current legislative solution in the event where the owner is a natural person who is a social case or over 60 years of age and who intends to move into his apartment, and cannot ensure an alternative apartment for the protected lessee, so it must be ensured by the unit of local self-administration, i.e. the City of Zagreb, mostly does not find application in practice. Failure to perform the obligation to ensure an alternative apartment means inhumane settling of matters in terms of the citizens. Although the solution laid down in the Act on Apartment Lease should have been resolved through the implementation of the Act on the Sale of Apartments

to which there was tenancy right (55%, i.e. 65% of the money from the sales is remitted to the State Budget or to a separate account, 45% is kept by the local self-administration, i.e. 35% by the company or some other legal entity), it turns out that in practice the realisation of the Act has not been achieved.

Along with the question of conditions for terminating the apartment lease contract, the Ombudsman also received questions concerning controlled rent (protected rent), i.e. a fair balance between the interests of the lessor to cover the losses arising from the maintenance of the apartment and the general interest to provide apartments to tenants, under the same conditions under which they used the apartment as tenancy right holders.

The amount of protected rent, which is established according to the Regulation on the conditions and standards for setting the protected rent, does not enable the lessor to fulfil the obligation of performing extensive maintenance. Therefore, the apartment owners deem that the protected rent (controlled rent), without the possibility of increase in view of the value and/or costs of repairing the apartment, represents an excessive and disproportionate burden.

Although the application of the restriction is justified and proportionate to the goal that is in the general interest (the protection of tenants, a socially sensitive issue), the amount of the rent which is less than the cost of maintenance does not achieve a fair distribution of social and material burdens involved in the reform of the housing legislation. The mechanism of protection, i.e. the absence of a legal path for the compensation of losses (e.g., through subsidies for the costs of maintenance to the owner, subsidies for the rent to the lessee) is not in place.

In the domestic legal system, it is necessary to timely ensure the mechanisms for maintaining a fair balance between the interests of lessors, including their right to generate profit from their property, and the general interest, i.e. the protection of tenants by not imposing an excessive burden and/or stricter conditions of housing than the ones to date. To the contrary, in the event of protection of the rights outside the domestic legal system, the Republic of Croatia might have to face compensation payments (European Court of Human Rights, Pilot-judgment of the Grand Chamber of 19 June 2006, Hutten-Czapska v. Poland).

As part of the field of housing relations, in 2007 the Ombudsman once again reviewed the issue of housing in the areas of special state concern.

Numerous citizens from the areas of special state concern, especially from the area of Vukovar, who are either lessees or the users of state apartments, addressed the Ombudsman with complaints that contrary to law they were obligated to pay reserve payments, while in

other parts of Croatia, it was the owners who had to pay such fees. Until the end of 2007, the Directorate for Exiles also obligated persons living in state apartments to pay reserve fees.
This issue and the measures taken by the Ombudsman towards the Directorate for Exiles are discussed in the chapter on settling housing issues.

EXAMPLES:

(1) Case description (P.P.-41/07): V.R. requested assistance in the acquisition of the right to purchase a state apartment under the Act on the Sale of Apartments to which there was tenancy right. The apartment is at the disposal of the Ministry of Defence of the Republic of Croatia. He had not received a reply from the Ministry of Defence to a request to purchase the apartment of 24 October 1995. He then addressed a non-governmental organisation to receive legal aid, which notified the Ombudsman, the Government of the Republic of Croatia, the clubs of representatives and certain committees of the Croatian Parliament, the OSCE Mission in Croatia and the European Commission about the case of Mr. V.R. The non-governmental organisation issued a request that in the case in question, but also in other cases concerning the purchase of state apartments, an exception should be made by allowing the parties an extended preclusive period for the submission of requests to purchase the apartment.
Undertaken measures: The complaint was primarily discussed within the meaning of Article 5 of the Ombudsman Act (competence). Considering that the Ombudsman is not competent to get involved in the protection of the rights of Mr V.R., as the case involves protection of the rights which can be realised in court, and in the event of failure legal instruments may be used to request an evaluation to be made before a higher-instance court, but also an evaluation by the Constitutional Court, if the constitutional right of equality was violated, Mr V.R. received a closer explanation of the situation.
The special criteria and conditions for selling state apartments were laid down in the 1992 Act on the Sale of Apartments to which there was tenancy right. (The Decision of the Constitutional Court of 29 January 1997 repealed the special condition – the time limit for submitting the request within 60 days, i.e. 30 days for the purchase of a state apartment, stipulated in the Act on Amendments to the Act on the Sale of Apartments to which there was tenancy right of 9 August 1995.)
Although after the revocation of certain provisions of the Act on Amendments to the Act on the Sale of Apartments to which there was tenancy right (of 9 August 1995) the competent body did not adopt a regulation which would set a special time limit for submitting a request

for the purchase of a state apartment, Mr V.R. had submitted his request within the general legal time limit (by 31 December 1995), during which all other purchasers of apartments not owned by the state could submit such a request.

Therefore, the complainant was instructed to notify the court of his request, so that a judgment could be passed replacing the apartment sale contract. In such a case, the court, in accordance with the legal standpoint of the Constitutional Court and the Supreme Court expressed in court decisions for the sale of state apartments, will competently discuss the issue at stake: whether the request for the purchase of the apartment was submitted within the legal term.

Only if he complies with the foregoing, will he have legal protection ensured.

Case outcome: No data on the initiation of a court dispute.

Note: Although according to the amendments to the Act on the Sale of Apartments of 9 August 1995 the holders of the tenancy right to the apartments at the disposal of the Ministry of Defence of the Republic of Croatia were placed into a less favourable position, which was corrected by the Constitutional Court by repealing certain provisions, including the deadline for purchasing the apartment, the purchasers of state apartments cannot be placed in a position that is more favourable than that of other purchasers, as was requested from the Ombudsman by the non-governmental organisation.

The question of the time limit for submitting a request for the purchase of a state apartment should not be interpreted at the detriment of the tenancy right holder who should have taken certain actions. The purchasers of state apartments were placed into the same legal position as other purchasers by the Decision of the Constitutional Court of 29 January 1997 and they cannot be placed in a position that would be more favourable by excluding them from the prescribed time limit within which the request could have been filed.

It is still insufficiently clear whether after the revocation of the time limit it is permitted to make an interpretation that with respect to the said apartments there is no time limit for submitting a request for purchase, in which case an objection could be made that the purchasers of state apartments at the disposal of the Ministry of Defence of the Republic of Croatia are in a more favourable position, or whether in the event of the sale of a state apartment the purchasers should also be governed exclusively by the general term for submitting the request (31 December 1995).

Therefore, the Ombudsman warned that the issue of time limits for submitting a request for the purchase of an apartment under the Act on the Sale of Apartments should definitely be evaluated on a case-by-case basis (when all the facts are established beyond any doubt),

where account should be taken that the legislator's goal was not the loss of the right of citizens in view of the preclusion of the time limits.

(2) Case description (P.P.-482/07): Ž. K. filed a complaint against the Town of S.B. for failure to recognise the legal right to a discount price of the apartment, calculated in accordance with the Act on the Sale of Apartments to which there was tenancy right.

Based on the contract on the purchase of an apartment to which there is the tenancy right of 19 May 1995 he purchased an apartment on the ground hall of a building. The apartment was purchased in instalments (360 monthly instalments), at the price of HRK 92,037.60. The price was set under Article 11 of the Act on the Sale of Apartments. The son of Mr K., who lives in the same household, born in 1969, is a person with disability. His disability was established on 7 March 1987 as 100% (paraplegia), and it occurred during his regular schooling, i.e. in the second grade of high school. At the time of purchasing the apartment, he did not receive the discount of 20% referred to in Article 16 of the Act on the Sale of Apartments.

Recognition of the right to a discount price was requested on 7 September 2005. However, in the conclusion of 12 May 2006, the town government rejected the request, explaining that the request for recognising the right to a discount was submitted after the expiration of the term within which he could have submitted the request for purchase, ten years after conclusion of the contract, and that at the time of submitting the request for the purchase of the apartment, he did not enclose any proof of the disability of his child.

Undertaken measures: The relationship in question is governed by the law of civil obligations, in which contractual parties cannot determine any essential elements of the contract on their own, as the price and conditions of sale are laid down by the Act. Considering that the purchaser is the parent of a person with disability, the right to a discount under Article 16 of the Act should have been recognised at the time of concluding the contract. Although it is the party himself that should primarily protect his rights, the body conducting the procedure must enable the party to protect them. In this case, the contractual parties are not in an equal position, and when the seller adopts an individual act on the determination of the price arbitrarily, they are not equal in the material-legal sense either.

For that reason, the town government was requested to provide an explanation of the expressed legal standpoint on the existence of the prescribed time limit within which one of the contractual parties may request an amendment to the contract in the part of the price. In view of the unnecessary exposure to litigation costs, because the complainant may realise the protection of his right to the price laid down in the Act in court, the town government also

proposed amendments to the act setting the price of the apartment and the conclusion of an annex to the purchase and sale contract of 19 May 1995.

In the submitted report, the town government responded that the tenancy right holder, and not the seller of the apartment was obligated to take care of the fulfilment of special conditions for the use of the right to the discount under the Act on the Sale of Apartments. Before delivering a reply, the municipal state prosecution was asked to provide an opinion.

Case outcome: Conduct further to the principles of fairness and morals was exhausted, and the Ombudsman's procedure was completed. After a contract is concluded, in the event of absence of the consent of one of the contractual parties to an amendment, the amendment may be requested only in court (the relationship from the contract acts as between the contractual parties).

At the time of concluding the contract, the right to a discount was not exercised, and the fact that the seller did not warn the complainant of the right to a discount, does not mean that the right expired.

(3) Case description (P.P.-1413/07): Mrs B. R. requested assistance in the protection of the right to an apartment and the status of protected lessee in a city apartment. She is a single mother of one daughter under age, she is unemployed, she receives social welfare payments, and both have more pronounced needs in view of their deteriorated health.

Until 2000, the complainant, as the holder of the tenancy right, was using an apartment in K. Street (in the basement), when, in view of her poor health, she moved to a newly-built apartment in A.Š. Street (on the 5th floor), both owned by the City of Z. She is in the possession of the contract on safe-keeping of the apartment for the latter.

However, after the expiration of the term of the contract on safe-keeping of the apartment (in A.Š. Street), the City of Z. initiated a court procedure for return of the apartment. In the enforcement procedure (eviction from the apartment in A.Š. Street), she once again took possession of the apartment in the basement of the building K. With a view to implementing involuntary eviction and return to the previous apartment, she was also granted the right to the legal position of protected lessee.

Undertaken measures: In the procedure of investigation before the Ombudsman, he concluded it was questionable, especially from the aspect of the principles of fairness and morals, to force one to live in an apartment that does not meet the basic condition referred to in Article 12 of the Act on Apartment Lease (*an apartment suitable for habitation*), especially if it is known that as the protected lessee and a person of very difficult social status she is the

weaker and unprotected party, and in an unequal position with respect to the first party, the lessor (City of Z.).

The moving to a free city apartment in 2000 (the newly-built apartment in A.Š. Street) was performed not only for social and health, including moral reasons, but also because the apartment in K. Street is about 1.5 m below ground level, humid, without enough natural light. Based on the minutes taken on the condition of the apartment at the time of takeover, drawn up at the site on 12 October 2005, it is indisputable that the rooms (of the basement apartment in K. Street), with the total size of 33 m2, do not meet even the most basic conditions for habitation: the walls are peeling, the parquet floor is ruined, there is water leaking from the apartment on the ground floor, there is a very strong smell of humidity, and the apartment is very dilapidated.

For that reason, the Ombudsman issued a recommendation that 1) the City of Z. as the owner and lessor should not seek implementation of the enforcement procedure based on the judgment of the Municipal Court in Z. dated 27 June 2007 before the basement apartment, with the size of 33 m2, is made suitable for habitation, and 2) if the City of Z. cannot make the apartment suitable for decent and healthy habitation for any reason (the position of the apartment in the building, the rules of civil engineering, excessive costs and the like), the protected lessee should definitely be provided an alternative city apartment, fit for the needs of the family B.R.

Case outcome: The procedure is underway, as the deadline imposed on the City of Z. to submit a notification on the measures undertaken with respect to the recommendation did not expire until 31 December 2007.

(4) Case description (P.P.-83/07): A. P. from Z. holds that her right to purchase an apartment based on the acquired tenancy right was violated. At the moment, she is in the possession of the contract on the lease of the apartment with protected rent. A.P. has been using only ½ of the apartment for more than thirty years as the tenancy right holder. Although as of 1998 she uses the surface area of 53.20 m2, the remaining ½ of the apartment was granted to her for use based on the decision of the housing commission of the City of Z. of 18 June 1996, after it was established that the total housing surface area (formerly two co-owned parts) makes a single housing unit.

The procedure for compensation for the taken-away property is underway with respect to the part of the apartment to which she expanded in 1996.

Undertaken measures: With respect to the complaint, the procedure of investigation was initiated with the City Office for Property and Legal Affairs of the City of Z. Considering that the issue of compensation is a preliminary issue with respect to which there is a special administrative procedure going on based on the request of the former owners, it was decided that in order to review the question of the right to the purchase of the apartment it was necessary to first determine the reason because of which in the procedure of compensation, which had been concluded by a partial decision of 2 September 2003, for the housing structure in the yard T… House No 82 in Z., the procedure had not been conducted and no decision passed.

Case outcome: It was established that the compensation procedure is not over yet, although the time limit for implementing the procedure and completing it through the issuance of a decision on compensation had expired. The total duration of the procedure cannot be justified by its complexity, by the conduct of the applicant or the work of the body conducting the procedure.

The unfounded stalling of the procedure with the City Office for Property and Legal Affairs of the City of Z., i.e. procrastination in adopting a decision on the apartment with respect to which the complainant has a legal interest, has got direct impact on the realisation of the right to the purchase of the apartment. However, at the same time, the right to further housing was not jeopardised.

Although the preliminary issue, the question of the owner of the apartment, was not resolved within a reasonable term, the protection and realisation of the right to the purchase of the apartment under the conditions laid down in the Act on the Sale of Apartments to which there was tenancy right, may be realised in court. If at the request of the tenant/purchaser, the contract on the purchase and sale of the apartment is not concluded, the purchaser has the right to initiate the procedure and request the court to issue a judgment which fully replaces the contract on the purchase and sale of the apartment. In that case, the court establishes whether the request for the purchase of the apartment was submitted timely. As the matter involves ½ of the apartment which was nationalised, the request for the purchase of the part of the apartment should have been submitted to the Fund for the Compensation of Taken-away Property by 31 March 1997.

However, as one of the requests for the purchase of the apartment was submitted too late (for ½ of the apartment with the tenancy right the request was submitted on 26 February 1996), because it was submitted after the expiration of the preclusive term within which the request should have been submitted (by 31 December 1995), the complainant did not pay enough

attention to the realisation of her right to purchase the apartment or exhaust the regular legal instruments for the protection of the right concerned.

Note: The complaint is partly well-founded. The complainant was instructed to seek court protection.

Property confiscated during the Yugoslav communist rule

During 2007, the Ombudsman received altogether 39 newly filed complaints from this sphere, and 22 were left over from the previous years.

Compared to 2006, when 29 new complaints from this sphere were received, and altogether 33 were in process, in 2007 there was a significant increase once again.

The citizens' complaints that refer to the realization of the rights on the basis of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule mostly refer to the stalling of the procedures before the first- and second-instance bodies and to the obstruction in the implementation of the procedures for the restitution of the confiscated real estate.

This year, the former owners expressed their dissatisfaction with the obstructions imposed concerning the restitution of agricultural land, which the Ombudsman will address in the examples below and in the part of the report that deals with agricultural land.

Most citizens complain against prolonged procedures, i.e. the inability to exercise their rights in view of the changes to the legal opinion concerning the application of law by the Civil Law Directorate of the Ministry of Justice, which changed without any specific explanation in 2003. Based on the opinion, the applicants whose property (real property) had been confiscated do not receive all of it back, but they become co-owners with the Republic of Croatia (by reference to Article 77 of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule).

In the review of the lawfulness of the said administrative acts in the administrative dispute, in its public judgments the Administrative Court of the Republic of Croatia evaluated that they were unlawful.

The Civil Law Directorate of the Ministry of Justice of the Republic of Croatia, however, not accepting the assessment of the judicial authority concerning the lawfulness of the administrative acts, continues to proceed in the identical manner, which is why the procedure

is significantly prolonged and the workload of judges intensified. Namely, as the result of the foregoing the applicants in each and every administrative procedure are forced to file a complaint with the Administrative Court to seek court protection of their rights, unless they want to remain without part of their property (again).

The complaints became topical only in 2007, because the Ministry of Justice is more than 3 years behind in the processing of appeals in the second-instance, contrary to the legal time limit for adopting a decision on the appeal (which is within 2 months at the latest, counting from the date of submission of the appeal), as stipulated in Article 247 of the Act on General Administrative Procedure.

It follows from the described conduct that the executive authority is not only making the restitution of the property difficult and prolonged, but it is also failing to apply the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule according to the intention of the legislator, and in general it is failing to respect the opinion of the judicial authorities, which is voiced through court decisions, thus placing itself above the legislative and court authorities.

After a legal analysis of the provision of Article 77 of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule, based on which the Republic of Croatia should acquire the property on which there is no title, i.e. with respect to which the restitution request was not submitted or with respect to which it was rejected by a legally effective decision (and not the one where the holder of the title is known, i.e. with respect to which the request was submitted), one of the complainants concluded quite rightly: "Is it not logical and in line with every natural law there is that if there is but one inheritor in the first line of inheritance he should have more rights to the restitution of the confiscated property than the state which *wants* to return what was nationalised…".

If we also mention that for more than two years the Civil Law Directorate of the Ministry of Justice failed to react to the Ombudsman's requests to submit reports and to the voicing of problems and the proposing of measures that ought to be taken to reduce the number of backlogged cases and to enable the Department for Second-instance Administrative Procedures, and the first-instance bodies to be up-to-date, one can conclude that the Directorate is not ensuring the implementation of procedures and the implementation of the rights under the provisions of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule in a satisfactory way, and it did not co-operate with the Ombudsman with a view to improving the situation.

EXAMPLES:

(1) Case description (P. P.-1006/07): The Ombudsman was addressed by I.G. from Z. (by e-mail), complaining against the work of the State Administration Office in the County of Z., Branch Office V.G., from which it follows that no action was taken with respect to the duly submitted request which his mother had filed in 1997 in the matter of compensation for the property confiscated during the Yugoslav communist rule, and that the applicant could not obtain any information on the state of the matter. The last piece of information obtained over the phone was that nobody had been working on the cases for awhile, because the office was understaffed.

Undertaken measures: The Ombudsman requested the branch office to provide a statement on the complaint and a report on case status, and the reasons for failure to take any actions.

Case outcome: The Ombudsman received the report of the Branch Office V.G. It follows that the applicant submitted the restitution request, i.e. request for compensation of the confiscated property, together with B.O. and T.C.-G. on 17 June 1997, and that the applicant B.O. was asked in writing on 20 November 2000 to supplement his request in accordance with the provisions of Articles 66 and 67 of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule (OG 92/96). On 15 January 2001, the applicant submitted the requested documents. On 29 November 2001, the body requested the Municipal Court in V.G. to issue chronological land register excerpts, which were submitted on 5 December 2001. In the conclusion of the body concerned of 30 December 2002, it was decided that the administrative matters would be joined and that a single procedure would be conducted concerning them.

The Branch Office V.G. explained the reason to non-perform in this procedure since 2002 by stating that in the period from 2002 to 2005, two employees worked on property-related legal issues, who terminated their employment in the service briefly afterwards, and that in the period from January 2005 to May 2007, the property-related legal issues were within the competence of a single employee who worked on them on only one day per week. As of 20 May 2007, an employee was assigned to work full working hours on such matters, and he has the authority to take actions until the adoption of a decision.

In the report it is further stated that the Service currently has to deal with 155 restitution requests, i.e. requests for compensation, and it is also in charge of dealing with the proposals for the acquisition of title over real property for the construction of structures or the performance of works of interest for the Republic of Croatia, and the proposals for incomplete

acquisition of real property through the establishment of servitude for the construction of municipal infrastructure facilities and the like, of which there has lately been a large number in the area of V.G. (repairing the state road, constructing the central device for purification of the discharge waters, building a motorway).

Regarding cases with respect to which the Ombudsman requested a statement, it is reported that within a short term the official channels will be used to request that the remaining documents be supplemented and that the hearings will be scheduled after such supplementation.

It is evident from the statement that the described situation concerning the understaffing of the Service is unsatisfactory and that it contributed to the current jam in the resolution of property-related legal cases. Therefore, the Ombudsman asked the head of the branch office and the head of the State Administration Office in the County of Z. to submit reports on the reasons for the situation and on the actions taken to fill in the vacant posts, making a cautionary note that the understaffing should be rectified as soon as possible. At the same time, he sent a recommendation to the Justice Minister and the Assistant Justice Minister in the Civil Law Directorate, and to the State Secretary of the Central State Administration Office, asking them to take urgent action with a view to creating preconditions for handling the procedures concerning the citizens' requests within a reasonable term, and asked them to notify the Ombudsman of the measures taken further to the recommendation within 30 days.

Case outcome: Further to the recommendation sent to the said bodies, only the head of the Branch Office V.G. submitted a report to the Ombudsman within the fixed deadline. He notified the Ombudsman that the vacant post of the administrative advisor for property-related legal matters in the branch office, which was vacant for about 2 years, was a problem in the work of the branch office (where the Ordinance on internal order of the State Administration Office in the County of Z., foresees one such post). He also notified the Ombudsman that despite numerous repetitions of the public competition for filling in the post organised by the Office, on account of a small salary the post was filled in only on 21 May 2007. Over the said period, the expropriation files were handled by graduate jurists in charge of property-related legal matters in other branch offices of the Office, while restitution/compensation requests were handled by a graduate jurist on only one day per week, and that the branch office provided the required support to the employees from other branch offices over the said period. It is stated that the duties of the head of the branch office are laid down in the Ordinance on internal order, while an increase in the number of jurists working on property-related legal

matters would require an amendment to the current Ordinance on internal order, which is not within the competence of the head of the branch office.

Note: The officials to whom the Ombudsman had sent the said recommendation on 17 October 2007 did not issue a statement (before the date of finalising this Report) concerning their activities or undertaken measures aimed at creating preconditions for the decisions of the state administration concerning the citizens' requests within a reasonable term.

The violation of the complainant's right to a decision concerning her request within a reasonable term was caused by the vacancy, which could be blamed on the salary coefficient, which is not appropriate in view of the complexity and responsibility entailed in performing such tasks. It could also be blamed on the insufficient number of staff foreseen in the Ordinance on internal order which fails to follow the needs arising from the increase in the number of inhabitants in the area of the branch office, of which the competent bodies were notified, but provided no response.

(2) Case description (P. P.-1260/07): The Ombudsman was addressed by I.B. who complained against the inability to exchange his agricultural land, although it had been established in the procedure of restitution of the confiscated property, conducted in 2005, that based on the documents and the parties' statements the conditions required to reach the settlement had been fulfilled.

He stated that at the hearing held on 7 October 2005, it was ordered that a letter would be sent to the Municipal State Prosecution – Civil Administration Department to make an attempt at settlement after the adoption of the Programme of Disposal of Agricultural Land Owned by the Republic of Croatia for the Municipality Otok, but that did not happen before the submission of the complaint (4 September 2007).

Undertaken measures: Considering that under Articles 54 and 54 a, b and c of the Act on Agricultural Land, municipal councils were obligated to issue the Programme of Disposal of Agricultural Land by 30 September 2005, and request the consent of the line ministry, the Ombudsman asked the competent service of the Branch Office V. in the State Administration Office in the County of V.-S. to submit a report on the reasons for the excessive duration of the procedure, at the latest within 30 days, and later he notified the Ministry of Agriculture, Forestry and Water Management of the foregoing in a copy of the letter.

In the letter of 24 September 2007, the competent service of the Branch Office V. notified the Ombudsman that the Ministry of Agriculture, Forestry and Water Management had not adopted the Programme of Disposal of Agricultural Land and that therefore a settlement could

not be reached by awarding some other replacement agricultural land owned by the Republic of Croatia.

Further to the report, the Ombudsman notified the Ministry of Agriculture, Forestry and Water Management of the response in its letter of 10 October 2007 and requested a rush note to be issued. He also requested a report on the reasons for the failure to adopt the Programme, i.e. the reasons for the excessive duration of the procedure of issuing the consent, within 30 days.

Case outcome: Until the submission of this Report, the Ombudsman did not receive the requested report of the Ministry of Agriculture, Fisheries and Rural Development.

The reasons for the failure to adopt the Programme of Disposal of Agricultural Land by the Ministry of Agriculture are not known.

As the adoption of the same is a precondition for the realisation of the rights in the procedure of restitution of confiscated property through the award of replacement agricultural land owned by the Republic of Croatia, the complainant may not realise his right as the result of non-performance by the Ministry of Agriculture.

(3) Case description (P. P.-426/05): The Ombudsman was addressed by M.B. from P. (27 November 2007), requesting information to whom she could complaint against a partial decision on compensation for the property confiscated during the Yugoslav communist rule and against the provisions of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule.

The complainant states that she is 88 years old and that she received a decision that the amount of compensation would be paid out over a period of 20 years. She states that her family used to have a house and a big yard, which are not included in the procedure, and that their plough-fields and meadows were classified as lower quality, while other areas were transformed into social and construction land, and as such are not to be returned.

Based on the enclosed partial decision of 16 April 2007, it follows that for the confiscated building land in the town P., with the surface area of 777 čhv[2] and for the confiscated agricultural land of 166 čhv, which is now owned by the town P. and the Republic of Croatia, the amount of compensation is to be HRK 10,904.84 in the bonds of the Republic of Croatia, specifically: the complainant will receive HRK 2,726.21, the applicant M.M. the amount of HRK 1,363.10, while S.V. the amount of HRK 1,363.10. The bonds are in kuna and they are

[2] *Četvorni hvat* equals 3.6 square meters[3]

payable in equal semi-annual tranches over a period of 20 years, as of 1 January 2000. The part of the request filed by the complainant and other authorised persons requesting compensation, i.e. the restitution of 3 acres 5483 čhv, is rejected, while another decision will decide on the part of the request relating to the confiscated wood of 1 acre 1200 čhv as it is located in an area suspected of being full of mines.

It follows from the explanation of the decision that in the procedure the complainant stated she would opt for natural restitution, because the compensation in bonds was not acceptable.

The complainant states that she filed an appeal (against the partial decision of 16 April 2007) to the Ministry of Justice, but that she was told that she would have to wait for more than 3 years.

Undertaken measures: In the letter of 6 December 2007, the Ombudsman forwarded the complaint to the Ministry of Justice, stating that the woman was of an advanced age and asked the Ministry to issue a statement and take measures to resolve the matter of the complainant's appeal as part of a summary proceeding.

Case outcome: Unknown. The Ombudsman did not receive the report of the Ministry of Justice before concluding this Report.

Note: Having reviewed the decision, the Ombudsman established that in a procedure involving 37 čhv of confiscated construction land in the town P. in the 4th zone the amount was set at HRK 39.48, while the compensation for the confiscated agricultural land of 166 čhv and 25 m2 was HRK 4.44. He also established that the parties to the procedure had not agreed to bear the costs of division into plots (because the costs of the geodetic expert would be around HRK 5,000), so the first-instance body concluded that natural restitution was not possible, "because the evidentiary procedure by expertise would be disproportionately expensive in view of the value of the matter", which is why the body established that the complainants had the right to compensation in the bonds of the Republic of Croatia. The reasons why the compensation for the confiscated land in the amount of HRK 10,904.86 would not be paid in full is not separately explained in the decision. As the Ombudsman in the course of the administrative procedure does not have any influence on the way the matter is settled, in accordance with his powers laid down by law, he was able to only forward a letter asking the competent body to speed up the processing of the appeal. It should also be mentioned that although pursuant to the decision of the Government of the Republic of Croatia on the restitution of confiscated agricultural land (adopted at the 39th session held on 10 April 2003), with a view to allocating agricultural land for the confiscated, the State Geodetic Administration is under the obligation to perform urgently and subject to no

remuneration, at the request of the municipal state prosecution, all tasks needed to realise the settlements, especially the identification of real property in the field, the making of the studies on division of plots and the like, the complainant was not offered any of that, but was simply asked to bear the costs of division into plots, just like other applicants.

(4) Case description (P. P.-690/07): The Ombudsman was addressed by D.O. who complained against the inability to achieve restitution of confiscated property in view of the way of handling the case and its excessive duration before the Office for Property-Legal Affairs and the Property of the City of Z. The complainant stated that the persons in charge of the procedure, the indication of class and the assignment changed on several occasions during the procedure.

Undertaken measures: On 29 May 2007, the Ombudsman requested the competent body to submit a report within 30 days concerning case status in the administrative matter concerned and a detailed statement on the reasons for the excessive duration of the procedure, including a statement concerning the complaint, and notified the Ministry of Justice of the Republic of Croatia, Civil Law Directorate, accordingly.

The Ombudsman received no reply to the letter, so he issued a rush note on 5 September 2007.

On 25 September 2007, the Ombudsman received the report, in which he observed certain irregularities connected with office-related tasks in the form of case management, the allocation of new class indications, and the assignment of the case to the persons in charge of the procedure without adopting any conclusions connected with the management of the procedure, as can be seen from the report. In the file, it is also evident that the appellate procedure was inappropriately long (6 years) and that the procedure was being prolonged.

Further to the foregoing, on 11 October 2007, the Ombudsman submitted the entire documentation connected with the case to the Central State Administration Office – Administrative Inspection Department, with a recommendation that it should perform inspection supervision concerning the work in the sections concerned, and with a request for the submission of a report within 30 days. The Ombudsman also notified the Civil Law Directorate with the Ministry of Justice of the Republic of Croatia.

Case outcome: The Ombudsman did not receive the requested report on administrative supervision before the submission of this Report.

Lease of agricultural land owned by the Republic of Croatia

The manner of disposal of agricultural land owned by the Republic of Croatia was one of the reasons for addressing the Ombudsman. The complaints referred to the work of local self-administration, i.e. the municipal councils and the governments of the municipalities and towns.

The complaints mostly referred 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 field of the municipalities where such programmes were adopted and to which the Ministry of Agriculture, Forestry and Water Management provided its consent. There were also civil initiatives in which, in view of the irregularities identified in the implementation of the Programme, the citizens asked for changes to the Programme in a way to reduce, i.e. restrict the maximum size of agricultural land owned by the state which can be sold to a family farm, an agriculturalist or agricultural farm dealing with crop production.

Based on the received complaints, it was observed that the said bodies fail to notice that Article 22, paragraph 1 of the Act on Agricultural Land stipulates that the Republic of Croatia disposes of agricultural land in its ownership, save for the land to be returned to its previous owners under a special law.

Therefore, pursuant to Article 20 of the Act on the Compensation for the Property Confiscated During the Yugoslav Communist Rule, agricultural land, forests and forest land with respect to which the former owners filed a restitution request will be returned to the owners unless there are obstacles to such restitution foreseen in Articles 52 through 56 of the said Act, and therefore may not be the subject-matter of disposal (sale and lease) by local self-administration or the subject-matter of public competition for the award of concession.

However, it happens frequently that agricultural land with respect to which a restitution request of the former owners was filed, regardless of the said provisions, is the subject-matter of disposal in the public competition, i.e. the award of long-term lease. The foregoing creates many difficulties to the former owners, because although all conditions for the restitution of agricultural land were met in the procedure, they cannot exercise their rights.

In addition, if we add that the rent received for the confiscated agricultural land is used to finance the state budget and the budget of local and regional self-government, it is obvious that the former owners cannot realise the exchange for the confiscated agricultural land in

view of obstructions caused (amongst other reasons) by the way of funding the budget of the local self-administration.

Within the meaning of Article 1 of the Act on Agricultural Land, agricultural land is of special interest for the Republic of Croatia and enjoys its special protection, and the Ministry of Agriculture, Forestry and Water Management, under Article 57 of the Act, is in charge of conducting the administrative and inspection supervision of the implementation of the said Act and the regulations adopted on its basis, so the Ombudsman notified the Directorate for Agricultural Land – Department for Disposal of Agricultural Land of the Ministry of all complaints that he had received regarding agricultural land with a view to acquiring access, deliberation and processing, i.e. the submission of a report.

The Ombudsman warned the line ministry that the Act on Agricultural Land no longer provides efficient legal protection to those participating in a public competition in the form of an objection, appeal and administrative dispute against the decisions of municipal and town councils, as regulated before under Article 13 of the Act on Agricultural Land (OG 54/94 through 105/99).

Further to the identified problems based on the citizens' complaints, the Ombudsman holds that it is indispensable to amend the current Act on Agricultural Land.

EXAMPLE:

Case description: (P.P.-346/07): The Ombudsman received an objection against the decision of the Municipal Council of the Municipality G. on the selection of the best tender for the lease of agricultural land owned by the Republic of Croatia.

Undertaken measures: As the Ombudsman is not competent to decide on the objection he received (but wanting to forward the objection to the competent body for decision-making), the Ombudsman established that under the provisions of the Act on Agricultural Land, the participants in a public competition no longer enjoy legal protection against the decisions of the municipal and town councils (by submitting an objection or appeal and by initiating an administrative dispute, as was regulated in Article 13 of the former Act on Agricultural Land (OG 54/94 through 105/99)).

Therefore, on 27 June 2007, the Ombudsman requested a report from the Ministry of Agriculture, Forestry and Water Management of the Republic of Croatia whether administrative supervision had been conducted concerning the implementation of the

competition and whether the Ministry had given its consent to the competition and the award of the contract, and whether the complainant had sent the objection to the Ministry directly.

In addition, the Ombudsman also requested the Ministry's opinion on the basis of the results to date whether the constitutional and legal rights of the participants are sufficiently protected by the implementation of only the administrative supervision of the implementation of the current Act on Agricultural Land – by the giving or denying of the consent of the Ministry to the decision on the selection of the best tender, i.e. whether there is a concrete initiative in place to amend the Act on Agricultural Land. On that occasion, the Ombudsman indicated that the report was necessary and important to enable him to initiate amendments to the said Act in the Croatian Parliament, so that in accordance with the constitutional guarantees referred to in Articles 18 and 19 of the Constitution of the Republic of Croatia the participants of the public competition would be enabled once again to have individual protection of the rights by being able to voice legal remedies against the decisions of municipal councils.

The Ombudsman also notified the Ministry of Agriculture that he had received a large number of complaints by unsatisfied citizens in relation to the manner of implementing the programme for disposal of land in state ownership by the local and regional self-government. The complaints were submitted by the citizens whose attempts to achieve restitution of the confiscated agricultural land were thwarted by the municipal councils by granting the land for lease to third parties, where the bodies were obviously guided by their interest to generate income from rent and to fill the budget, while the citizens concerned did not receive an opportunity to use the legal remedy, although stipulated by law. In view of the foregoing, the Ombudsman requested the Ministry of Agriculture to submit a report within 30 days.

Case outcome: From June 2007 to the drawing up of this Report, the Ministry of Agriculture, Fisheries and Rural Development failed to comply with the request of the Ombudsman.

Note: The Ombudsman would like to express his concern that the Ministry, by the administrative supervision of the implementation of the Act on Agricultural Land concerning the decisions of regional government and local self-administration, is not able to effectively protect the citizens' constitutional and legal rights connected with the manner of disposal of agricultural land owned by the Republic of Croatia, which is why it is stated in this Report of the Ombudsman to the Croatian Parliament that it is necessary to amend the Act on Agricultural Land.

Land acquisition (expropriation)

Case description: (P. P.-1078/06): In 1977, the real property of the parents of J. M. G. was expropriated for the purpose of building a military structure. However, the compensation has never been set or paid. The land is now abandoned and devastated, and entered in the land register as the property of the Republic of Croatia. It is stated that she addressed the Ministry of Defence of the Republic of Croatia – Service for Real Estate, Construction and Environmental Protection, and the Town of R. – Land Management Directorate regarding restitution, but each time she was notified that they were not competent to settle her request.

The complainant enclosed the expropriation decision, the requests she had submitted and the letters of the bodies notifying her of their non-competence, with a request to the Ombudsman to tell her who was competent to settle her restitution request.

Undertaken measures: Having reviewed the enclosed documents, it was established that the addressees notified the complainant in their letters of their non-competence instead of handling the complainant's request in accordance with the provision of Article 66, paragraphs 4 and 5 of the Act on General Administrative Procedure:

"Paragraph 4: When a body receives a submission by post that it is not competent to receive, and it is indisputable which body is competent to receive it, it shall forward the submission to the competent body or court without any delay and inform the party thereof. If the body that received the submission cannot establish which body is competent to process the submission, it shall pass a conclusion, without any delay, dismissing the submission by reason of non-competence, and promptly forward the conclusion to the party.

Paragraph 5: A special appeal is allowed against the conclusion adopted under paragraphs (3) and (4) of this Article."

As in the matter the addressees did not comply with the Act on General Administrative Procedure, but notified the party of their non-competence in a letter, against which it is not possible to file an appeal, the Ombudsman wanted to warn the bodies based on this example of the drastic consequences that may arise from the omission – the loss of rights.

Namely, the party filed a restitution request with a non-competent body of the Town of R. on 3 July 2006.

At the time of submitting the application, the Expropriation Act did not foresee the existence of

an objective deadline, so the former owner could submit a request for the nullification of the legally effective decision on expropriation without a deadline (the provisions of Article 31 and 48 of the Expropriation Act).

In this case, however, after the Town of R. notified the complainant in the letter of 24 July 2006 that it was not competent to decide her case, on 25 July 2006 the Act on Amendments to the Expropriation Act entered into force (OG 79/06, published on 17 July 2006), which in the provision of Article 7 imposes a deadline on the former owners of the expropriated real property, so that it cannot be submitted on the expiration of five years of the date of legal effectiveness of the expropriation decision, i.e. of the date of taking possession.

When the Ombudsman realised that in view of the identified omissions and the amendments to the Expropriation Act which would take place in the event of submission of the request to the non-competent body the complainant would lose the right to submit it again, thus suffering potentially irreparable damages, the Ombudsman issued a recommendation to the Town of R. to use registered mail to forward the request of the party of 3 July 2006 and the entire case to the State Administration Office competent for property-related legal affairs in the county, as the said body is competent to decide the case within the meaning of Article 21.a of the Act on Amendments to the Expropriation Act (OG 114/01) (the office in whose area of responsibility the real property is located), so that the party's deadline would continue to apply.

At the same time, the Ombudsman pointed out to the said bodies that the procedural provisions laid down in the Act on General Administrative Procedure elaborate on the constitutional principles on the citizens' human rights and freedoms in terms of legal relations with the bodies of administrative authority, and on the mechanism for their protection, which is very important to ensure the rule of law as the highest value of the political and legal structure of any modern public authority, which is why he warned the bodies and the employees to comply with the foregoing, and called on the Town of R. to notify the complainant and the Ombudsman of the actions taken further to the recommendation.

Case outcome: The Department of the Town Administration for Development, Urbanism, Ecology and Land Management of the Town of R. notified the Ombudsman in the letter of 2 May 2007 that it had complied with the recommendation and forwarded the request and the documents to the competent body for further work.

Note: Based on the Ombudsman's intervention, the complainant did not lose the legal right to have her request discussed and decided.

Science, higher education and school education

In 2007, there were 15 complaints from the sphere of science, higher education, school and pre-school education. It is important to point out that the complaints from the sphere of school and pre-school education referred mostly to the employment-related legal status of the employees.

Two complaints from the sphere of science referred to the adoption of a decision on the acceptance of projects. As the said issue is within university autonomy, the Ombudsman was not authorised to review them.

The Ombudsman responded to several queries related to housing loans, where the interest rate is partly funded by the Ministry of Science, Education and Sports, and which are granted in public competition to those employed in the system of science and higher education.

Three complaints from the sphere of higher education referred to the problem of the students in the third year who had failed to comply with the conditions for admission to a higher level (year), resulting from the introduction of the ECTS system. The Ombudsman established that in such complaints it is not the rights of the students that were violated, but that the matter involved an erroneous interpretation of the transitional provisions of the Act on the Scientific Activity and Higher Education.

The 2003 Act on the Scientific Activity and Higher Education lays down the obligation of the universities to introduce the ECTS system as of the 2005/2006 academic year.

In the transitional provisions it is stated that the students enrolled in 2003 have the right to complete their studies according to the curriculum and under the conditions valid at the time of enrolment in the first year of their studies, except for those students who lose a year. The students who lose a year may continue to pursue their studies under the ECTS system or the old system, as decided by the university in a general act.

Therefore, any university could lay down in a general act that the students who enrolled in 2003, and did not complete their studies according to the old curriculum, ought to continue the studies under the ECTS system and its curriculum.

EXAMPLE:

Case description (P.P. – 534/07): The Ombudsman was addressed by D.M. from S., who stated in his complaint that based on a decision of the University in S. of 27 October 2006 his right referred to in Article 116, paragraph 3 of the Act on the Scientific Activity and Higher Education had been violated. The said provision states that a university may restrict the duration of the right to complete one's studies under the curriculum and the conditions valid at the time of enrolment in the first year to a pre-determined number of years, but which may not be less than the number of years remaining to complete the studies under the programme according to which the student started his studies, increased by two years. Based on the decision of the University of 27 October 2006, it was laid down that the students who enrolled in their final year for passing the exams in 2006/2007 had to complete their studies at the latest by 30 September 2008.

Undertaken measures: The Ombudsman issued a recommendation to the Ministry of Science, Education and Sports to investigate the complaint and to notify the Ombudsman of the measures taken.

The Ministry of Science, Education and Sports notified the Ombudsman that the complainant had enrolled in the course of studies in the duration of 7 semesters, i.e. three and a half years. The complainant enrolled in 2002/2003, meaning that the deadline for completing his studies ended on 28 February 2006, on completion of the first semester of the academic year 2005/2006.

The provision of Article 116, paragraph 3 of the Act on the Scientific Activity and Higher Education lays down that a university may restrict the duration of the right to completion of one's studies to the number of years that is not less than the number of years remaining to the completion of the studies under the curriculum according to which he had started his studies, increased by two years.

Considering that the complainant's deadline for completing his studies expired on 28 February 2006, the University restricted the duration of the right to complete his studies until 28 February 2008. The deadline for completing the studies was increased by two years in accordance with Article 116, paragraph 3 of the Act on the Scientific Activity and Higher Education.

Case outcome: Processing completed.

Note: The complaint was unfounded.

Complaints against the work of the judiciary

In 2007, the Ombudsman received a total of 276 citizens' complaints from this sphere, which is slightly more than in 2006 (266). However, the Ombudsman was addressed by a much larger number of citizens with complaints against the work of courts, verbally, over the phone or directly at the Office, by asking advice or seeking assistance from the sphere in question. The citizens were informed that the Ombudsman was not competent to handle such matters.

Based on their structure, the complaints mostly referred to the excessive duration of the procedures in the first- and second-instance decision-making process, and the outcome of court disputes, and there were also complaints against the way judges were conducting court procedures, and against the performance of the duties of court administration. The Ombudsman also recorded complaints where the citizens requested his intervention concerning the merits of the case. An increase in the number of complaints against the work of the land registry department was also noted.

Where the complaints included the data needed to be investigated, the Ombudsman would forward them to the Ministry of Justice as the highest body competent to perform the duties of judicial administration, which would then submit a statement on the actions taken to investigate the complaint (by forwarding a copy of the letter to the president of the court).

The Ombudsman also received complaints against the work of the Ministry of Justice connected with inadequate implementation of the supervision of the work of courts, in which it was stated that there was no effect concerning the complainants. Therefore, the Ombudsman requested a special report from the Judicial Administration Sector with the Ministry of Justice both connected with the supervision conducted in 2007 and with the complaints received.

Based on the report of the Judicial Administration Sector, it follows that in 2007 the Ministry of Justice received 11,859 complaints, of which 11,744 referred to the work of courts and the state prosecution, and 69 against the work of notaries public and 46 against the work of lawyers. Of the total number of complaints against the work of courts and the state prosecution, i.e. of 11,744, only 3,319 were submitted by new complainants, while the rest refers to the so-called repeated complaints filed by persons who had already received an answer. Compared to 2006, the Ministry of Justice recorded a decrease by 72 complaints. All complaints received in 2007 were investigated, and only around 25% were well-founded.

According to the report of the Judicial Administration Sector, a thorough supervision of the performance of the work of the judicial administration was performed at 7 courts, and 7 more supervisions were performed concerning specific duties of the administration, of which 4 were performed by reviewing specific court cases after the party's complaint. The activities of judicial inspection in 2007 were performed by 4 judges (of whom, three municipal judges temporarily assigned to work in the Ministry, while the standard for work of the fourth judge from a county court was reduced on account of participation in the activities of the judicial inspection). In the report, it is stated that the number of staff in the judicial inspection is not satisfactory, which is why measures are being taken to improve the situation.

Furthermore, in relation to the complaints filed with the Ombudsman against other persons in the court procedure, it should be pointed out that they are slightly fewer in number than the complaints against the work of courts, so that in 2007 the Ombudsman recorded 6 complaints against the work of the state prosecution and 3 against the work of lawyers.

The complaints against the work of the state prosecution referred to stalling in the undertaking or not undertaking of criminal prosecution, and to non-acceptance of the proposals for the conclusion of settlements on behalf of the Republic of Croatia before suing, and to the filing of appeals without exceptions in cases within civil competence, and especially in cases further to the requests for the restitution of property confiscated during the Yugoslav communist rule.

Furthermore, the complaints against the work of lawyers were the result of distrust in their representation, and of suspicions as to the justifiability or accuracy of the collection of the lawyers' fees after representation.

Case description (P.P.-1568/07): N. B. from S. addressed the Ombudsman in view of the excessive duration of the procedure being conducted before the Municipal Court in S.

It follows from the complaint that the Police Administration S.-d. filed criminal charges against the complainant with the competent state prosecution in 1993. On 29 November 1995, the County State Prosecution in S. issued an indictment for the criminal offence of abuse of position or authority under Article 215, paragraphs 1, 3 and 4, punishable under paragraph 5 of the Criminal Code of the Republic of Croatia. The County Court in S. notified the complainant on 16 December 2003 that the procedure was being suspended under the first item of the indictment (probably because it had become barred by the statute of limitation on criminal prosecution). On 16 March 2007, 12 years after the filing of the indictment, the County Court in S. adopted a decision declaring itself non-competent (as the result of amendments to the Criminal Code). After the decision became legally effective, the file was

forwarded to the Municipal Court in S. for further procedure. Based on the information in the possession of the complainant, the case has still not been forwarded to the competent municipal court.

Therefore, over the past 14 years no first-instance decision was adopted, and with respect to the first item of the indictment the state prosecution abandoned criminal prosecution. The complainant also states that in view of the situation he cannot apply for a job in the civil service where he worked for 18 years until 1990, because he cannot obtain a certificate that no investigation is pending against him.

Undertaken measures: Further to the foregoing, acknowledging the fact that the complainant has been living under the burden of criminal prosecution for 14 years, the Ombudsman requested the Ministry of Justice as the highest body for the performance of the duties of judicial administration to make an inquiry into the matter, to determine the reasons for non-performance and to speed up the processing of the case in accordance with Article 67 of the Act on Courts (OG 150/05), and to notify him of the facts established and the actions taken.

He particularly pointed out that under Article 3 of the Constitution of the Republic of Croatia the rule of law is one of the highest values of the constitutional order and the basis for interpreting the Constitution, while Article 29 of the Constitution of the Republic of Croatia provides that everybody has the right that a legally established, independent and impartial court decide fairly and within a reasonable term on his rights and obligations, or suspicions or accusations of a punishable offence. Acknowledging the said provisions and the European standards, it is indisputable that issuing a decision within a reasonable term is, in each individual case, either, the establishment, realisation and confirmation of a state governed by the rule of law or, its denial. On the other hand, on the expiration of time, if the court fails to establish guilt, the purpose of punishment laid down in the Criminal Code is lost or significantly diminished.

Case outcome: Unknown. Until the time of concluding this Report, the Ombudsman received only a notice from the Ministry of Justice concerning the letter he had sent to the president of the Municipal Court in S., asking the allegations from the complaint to be examined, the measures of speeding up the procedure taken and the reporting duties concerning the measures performed, in accordance with the powers of the president of the court.

Note: The excessive duration of the criminal procedure against the accused, along with a violation of the right to a trial within a reasonable term, may also lead to the violations of some other rights. Thus, over a long period of time, the criminal procedure conducted against the accused presumed the legal prohibition, i.e. obstacle to employment in the civil service.

Namely, the Act on Civil Servants and Employees and the Salaries of the Holders of Judicial Duties (OG 74/94, 7/95), which was in force as of 1994, stipulated the prohibition of admission to the civil service pending investigative or criminal proceedings or if a person was convicted of a criminal offence. The said act was in force until 2001, when the Act on Civil Servants and Employees (OOG 27/01) imposed the prohibition of admission to the civil service only with respect to persons convicted of a criminal offence by a legally effective decision, unless provided otherwise by a special law. The current Act on Civil Servants (OG 92/05 and 107/07), which entered into force on 1 January 2006, stipulates that a criminal procedure that is underway or a decision on conviction for a criminal offence is an obstacle to admission into the civil service. Further to the said provisions, it is obvious that the complainant could not apply for the posts in the civil service over a long period of time.

PART FOUR

INTERNATIONAL COOPERATION

International relations and cooperation of the Ombudsman in 2007 included many activities, including active participation of the employees of the Office of the Ombudsman in a series of international conferences, seminars and workshops, visits by the representatives from various international institutions, as well as individuals to our institution, and the finalisation of the project of visiting the counties as part of the project that the Office implemented in cooperation with the OSCE Mission in the Republic of Croatia.

The institution of the Ombudsman as a member of the European Ombudsman Institute (Innsbruck, Austria) and the International Ombudsman Institute (Edmonton, Canada) was enabled to participate at all the relevant meetings organised by the two institutions. In addition, it should be pointed out that the Ombudsman, although the Republic of Croatia is still not a member state of the European Union, was regularly invited to all the meetings of the EU ombudsmen, while the institution of the Ombudsman also achieved good co-operation with the office of the European Ombudsman.

Of the great number of invitations to various meetings from the scope of work of the institution of the Ombudsman, at which the employees of the Office of the Ombudsman took part, we shall single out only those we regard as the most important ones for the work of the institution.

The 10th Round Table of European Ombudsmen and the Council of Europe Commissioner for Human Rights concerning the topic "*Implementing human rights and the rule of law in Europe*" was held in Athens from 12-13 April 2007. The following topics were discussed at the meeting:

- strengthening the independence, effectiveness and responsibility of the ombudsmen and national human rights institutions,
- the types of institutions of the ombudsman and national human rights institutions in the member states of the Council of Europe,
- cooperation between ombudsmen and national human rights institutions in the light of Protocol 14 and the recommendations of the group of experts,
- the ombudsman and national human rights institutions as a direct source of information for the European Court of Human Rights through the Human Rights Commissioner,

- the ombudsman as an independent source of information towards the ECHR system and as mediator in relation to the citizens,
- the contribution of the ombudsman and national human rights institutions to the enforcement of the judgments of the European Court of Human Rights,
- the powers of the ombudsman and national human rights institutions, and their mutual co-operation,
- the establishment of the institution of the ombudsman and/or the human rights institution,
- the justifiability of the institution of the ombudsman and/or the human rights institution.

On 14 to 16 October 2007, the 6th Seminar of national ombudsman of EU member states and candidate countries was held in Strasbourg. It was entitled "*Rethinking Good Administration In the European Union*". The following topics were discussed at the seminar:

- Legality and good administration: is there a difference?
- The relationship between the ombudsman institutions and the judiciary,
- Remedies, Redress and Solutions: What do Ombudsmen have to offer?
- The European Network of Ombudsmen,
- Free movement of persons: what are the problems and how do ombudsmen deal with them?

Thanks to the work of our institution to date, in late 2007 the UN High Commissioner for Human Rights sent an invitation to the Office of the Ombudsman to join the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC). Accordingly, it was necessary to prepare detailed documents on the establishment of the Office, its powers, organisational structure, its staff, the annual budget, the latest annual report or an equivalent document, and detailed data on whether the Office acts in accordance with the Paris Principles.

In connection with the submission of the request for accreditation in ICC, the forum concerning the topic "*National Human Rights Institutions: Basic Institutions for the Promotion and Protection of Human Rights*" was held in Lisbon.

The goal of the meeting was to initiate a discussion on the role, function and activities of the so-called national human rights institutions, as advocated in the Action Plan of the UN High Commissioner for Human Rights (OHCHR). The key elements on which such systems for the protection of human rights must lie are the following: an independent and efficient judiciary, a well-functioning court administration, a parliament with special bodies for the protection of

human rights, independent plural and effective human rights institutions working under the Paris Principles, the creation of a human rights culture through both formal and informal education, the implementation of public awareness-raising campaigns, and the existence of a strong and dynamic civil society. Such institutions should serve as a connection between the government, parliament members, non-governmental organisations for human rights protection, with a view to promoting good administration and the rule of law, and ought to be financed by the state. The establishment and operation of such institutions ought to be foreseen in the constitution or law, they must have powers to promote and protect human rights at the national level. At the same time, they represent a mechanism through which the states perform their international obligations in terms of "taking adequate action" for the bringing into life of the international human rights standards at the national level.

On 8 and 9 June 2007, the Regional Ombudsman Conference was held in Pristina: "*Support and Obstacles to the Protection of Human Rights*". It was organised by the Kosovo Ombudsman with the support of the US Office Pristina and the OSCE Mission to Kosovo.

On 9 and 10 October 2007, a seminar was held in Zagreb as part of the project RAXEN – CIT of the EU Agency for Fundamental Rights that focuses on raising awareness of the rules of the Community on the application of the principles of equality, regardless of their racial or ethnic origin. The objective of the seminar was to launch the collection of data in the field of anti-discrimination and the creation of an Information Network on racism and xenophobia in the candidate countries Croatia and Turkey.

From 8 to 10 November 2007, the First International Meeting of the Ombudsmen and Mediators from the Mediterranean Region was held in Rabat (Morocco). It was organised by the institutions of the ombudsman from the Kingdom of Morocco, Republic of France and the Kingdom of Spain.

The objective of the meeting was to encourage cooperation and association of the institutions of the ombudsman from the Mediterranean region, to encourage their strengthening, to enable them to fully perform their role to the benefit of justice, equality, democracy and human rights. To assist and encourage the countries which still do not have the institution of the ombudsman to consider its establishment.

At the meeting, which was entitled: "*Mediterranean Basin: Space of Dialogue and Cooperation - Mediators: Actors for Good Governance*", the *Rabat Declaration* was adopted;

which sets out the goals and further cooperation between the mediators in the Mediterranean region. It was proposed to establish a standing Cooperation and Monitoring Committee, which would meet every two years.

In 2007, many individuals and representatives from the international institutions or embassies in the Republic of Croatia also visited the Office of the Ombudsman.

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 realisation 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

The number of complaints addressed to the Ombudsman in 2007 was by around 12% greater than in 2006 and 2005, when 1,655, i.e. 1,653 complaints had been received.

In the total number of complaints, a significant share of the complaints accounted for the consequences of the war and disintegration of the former state, although the number has been decreasing both in absolute and relative terms.

In 2007, there was a detectable decrease in the number of such complaints, in the field of pension-disability, and in relation to exiles and refugees, and the complaints against the restitution of temporarily seized property.

The number of complaints concerning the settling of housing issues is on the rise, and the number of complaints in view of the right to reconstruction is still high (mostly because of the excessive duration of the second-instance procedure).

The number of other complaints referring to standard procedures, i.e. regular relations between the administration and the citizens is on the rise in the spheres of construction, physical planning and environmental protection, property-related legal issues, status-related issues, social welfare and health care, and employment and civil service-related relations.

In 2007, the trend of increase in the number of complaints against the entities that do not belong to the circle of (classic) administrative bodies, but have a major impact on the life and

rights of the citizens, continues. For example, those would be municipal and other public companies and institutions, banks, educational, social and health institutions with respect to which the citizens sometimes feel insufficiently protected.

Concerning the content of complaints, the most numerous groups still continues to be the one concerning the excessive duration of procedures in administrative matters, more in the first- than in the second-instance, but also before the Administrative Court of the Republic of Croatia. Along with the excessive duration, a large number of complaints also mentions lack of communication between the administrative bodies and the citizens (parties), as well as difficulties in obtaining information on case status (rather in relation to the ministries and central state administrative bodies, than local).

Along with the missing of legal time limits in the first-instance procedure, the citizens' rights are also violated in view of the excessive duration of second-instance procedures in the sphere of property-related legal relations (especially in the procedures of denationalisation), reconstruction and, to a lesser extent, in the sphere of pension-disability insurance and construction. In quite a lot of cases, the procedure was unreasonably prolonged, because of the repeated annulment of decisions and returning cases for a renewal.

In the procedures of denationalisation and reconstruction, second-instance procedures often last over three years. The reason would be in the complexity of the procedures, but also in the staff-, structure- and material-related deficit in the services concerned.

As a large number of cases eventually ends at the Administrative Court, where the procedures last from 2 to 4 years (which is a separate problem, which must be resolved as a matter of urgency), not rarely the citizens have to wait for a decision concerning administrative matters for a period from 5 to 10 years.

This is the fourth year in a row that the Ombudsman must issue a warning concerning the rights of the citizens in view of the excessive duration of the administrative procedure in his annual work report. All reports to date included the proposal of measures for changing the situation. We felt and we still feel that the majority of the measures could have been conducted over a relatively short period of time, relatively independently or in parallel with other reforms and changes in the administration.

The judgments of the European Court of Human Rights which the Ombudsman mentioned in the previous report also indicate the necessity to perform the measures. The standpoints from the judgments led to changes in the court practice of the Constitutional Court and the Supreme Court, which are now addressed also by the citizens whose cases have been at the Administrative Court for a long time, and the procedure preceding the administrative dispute

lasted for an unreasonably long time, against violations of the right to a trial within a reasonable term.

The main message that follows from the judgments of the European Court, which is that the state is responsible for any violations of human rights resulting from the fact that the citizens cannot realise their rights and legal interests within a reasonable term, regardless of all other circumstances (changes of regulations or competence, problems with human resources and material problems, and the like), should eventually lead to major changes and improvements in the solving of administrative matters in all phases and instances of the procedure.

To a great extent, such improvements and developments can be realised or initiated immediately, and they are not to be postponed on account of the forthcoming comprehensive reforms which not infrequently come down to the adoption of new or amendments to the existing legislation, and which (in view of the shortness of the time limits for alignment with the European Union) are often passed in a hurry and based on a very tight schedule. Sometimes, based on the services of foreign experts, other persons' models and solutions are copied without the required adjustments being made in view of the national needs, the national legal system a s a whole, and the legal culture. In last year's report, I made a cautionary note that significant changes were to be expected in the implementation of the new Act on Civil Servants, which unfortunately proved to be true). The practice of frequent and extensive changes to the legislation, without a serious analysis of all the aspects of the implementation to date, leads to unnecessary standardisation even in cases where the correct interpretation, including the application of the existing standards, depends solely on better organisation, concrete measures and proper and responsible work and behaviour.

In terms of the problems concerning the excessive duration of administrative procedures, it is not necessary to wait for a new act on general administrative procedure or amendments to some other act for the required measures to be implemented:

1) For the heads of administrative bodies and services to ensure, and for the authorised employees to fully apply the principles of the current Act on General Administrative Procedure referred to in Article 5 (Protection of Civil Rights and Public Interests), Article 8 (Principle of the Party’s Right to be Heard), and Articles 13 and 14 (Cost-efficiency of the Procedure and Assistance to an Uneducated Party);

2) For the procedure referred to in the provisions of Article 68, 136 and 137 to be implemented as soon as possible after receipt of the party's request, to make the case file as complete as possible pending processing;

3) For the unjustified (and often repeated) returning of cases for a renewal in the procedure further to an appeal to be prevented through correct interpretation and application of the provisions of Articles 235 through 237, and 242 and 243;

4) For the timely reaction and measures needed to achieve reasonable promptness and quality – at the level of each service or body, but also in the ministries for the administrative sphere as a whole, to be undertaken though regular monitoring and analysis of statistical data on administrative decision-making process;

5) For special extraordinary measures and programmes in the critical domains in which in view of the complexity of the procedure, but also of deficit in terms of human resources there is a large number of unsettled cases, the processing of which is taking an unreasonably long time, to be undertaken.

Naturally, we are not disputing the need to conduct reforms and to adopt regulations in line with the EU legislation. However, neither the reforms nor the new regulations can resolve the underlying problems arising from the system's weaknesses, which result in non-implementation of laws and non-application in accordance with the principles and good administration practice.

The helplessness and inability to improve the situation described in this Report in any more significant way also arises from the state of neglect of the administrative function of settling administrative matters. The state of neglect also manifests itself through insufficient monitoring and control of the promptness and quality, which should be a regular monthly and annual obligation of the heads of such services. The state of neglect of the function, the consequences of which affect the citizens the hardest, unfortunately tells us that the administration sometimes acts as the authority in matters where it should be at the service of the citizens.

The causes of such situation in the state administration lie in the fact that for many years the salaries of civil servants are lower than the salaries in other services and the economy, and

than the salaries of those employed in local and regional administration, especially in terms of those with most expertise and education. The foregoing has resulted in negative selection and a fall in professionalism, quality and motivation. On the other hand, the (current) political unwillingness to end the vicious circle of appointing politically correct persons with personal loyalties after each and every elections or changing ministers or other heads of the administrative body has had a devastating impact on the key management's constancy and professionalism, but also unfortunately on the much needed independence in the activities in which independence, impartiality and expertise are key to the performance of tasks and functions.

We expect that the content and consistent application of the planned Act on the Salaries of Civil Servants and the regulations already adopted (amendments to the Act on the System of State Administration) will contribute to the termination of at least some of the causes for the dissatisfactory situation.

COMPLAINTS AGAINST THE WORK OF COURTS

It is a well-known fact that the Ombudsman may not take direct action towards the courts and other judicial bodies either in terms of the excessive duration of procedures or in terms of other complaints against the work of court administration. Nonetheless, the citizens continue to address the Ombudsman regarding such issues. For several years, the complaints against the work of the judiciary account for around 15% of the total number of written complaints received. In addition, around 50% of the citizens who come to the Office personally or address the Ombudsman over the phone seek an intervention or legal advice concerning the judiciary.

Other than the complaints referring to the content or outcome of a procedure or dispute or which are manifestly unfounded (in which cases the complainants are notified directly), the rest of the complaints is forwarded to the Ministry of Justice in charge of performing the activities of judicial administration for further procedure. An exception would be the complaints against the excessive duration of procedures before the Administrative Court of the Republic of Croatia, with respect to which the Ombudsman tries to have the processing accelerated in cases where the overall procedure both before the administrative bodies and before the Administrative Court lasts for an unreasonably long period of time under all standards.

The slowness of the courts and the excessive duration of court procedures, as shown by the large number of complaints, and by statistical data on the work of the courts, is still the greatest problem.

The fact that in the administrative system it is now possible to file requests for the protection of the right to a trial within a reasonable term to an immediately superior court, along with the possibility of filing a constitutional complaint to the Constitutional Court of the Republic of Croatia, has not reduced the problem to any significant extent. It cannot be expected that the problem will be resolved in the future either, because the courts acknowledge such requests only when the violation of the right to a trial within a reasonable term has already occurred. The citizens in such procedures can obtain only damage compensation for an injury and a time limit within which the court before which the procedure is being conducted must decide on the case.

The problem that has grown to its current proportions as the result of long-term activity of many causes can be resolved, i.e. diminished only through systematic and concerted action of the legislative, executive and judicial branches, including a reduction in the number of cases appearing before the courts and the judges' workload, the streamlining of the court network, computerisation of the courts and introduction of the integrated case management system, the strengthening of court administration and management, continuous professional education of judges, the introduction of a comprehensive statistical system and ongoing monitoring, control and assessment of the work of judges.

In the previous reports, we welcomed and supported the measures and activities undertaken by the Supreme Court of the Republic of Croatia for the past two years as part of the programme of resolving old cases, but also as the beginning of the system of monitoring and controlling the work of individual courts and judges. Today, we can already see the results of the measures, which together with the re-distribution of cases from the courts with an excessive workload to those with less workload have already contributed to the accelerated resolution of old cases, and even led to more pronounced promptness in the criminal judicial branch.

Nonetheless, the said well-justified and useful activities of the Supreme Court have only limited scope and they mostly serve to resolve the problems and backlog inherited from the past, but cannot have a sufficient impact on the duration of the procedures that are just beginning or have just recently begun. The Supreme Court seems to be aware of the problem as it has been launching initiatives and proposing changes and solutions of systematic significance from the domain of both the legislative and executive branches.

The initiative of the Supreme Court should be welcomed, especially as the several-year long deficit in the reform capacity of the Ministry of Justice is manifestly obvious today (we mentioned it in last year's report), and which had led to the backlog in the implementation of the reforms required for the continuation of the negotiations on the accession to the European Union.

The Ministry of Justice faces extensive tasks which have to be performed over a very short period of time. Apart from the programmes, which are quite behind schedule, and should have been at least partially operable by now, such as the streamlining of the court network, free (sponsored) legal assistance, the upgrading of the system of the legal profession, the reforms of administrative adjudication should begin as soon as possible, thus enabling the Supreme Court to effectively perform the function of ensuring uniform application of the laws, but also of the supreme instance of court administration in a uniform system.

At the same time the Ministry of Justice must significantly speed up the procedure of appointing judges and ensure continuity of the required number of judges, so that the (already) slow courts would not be in cold operation.

In conclusion, we should repeat that, along with the measures serving to achieve better conditions and more favourable external environment for the judiciary, special attention within the system should be directed at the improvement and changes to the judicial staff, and in particular:

1. Imposing the standards of the required effect and quality;
2. Systematic monitoring of the work of all judges and removing those who cannot meet the requirements;
3. Appointments of new judges and their advancement strictly in line with the public and objective criteria and in a public procedure;
4. The obligation of court administration to make in-depth checks in the event of suspected corruption or bias;
5. Systematic training of all and especially young judges.

All of the foregoing belongs to the tasks of court administration and the State Judiciary Council. Their role should be strengthened both in terms of human and material resources and in terms of the appointments of judges and the presidents of judges.

LEGAL SECURITY – EQUALITY BEFORE LAW

Slowness in dealing with cases on the part of the administrative bodies and courts causes disorder and makes the very much required foreseability and certainty in resolving the citizens' rights and legal interests more difficult. The excessive duration of the procedures, which is in many spheres longer than what is reasonable by any measure is a serious violation of the citizens' rights and causes great harm to the economy and society as a whole.

Such situation, along with the absence of any effective internal and external control and monitoring mechanisms, jeopardises the realisation of the constitutional principles of equality before law and legal security, and thus the rule of law itself.

In view of the great backlog in certain administrative bodies and courts, the citizens cannot predict at all when their case will be taken into processing or at least an approximate time limit within which it will be resolved, not to mention the order of priority in settling cases based on objective and transparent criteria, which order could be maintained, but also be verified quite simply.

It is quite clear that the disorder contributes to the abuse of authority and makes corruption possible (in all its forms, from the mildest to the most serious), but also arbitrariness. The way corruption is perceived arises greatly from the excessive duration of the processing phase and the absence of any communication with the parties that should exist in the procedure.

In such a situation, the principle of equality of all before law is jeopardised, because the excessive duration of the procedures and arbitrariness affect mostly the so-called ordinary people, especially those who are socially threatened and poor who can hardly afford quality- or any kind of legal assistance. The absence and shortage of free (sponsored) legal assistance, which is to a limited extent provided only by lawyers as part of *pro bono* work, make the position of socially threatened persons even more difficult, and in many cases the possibility of access to court is also made more difficult.

On the other hand, those who have the money or social power (which mostly go hand in hand) find it easier and faster to achieve their interests, sometimes even at the expense of those with less means, but also at the expense of society as a whole.

It should be pointed out that the division into the rich and into the poor is an inevitability, arising from the accepted social model based, amongst other things, on the free market. The depth of the schism will depend on social development and growth of a society's wealth, and on the world- and political views of the citizens and the political elite.

What is not inevitable, and what a state governed by the rule of law simply may not allow is the division into the poor and weak and into the rich and powerful before the state bodies deciding on their rights and legal interests. The state must create equal conditions and regulate the administration and the judiciary in a way to guarantee real and effective equality of all before law. Apart from the monitoring of strict compliance of the substantive and procedural regulations, including the system of ongoing monitoring and control of the judges and civil servants (but also the sanctioning, whenever necessary), the state must remedy the causes which lead to or favour corruption and bias and non-objectivity, or which make the detection and sanctioning more difficult. In the strategy for combating corruption, it is necessary to continuously re-assess and perfect laws and other regulations, and the relevant policies.

Achieving equality before law and the fight against corruption have special significance for those citizens of the Republic of Croatia who had to go through the war and through what is generally viewed as unfair and in many cases illegal transformation and privatisation which resulted in a new unfair distribution of social wealth in favour of a select few, and thus in unjustified inequality and an excessive gap in the chances and opportunities available to them. As the result of the new distribution of wealth and power and of the war, many educated and once successful, deserving and honest people became poor and weak who lost their property and jobs, and their dignity in the jungle of transition Croatian style.

On the other hand, part of that wealth got into the hands of persons most frequently connected with the structures of authority whom the citizens rightly call war profiteers, and who frequently acquired it in an illegal and immoral way, by taking advantage of poorly-drafted laws, and the incompetence and unwillingness of the bodies of prosecution and of administrative and judicial bodies to prevent crime and illegal actions, along with no political will to seriously deal with the issues concerned.

Despite public demands and all attempts made, based also on the findings of the State Audit, the irregularities identified in the process of transformation and the persons who committed them (save for a negligible number of exceptions) were not sanctioned.

The capital acquired in the described manner remained mostly protected. Today it is used to conduct business partly legally and partly by using the same illegal methods that were used to acquire it, thus causing and encouraging corruption and conflicts of interest, using the same poorly-drafted and incomplete laws and all forms of influence. The capital acquired through other forms of crime is also being successfully legalised, it seems, but the methods often remain the same.

It is high time to implement all measures from the anti-corruption programme and from the obligations assumed in the process of accession to the European Union without any hesitation and with commitment. We should not stop seeking and implementing measures and ways to correct at least part of the injustices committed in the illegal privatisation either by seizing illegally acquired gains and sanctioning the perpetrators and helpers, but what is even more important for the future is the influence of such methods and those using them.

In that sense, the resolution of the backlog and the introduction of the much needed order and better control of the promptness and quality in administrative and court adjudication should have a high place amongst the priorities for suppressing corruption.

RETURNEES (RECONSTRUCTION, SETTLING HOUSING ISSUES)

This Report does not include any data on the number of complaints filed by the persons belonging to national minorities. Whenever they request an intervention or protection by the Ombudsman, the citizens usually do not state their nationality or ethnic origin. Therefore, such data could not be taken as credible. 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, that they do not have equal rights as other people or that they were subjected to unequal treatment. The cases mostly involve work and employment, status-related issues (such as citizenship, permanent residence and the like) and the conduct of the police. Such complaints are treated with special attention, with a request for detailed statement by the competent bodies.

However, (as evident from the special part of the Report) there are still certain administrative spheres where the share of complaints by the persons belonging to the Serb minority in the total number of complaints is high. That primarily covers issues in the field of the realisation of the rights arising from pension and disability insurance, restitution of property, reconstruction, settling of housing issues and status-related rights. The cases mostly relate to the resolution of problems which appeared after the war and disintegration of the former state, and the complainants are mostly from the areas of special state concern, i.e. formerly occupied areas of the Republic of Croatia, refugees and returnees.

The number of such complaints is decreasing both in absolute and relative terms in relation to other complaints. The data provided by the line ministries and the reports drawn up by the

international organisations and bodies that deal with the topic, show that many problems have been settled or are about to be settled.

That is precisely why it would not be good for the poor organisation, staffing problems, red tape and numerous irregularities, and even unlawful work of the responsible services (presented in the first part of this Report) to jeopardise the successful implementation of the remaining programmes, and thus the capacity and political will of the Republic of Croatia to perform its obligations assumed in the negotiations with the European Union.

Therefore, the programmes of completing the process of reconstruction (resolution of the large number of backlogged second-instance cases) and the procedures of settling housing issues should be performed strictly in compliance with the procedural regulations, with an effective possibility of using the right to appeal and other forms of legal protection. At the same time, it is necessary to ensure compliance with the principles of a good and friendly administration which is not only an authority, but also a public service at the service of the citizens.

Such conduct should be strengthened and the trust of the citizens who have been failing to achieve even the most basic conditions for their return and normal life, i.e. the rights guaranteed by the laws of the Republic of Croatia and the programmes of the Government of the Republic of Croatia, in state institutions should be re-built

WORKING CONDITIONS AND DEVELOPMENT OF THE INSTITUTION

Altogether 5,807,000 kuna were allocated from the 2007 budget and 266,570 kuna through a donation as part of the project entitled "Programme of Institutional Support to the Ombudsman for 2006-2007" which was developed in cooperation with the OSCE Mission in the Republic of Croatia, and which was mostly used for the field work, i.e. for visiting the counties.

The funds from the budget for 2007 made possible the recruitment of 5 new officials, so that at the end of the year the Office had a total of 25 employees (along with the Ombudsman, three deputies, 14 advisors and 7 other officials).

Altogether 6,976,000 kuna will be allocated from the 2008 budget. Along with the increased funds for both material and functional expenditures, the budget also enables the recruitment of 9 more officials as of 1 April 2008.

By the end of the year 2008, with a delay of one year, the plan of strengthening the institution will be achieved, which was accepted by the Croatian Parliament, at the proposal of the Ombudsman, in its conclusion of 3 June 2005.

As far as further development of the institution is concerned, we should mention that the procedure for the adoption of the Act on the Suppression of Discrimination (which would be a single anti-discrimination law) under which the Ombudsman should assume the duties of the Central Authority for the Suppression of Discrimination will require further strengthening of the human resources and materials in 2009.

Furthermore, the Ombudsman also submitted a formal initiative to amend Article 92 of the Constitution of the Republic of Croatia, which includes the provision on the Ombudsman, through the Committee on the Constitution, Standing Orders and Political System.

The proposed amendment has as its purpose to entrust the Ombudsman with a general mandate to protect and promote human rights, which is one of the important criteria foreseen in the UN Paris Principles of 1993 for the national institutions for human rights. The amendments to paragraphs 1, 2 and 4 should remove any doubts as to whether the Ombudsman can be entrusted with certain powers in relation to court administration and legal and natural persons.

When (if) the initiative is accepted, there will also have to be amendments to the somewhat obsolete 1992 Ombudsman Act.

The question of procuring office space for the Office is more topical than ever. As a temporary solution, until moving into the building in Visoka Street (which is being adapted and which the Office will share with the standing electoral commission), the Office is currently using two rooms in the Upper Town, but outside the seat of the Office.

In view of the already approved increase in the number of employees, and a further increase to follow after the expanded powers and new duties in 2009, it is necessary to urgently address the issue of office space, which has been on the parliamentary agenda for several years now.

In addition, as part of the expected amendments or the adoption of the new ombudsman act, it is necessary to open a discussion on the possibility of opening regional offices of the Ombudsman or some other forms of field work which would be closer to the citizens.

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