REPUBLIC OF CROATIA

OMBUDSMAN

REPORT ON WORK FOR 2006

Zagreb, March 2006

PART ONE

INTRODUCTORY NOTES

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

The methodology used in the previous reports was also applied when drawing up this year's Report. Legal spheres which were represented more in the total number of complaints or which were assessed as important for the noted problems (e.g. legal security and equality of citizens, efficiency, drawbacks in the normative regulation of issues, etc.) were illustrated in more details than the spheres which were not as significant in terms of number of complaints and their gravity.

This report contains a statistical review of the cases the Office dealt with by individual legal spheres and geographical criteria: cities, counties and foreign countries.

The number of the newly received written complaints in 2006 (1,655) is almost identical with the number of complaints from 2005 (1,653).

It must be noted that the total number of citizens addressing the Ombudsman in their complaints is higher than the number showed 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 old cases.

Like the previous ones, this Report cannot present the state and level of respect for the citizens' constitutional and legal rights in entirety, but it is a review of the most severe and most numerous violations of human rights that were noted, and of their causes.

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, international cooperation, visits to the counties of the Republic of Croatia, and, finally, assessments and proposals of the Ombudsman.

The Report of the Ombudsman for 2005 was discussed by the working bodies and at the (20^{th}) plenary session of the Croatian Parliament, held on 2 June 2006.

Discussion on the Report on Work for 2005

Working bodies

The Report was discussed by the Committee for the Constitution, Standing Orders and Political System, Committee for Judiciary, Committee for Local and Regional Self-Administration, Committee for Labour, Social Policy and Health, Committee for Immigration and Committee for Human Rights and Ethnic Minorities' Rights. The abovementioned bodies proposed the Parliament to adopt the Report.
The Committee for Human Rights and Ethnic Minorities' Rights proposed 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.

Opinion of the Government

The Government of the Republic of Croatia pointed out in its opinion that it entrusted the competent bodies of the state administration with undertaking adequate measures within their jurisdiction for the purpose of eliminating irregularities mentioned in the Report.

Conclusion of the Croatian Parliament on the Report for 2005

The Croatian Parliament passed by the majority vote (89 "in favour", 2 "abstained") a Conclusion by which it adopted the Report on the Work of the Ombudsman for 2005, and delivered to the Government of the Republic of Croatia opinions, remarks and proposals set forth during the discussion on the Report, for the purpose of undertaking measures for more efficient work of the competent bodies and bodies with public powers.

PART TWO

STATISTICAL DATA FOR 2006

The citizens addressed the Ombudsman personally at the Office, by written complaints, and over the telephone.
Altogether **2,481** cases related to complaints were in process during 2006, of which:

a) **1,655** were new cases, received in 2006, and
b) **826** were cases from earlier years.

During 2006, **1,717** cases out of total **2,481** were settled.
Of 1,717 settled cases:

a) 1,140 cases were received in 2006, and
b) 577 cases were received during the previous years.

During 2006, altogether 764 citizens addressed the Ombudsman in person, between 20 and 30 citizens addressed him daily over the telephone, on which there are no records and case files, so these data are not included in the statistical review. The problem of lack of promptness on the part of the competent bodies related to the delivery of statements requested by the Ombudsman has been noted during this report period, too. Responses were not delivered within the legal deadline of 30 days in as many as 440 cases, so a rush note had to be sent.
This remark refers to the following bodies:

- Croatian Pension Insurance Institute (particularly the Regional Service in Dubrovnik),
- Ministry of Justice – Directorate for Civil Law,
- Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia – Directorate for Exiles, Returnees and Refugees and the Directorate for the Reconstruction of Family Houses,
- Ministry of Environmental Protection, Physical Planning and Construction – Service for Appeals and Administrative Supervision,
- Central State Office for State Property Management.

Figure 1 Number of complaints in the period between 2004 and 2006:

Received complaints

Figure 2 All settled/unsettled cases in 2006 (including the new cases and the ones from the previous years):

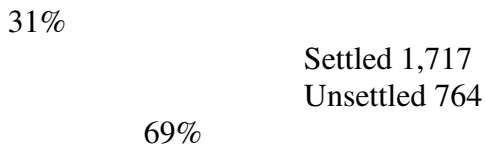


Figure 3 Cases from the previous years, settled in 2006:

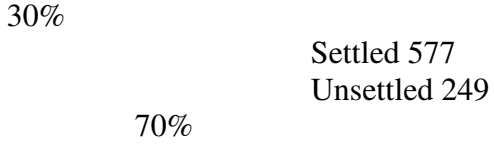
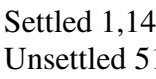


Figure 4 Settled cases – newly received in 2006:

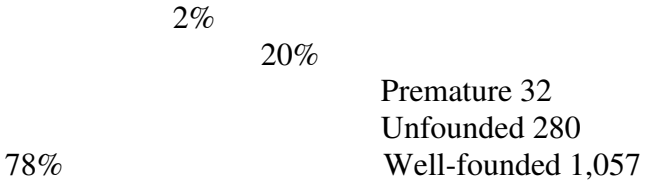


Note: A case is not settled until an administrative act or ruling has been passed; some cases can be considered settled upon the delivery of the statement by the competent body. In some cases the parties fail to deliver the requested data/documents promptly, which slows down reaching decisions and completing the work on the case.

Figure 5 Share of complaints against the work of courts compared to new complaints from 2006:

Of altogether 1,717 **settled** cases in 2006, 1,369 were in the jurisdiction of the Office, and 348 complaints were outside its jurisdiction. Figure 6 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 6



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 7 illustrates the structure of complaints from 2006 by the cities, by which only those with more than 20 complaints have been included:

Note: The data on the large number of complaints from Zagreb and Zagreb County show the importance of visiting all the counties in Croatia.

Figure 8 Complaints from abroad (altogether 372):

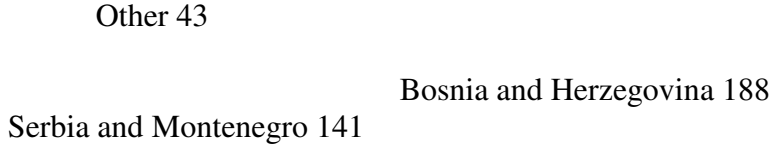


Figure 9 Number of complaints in the pension insurance sphere (2003 – 2006):

Figure 10 Share of complaints out of pension insurance sphere in **2006**, compared to the total number of the newly received complaints:

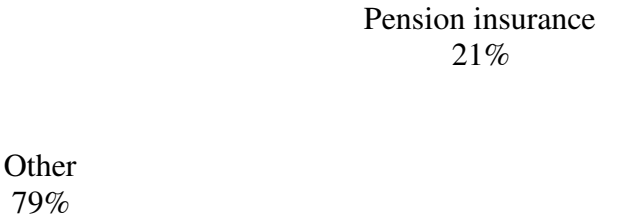


Figure 11 Number of complaints from the persons deprived of freedom (2004 – 2006):

Figure 12 Share of complaints against the work of the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia:

Figure 13 Undertaken measures:

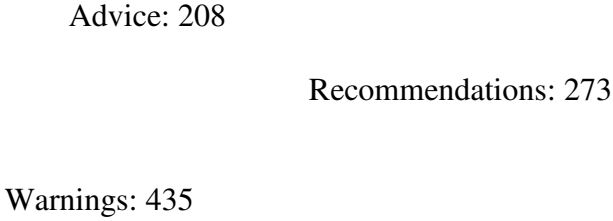


Figure 14 Comparable illustration of complaints by spheres ((2005 – 2006):

Sphere:	**2006**	**2005**
Various	113	103
Non-jurisdiction - various	65	72
Ownership rights	17	40
Property-related insecurity	2	6
Denationalization	29	42
Pension insurance	343	436
Status-related rights	50	53
Refugees, exiles, returnees	43	17
Housing issues	44	42
Settling housing issues	63	5
Health insurance	23	23
Labour – civil servants	40	53
Right to reconstruction	207	191
Conduct of the police officers	28	14
Court	266	254
War veterans' rights	20	38
Social welfare	40	44
Persons deprived of freedom	152	86
Lease of state land	3	3
Environmental protection	14	11
Construction/physical planning	59	106
Children's rights	3	3
TOTAL	**1,655**	**1,653**

PART THREE

ANALYSIS OF WORK BY LEGAL SPHERES

Complaints against the work of courts, state prosecution, public notary service, lawyers and court expert witnesses

During 2006, citizens filed 266 complaints in this sphere. Additional 50 cases from the previous period were being processed, too (those were mostly the same citizens that addressed the Ombudsman in the previous years for the same court proceedings).

Compared to 2005, when 254 complaints were received, there was a marginal increase in the newly received written complaints. However, there were numerous parties who asked for help over the telephone or in person, unsatisfied with the work of the courts, primarily due to excessively long-lasting proceedings, and there were also complaints about the way the court proceedings were conducted and about the outcomes of the court disputes.

The Ombudsman used to deliver the received written complaints about the work of courts to the Ministry of Justice as the competent body for carrying out the judicial administration activities.

Upon receiving the complaints, the Ministry of Justice would notify the Ombudsman on the actions undertaken for the purpose of investigating a complaint (by delivering a copy of the official letter to the court president) as a part of performing the judicial administration activities.

As regards the cases in which administrative dispute was in process, the Ombudsman would deliver the complaints against unduly long duration of proceedings to the President of the Administrative Court.

In other cases, the complainants were notified by official letters on the Ombudsman's non-jurisdiction to act.

It should be emphasized that a certain number of complaints against the work of the Ministry of Justice was filed as well this year, concerning inadequate supervision of the work of courts.

Based on the report delivered at the Ombudsman's request by the Sector for Judicial Administration within the Ministry of Justice, it is evident that the judicial inspectorate carried out 15 supervisions during 2006, one of which was carried out on the basis of a citizen's complaint, whereas the rest 14 were undertaken on the basis of the statistical reports on the work of courts, at the request of higher courts, etc.

The Ombudsman points to the necessity of changing the Justice Ministry's current practice of implementing supervision of the work of courts (which is separately dealt with in this report, i.e. on the basis of individual examples). The Ombudsman expects that employing the judicial inspectors with the Justice Ministry, in accordance with the new Act on Courts, will result in more frequent, and sometimes vitally necessary immediate supervision of the regularity of carrying out court administration activities in courts.

As regards the complaints concerning the other participants in the court proceedings, it should be pointed out that the number of such complaints was significantly lower compared to those related to the work of courts.

Complaints against the work of the state prosecution, lawyers and one complaint against the work of an expert witness were registered this year. Also, there were complaints against the work of public notaries as holders of public affairs and court commissioners.

The complaints filed against the work of the state prosecution referred to the failure to initiate criminal prosecution and accept proposals for the conclusion of settlements on behalf of the Republic of Croatia before filing lawsuits.

The Ombudsman this year registered complaints against irregularities in the work of public notaries as court commissioners when conducting inheritance procedures, which resulted in the loss of, i.e. in the impossibility for the clients to realize their rights. He also received a complaint that pointed to the lack of expertise and incompetence of a public notary concerning the work of the Association Assembly.

Complaints against the work of lawyers mostly resulted from the distrust in the representation, and from the justifiability or regularity of charging legal fees after the delivered representation.

The complaint against an expert witness referred to the failure to deliver the findings and opinion to the court after the expiry of the deadline ordered by the court, which resulted in the stalling of the court proceedings.

Example:
Case description (P.P. – 1327/06): The lawyer B.S. of Z., representative of the plaintiff in the legal proceedings, addressed the Ombudsman in a written complaint, expressing his dissatisfaction with the work of the Municipal Court in Z.

The reason of his dissatisfaction lied in the fact that the court failed to set the preliminary hearing, although two and a half years passed since the lawsuit was filed (March 2, 2004).

The Ministry of Justice delivered its statement on his lawsuit, which the complainant considered unsatisfactory, so he decided to address the Ombudsman.

It is evident from the Ministry's statement that the Office of the President of the Municipal Court in Z. immediately delivered the statement of the hearing judge S. Đ. Š. of 4 October 2006, with the following contents: "The lawsuit in this civil case was submitted on 2 March 2004. By the kind of the dispute and the date the complaint was filed on, this case does not belong to the cases that require urgent proceedings. Hearings are primarily set according to the date the lawsuits are filed, and it is not this case's turn for the hearing to be set, having in mind the date on which the lawsuit was filed. Expert evaluation has not been set, as the Civil Litigation Act does not recognize extra-court presentation of evidence."

Undertaken measures: The Ombudsman sent a warning to the Justice Minister, since court administration activities, over which the Justice Ministry has supervision (within the meaning of Article 62, Paragraph 1, Item 7 of the Act on Courts), are the subject matter of this complaint. A report on the undertaken measures was also requested from the Ministry.

Since it was established from the documentation of the case file that the setting of the preliminary hearing was still uncertain, the Ombudsman directly addressed the President of the Municipal Court in Z. and asked him to consider the abovementioned statement and notify the Ombudsman of the period, starting from the date on which the lawsuit was filed, and acting in accordance with the Court Rulebook and the number of the received legal cases before that particular court, within which the parties could expect the preliminary hearing to be set, according to the regular development of the situation.

Case outcome: Unknown. The Ombudsman did not receive any response either from the President of the Municipal Court in Z. or from the Justice Minister until the moment of drawing up this report.

The Ombudsman received a copy of the official letter from the Ministry of Justice, in form of notification, of 11 December 2006, sent to the Office of the President of the Municipal Court in Z., from which it followed that the Ministry filed in its official letter of 27 October 2006 another rush note concerning the actions undertaken in this case. Since the Ministry received no response by 11 December 2006, it delivered the Ombudsman's official letter of 7 November 2006 to be examined and acted upon, and it rushed the undertaking of actions in its official letter of 27 September 2006.

Note: The party's representative warned the competent body for the supervision of the work of courts of unacceptable stalling of the proceedings, which could result in incurring damage to the state budget. To be specific, according to the Act on Courts, parties are entitled to claim adequate compensation (from the state budget means) due to disrespecting a reasonable deadline for delivering decision in the court proceedings. Since the court failed to set the preliminary hearing within a reasonable deadline, it can be expected that the decision will not be reached within a reasonable deadline.

The Ombudsman holds that the Ministry of Justice, after receiving such a statement from the hearing judge and in accordance with its legal powers, should have carried out immediate supervision at the Municipal Court in Z., both in the concrete case and at the office of the concrete judge, in relation to the regularity of performing the court administration activities.

Pension and disability insurance

The Ombudsman received 343 complaints in the legal sphere of pension and disability insurance during 2006, and he acted upon 336 cases. He also undertook actions in another 255 cases from earlier years.

The number of complaints in this sphere decreased compared to 2005, when 436 were received.

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

- the Republic of Bosnia and Herzegovina (69);
- the Republic of Montenegro (7);
- the Republic of Serbia (11);
- the Republic of Slovenia (1);
- the Czech Republic (1);
- the Slovak Republic (1).

He also acted upon 34 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 343 received complaints in 2006, 297 were in the Ombudsman's jurisdiction, whereas 46 were outside his jurisdiction.

Of the cases received in 2006, 272 have been concluded, and 64 are in progress.

Of the total number of the received complaints, seven 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).

The Central Service regularly delivered the Ombudsman the requested statements and instructions (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.

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 and the appellate body's attention 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.

As regards acting upon administrative-court cases, the Ombudsman forwarded the parties' complaints to the Administrative Court on several occasions, in the form of a rush note.

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.

Complaints against the work of HZMO in 2006 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 agreements on social insurance;
- silence of administration;
- realization of the rights to family pension;
- payout of the behindhand pensions;
- realization 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 (Official Gazette, No. 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 agreements on social insurance applied, particularly in the cases of complainants with the place of residence in Bosnia and Herzegovina, the Central Service would often inform the Ombudsman about the foreign insurer's failure 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 is evident from the delivered statements. International agreements 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. Consistent application of the prescribed should be insisted on.

Furthermore, it is evident from the files that the parties do not know which service to address in order to realize their rights, which is a consequence of poor accessibility of information to the parties during the procedure. The parties are often elderly and uneducated persons, lacking computer education, and officials instruct them to collect data on their own and in established (*not prescribed*) forms in two languages. Specifically, the possibility of direct communication of the holder of one contracting state with the insurant or beneficiary of pension is regulated by an international agreement and administrative agreement, but the very processing of requests is carried out exclusively via insurance holder and the liaison body. The Ombudsman feels there should be better cooperation between the liaison bodies in accordance with Articles 2, 3 and 10 of the Administrative Agreement for the application of the Social Insurance Agreement between the Republic of Croatia and Bosnia and Herzegovina (Official Gazette – International Agreements, No. 3/01) 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 (Official Gazette – International Agreements, No. 10/03), i.e. in accordance with similar articles 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. certain liaison body, lead to the violation of the parties' rights – by stalling the procedures, i.e. failure to reach decisions within the prescribed deadline. Therefore, direct contact should be made in such situations with the foreign insurance holder and he/she should be rushed. In the case of multiple rush notes, after which the requested data necessary for the request to be processed are still not delivered, the Central Service of HZMO, i.e. other competent service of HZMO, should inform the Ministry of Economy, Labour and Entrepreneurship, Pension Insurance Administration. This ministry is authorized for the implementation of international agreements on social insurance and the administrative agreements concluded on the basis of the international ones, so certain actions should be undertaken as regards the delivered notifications, with the aim of improving the application of those agreements.

After he noted the problem of an excessively large number of cases that were being dealt with, overburdened officials, complexity related to the gathering of the documentation needed for identifying the rights – representing one of objective reasons of HZMO's delayed actions, 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 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).

Examples:
(1) Case description (P. P. 487/05): M. Z. of Z. filed complaint to the Ombudsman, stating his difficult material position and unequal material position of other retired disabled workers, according to the amended pension insurance regulations. He delivered his complaints to the Government of the Republic of Croatia, to the Ombudsman and other competent bodies and institutions. He emphasized that he sent to the Constitutional Court a proposal in November 1999 for the initiation of the procedure to review the constitutionality of the provisions of the Pension Insurance Act, but the Constitutional Court failed to act upon his proposal. The complainant stated that his pension was significantly decreased and that his category of invalids was brought into unequal position compared to other invalids.

Undertaken measures: Since the Ombudsman is not authorized to act upon the Constitutional Court, he asked the court in writing to notify him about the course of procedure as regards the complainant's proposal. It followed from the delivered notification that the procedure of the Constitutional Court was in the final stage of decision preparation. As a year passed since then, the Ombudsman again requested the notification on the course of the procedure, but he received a response that the procedure before the Constitutional Court was still in the final stage of decision-drawing. By acting in this case, the Ombudsman also learnt that the Croatian Parliament in it Conclusion class: 562/01/04-01/02, ref. no.: 611/1-04-08 of 19 November 2004, obliged the Government of the Republic of Croatia to create, as soon as possible, an analysis of material state of disabled workers and a report on the implementation of the Act on Professional Rehabilitation and Employment of Disabled Persons, and notify the Croatian Parliament of it. For the purpose of getting better insight into the position of the disabled persons, the Ombudsman requested from the Government of the Republic of Croatia to deliver him the abovementioned analyses and reports.

As regards the complainant, the Ombudsman recommended the competent social welfare centre to help him overcome the problems and difficulties he encountered, by approving him one-time aid. He was also informed that he could file a request to the competent city office for getting help for covering the housing costs.

Case outcome: The Government of the Republic of Croatia delivered neither the requested report and analysis, nor information whether it was carried out in accordance with the abovementioned Conclusion of the Parliament of the Republic of Croatia.

(2) Case description (P. P. R. – 13/06-54): Based on Article 35, Paragraph 1, Subparagraph 6 of the Constitutional Act on the Constitutional Court of the Republic of Croatia, the Ombudsman submitted on 8 December 2006 a request to the Constitutional Court of the RC for the assessment of the coordination with the Constitution – Article 80, Paragraph 1, Item 5 and Article 174 of the Pension Insurance Act – hereinafter: ZMO), i.e. with the provisions of Article 1, Paragraph 1, Articles 3, 5 and 14, Article 57, Paragraphs 1 and 2 of the Constitution of the Republic of Croatia.

The request was filed after it was noticed that the Constitutional Court failed to act upon the proposals (of several submitters) for the review of the constitutionality of the abovementioned provisions of the Pension Insurance Act during seven years.

There were about 60,000 disabled workers in the Republic of Croatia in December 1998, of which most were unemployed labour invalids (over 35,000), over 6,000 were employed on short time and some 20,000 full time employees on other adequate jobs.

The reform of the rights of disabled workers was unjustly implemented, since financial income that was earlier realized, although of temporary character, were replaced with permanent but significantly lower income, which could not satisfy the basic life needs, let alone ensure dignified life for them and their families.

After the application of the ZMO of 1998 (from 1 January 1999), the rate of disability pension reclassified or subsequently recognized due to the established circumstance of "professional incapability to work", depended on whether such a beneficiary was still in employment relation or outside it, i.e. whether he/she was outside pension insurance by any basis.

If such a disabled worker were unemployed, i.e. outside the pension insurance, the rate of new pension would be determined in accordance with the provision of Article 174, Paragraph 3, Item 1 of ZMO of 1998, by applying special pension factor of 0.6667 of *possible full disability pension*. This factor was increased to 0.8 by amendments to the ZMO of 18 December 2002, by which the injustice was only partially undone. However, if a disabled worker were employed, i.e. if he/she used the former right to work short time (four hours) in accordance with Article 174 of the ZMO (transitional and final provisions), or if he/she were established professional incapability to work after the application of the ZMO (1 January 1999), and he/she entered into the employment relation or started performing some other activity according to the provision of Article 80, Paragraph 1, Item 5 of the ZMO, his/her pension would be recalculated by applying another pension factor, amounting to only 0.3333 of his/her disability pension, which would be only one third of the disability pension.

By applying this pension factor, the employed industrial invalids were brought into unequal position, particularly those industrial invalids on short time and who were reclassified into the beneficiaries of disability pension due to professional incapability to work.

Considering the constitutional specification that the state must allocate special protection to disabled persons and include them into the social life by providing them with better material status, it needed to increase the pension factor to this group of invalids, too, at least to 0.4 of their disability pension from 0.333, starting from 1 January 1999, by which social injustice and unequal treatment compared to other industrial invalids would be partially rectified.

Such a reform is neither in accordance with the Convention of the International Labour Organization No. 102 on the minimum social insurance rate, i.e. with its Part X – Payments for disability, nor with the Convention No. 121, stipulating that in such cases *financial payments are established in relation to the salary*, whereas they are established *in relation to the pension* in the Republic of Croatia. According to the Convention, *not a single payment should be less than the minimum amount* and, according to the valid regulations in the Republic of Croatia, the minimum amount for the disabled persons is not established. In fact, the legal notion of the lowest pension is prescribed. It should be emphasized that the lowest pension does not belong to the beneficiary of disability pension due to professional

incapability to work during his/her employment period or while performing independent activity (Article 82 of the ZMO).

According to the Convention of the International Labour Organization C159 of 1983 on Vocational Rehabilitation and Employment, i.e. to the Recommendation R 99 of 1955 on Vocational Rehabilitation, disabled persons should not be discriminated in terms of salaries and other employment conditions because of their disability, if their work is equal to the work of persons having no disabilities.

Since international agreements which are in force, make up a part of the internal legal order of the Republic of Croatia and are above the law by their legal power, we hold that the disputed provisions of the law must be coordinated with them.

Having in mind the problems of inequality of the rights of the disabled persons, the Croatian Parliament passed in its session of 1 April 2005 the Declaration on the Rights of Disabled Persons.

Case outcome: Procedure before the Constitutional Court of the Republic of Croatia in underway.

(3) Case description (P. P. – 170/06) D. Š. of O. filed a complaint about the failure to have her request for the payout of pensions for the period from 1 May 2000 to 30 April 2001, submitted on 23 April 2001, settled.

Undertaken measures: The Ombudsman requested on 22 February HZMO's statement on the reasons of delayed and stalled reaching of decision in the concrete legal matter.

Case outcome: The Central Service delivered a notification on 22 March 2006 with a copy of the decision of the HZMO, Regional Service in R., of 14 March 2006, in which decision was made, on the basis of the complainant's request of 23 April 2001, on the payout of due family pension rates at the expense of the Croatian Pension Insurance from 1 May 2000 to 30 April 2001.

Note: Violation of the complainant's right was established due to excessive duration of the procedure, and failure to respect the provision of Article 296 on General Administrative Procedure. The payment was made only after the Ombudsman's intervention.

(4) Case description (P. P. – 420/02) D. D. of S. filed a complaint due to failure of settling her request for the recognition of her right to old-age pension, submitted on 9 June 1998.

Undertaken measures: The Ombudsman received the complaint in 2002. According to the file status and the Confirmation of the Regional Service in G. on the received documentation (of June 1998), it was evident that the administrative dispute was underway, too in this legal matter. After the complaint was filed, the Central Service was rushed on several occasions (3) and asked to deliver a report on the actions undertaken for the purpose of reaching decision and an explanation on the reasons of such stalling in the settling of the complainant's request.

Case outcome: The Central Service finally informed the Ombudsman on 12 May 2006, with a copy of the decision of the HZMO, Regional Service in G., that the insurant D.D. was recognized her right, starting from 1 July 1998.

Note: Severe violation of the complainant's right was established, due to inexplicably long duration of the procedure and disrespect for the provision of Article 296 of the Act on General Administrative Procedure.

(5) Case description (P. P. – 456/04) The Ombudsman received on 18 October 2005 a complaint from V. P. of S. B. against the work of the HZMO. It was evident from the statements in the complaint that the competent first-instance body of the HZMO failed to act in accordance with the decision of the Central Service of 17 March 2005 to the date on which the complaint was filed.

The complainant's appeal was recognized in the abovementioned decision and the decision of the first-instance body of 20 April 2004 was nullified and the case was returned to the same body to make a new decision.

The Central Service delivered in its official letter of 25 May 2005 to the Regional Service in V. the complainant's case for the purpose of issuing a new decision.

Undertaken measures: The Ombudsman requested on 20 October 2005 a report from the HZMO on the reasons of stalling the procedure and failing to reach decision in the complainant's legal matter.

Considering the elapsed time, the Ombudsman again requested on 23 December 2005 information on the reasons for the delayed decision and the failure of the first-instance body to act in accordance with the order of the Central Service of 2 November 2005 and 31 January 2006.

Case outcome: A copy of the HZMO Regional Service's decision of 31 January 2006 was delivered on 21 February 2006, from which it was evident that the complainant V. P., beneficiary of the old-age pension, was determined the payment of pension as of 1 December 1998 and that the same decision was brought in the enforcement of the decision of the Central Service in Zagreb of 17 March 2005. (!)

The explanation of the decision stated that the request for the introduction of pension and the payment of the unpaid pension rates was submitted by the complainant on 3 November 1998.

Note: Violation of the complainant's right due to unduly long lasting procedure and disregard for Article 296 of the Act on General Administrative Procedure was established.

(6) Case description (P. P. – 251/05): The Ombudsman of the Republic of Srpska forwarded to the Ombudsman the complaint from J. U. of U. in Bosnia and Herzegovina. The complainant stated that she submitted a request to the Croatian Pension Insurance Institute (hereinafter: the HZMO) on 20 February 2003 for the recognition of the right to pension since she was last employed in the Republic of Croatia. The competent services in Bosnia and Herzegovina failed to deliver the filled forms (BiH/HR 201, 202, 204 and 206), so decision has not yet been passed concerning her request.

Undertaken measures: The Ombudsman requested, in his official letter of 11 March 2005, from the Central Service of the HZMO to deliver him within 30 days a report on the reasons for stalling the procedure. As the report was not delivered, the Ombudsman sent a rush note

on 31 August 2005, requesting the report from the Sector for the Implementation of International Agreements on Social Insurance. The Ombudsman received in the official letter of 7 February a copy of the interim decision on the recognition of the right to old-age pension and on the set payment of the advance pension money valid until the delivery of the final decision, i.e. until the establishment of the necessary data on the complainant's salary, with a note that a copy of the final decision would be delivered upon the termination of the proceedings. The statement did not say why the necessary data on the salary were not established. The Ombudsman therefore requested in this case (and other similar cases) in his rush notes of 24 May 2006, 23 October 2006 and 15 January 2007 a statement on the reasons of stalling the termination of the proceedings and failure to deliver the requested statement.

Case outcome: Unknown.

(7) Case description (P. P. – 874/05) S. O. of K. V. from Bosnia and Herzegovina addressed the Ombudsman regarding the failure of the competent service of HZMO to act in relation to his request for the recognition of the right to disability pension, submitted in 2000.

Undertaken measures: The Ombudsman requested from the Central Service of the HZMO statement of the reasons for stalling the procedure, with a recommendation to speed up the settling of the administrative matter. The statement of 17 November 2005 said that the first-instance competent service of the HZMO in its decision of 12 March 2002 established the termination of the right to employment in other adequate posts, starting with 14 May 1991. The Central Service recognized the complainant's appeal, nullified the first-instance decision and sent the case for a renewed procedure (in its decision of 26 November 2002). The statement of reasons contained a remark that a complainant's new request of 9 February 2000, i.e. the request for the recognition of the right to disability pension, could not be dealt with until the first-instance body, in the renewed procedure, first settled the issue of the right on the basis of the leftover work capability (application of Article 174 of the Pension Insurance Act).

As regards the repeated complaint (received on 5 December 2005), the Ombudsman requested from the Central Service of the HZMO a statement of reasons for failing to reach decision in the renewed procedure, and for failing to deliver a report on the actions undertaken for the purpose of speeding up the procedure, but he received no response. Due to elapsed time, the Ombudsman sent a rush note requesting a statement on the status of the file, and from the delivered statement of 16 March 2006 it was evident that the competent first-instance body reached decision on 3 March 2006, by which it recognized the complainant's right to disability pension at the expense of the Croatian pension insurance of 9 February 2000, and "after the termination of the procedure of completing the case for the purpose of reaching decision in the enforcement of the decision of the Croatian Pension Insurance Institute, Central Service in Zagreb, No. 170808 of 26 November 2002, in the case of the complainant's recognized appeal concerning the decision of the HZMO's competent regional service No. 3661 of 12 March 2002, a new decision will be reached on the right of the complainant based on the leftover work capability in accordance with the rules on pension and disability insurance that applied until 31 December 1998."

As the Ombudsman did not receive the statement on the file status, he requested it in his collective rush notes P. P. R. – 13/06-22 of 24 May 2006, 19 June 2006 and 15 January 2007. In this case the Ombudsman emphasizes inconsistent conduct of the Central Service of the HZMO, i.e. of the Sector for the Implementation of International Agreements on Social Insurance, since it pointed out in the official letter of 17 November 2005 that the competent

service of the HZMO would in the first instance reach decision on the complainant's request for the recognition of the right to disability pension in accordance with the provisions of the Agreement on Social Insurance concluded between the Republic of Croatia and Bosnia and Herzegovina only after the termination of the procedure pursuant to the provision of Article 128 of the former Act on Pension and Disability Insurance, i.e. Article 174 of the valid Act on Pension Insurance, which is proper and legal. In its last statement of 16 March 2006, the same service informed the Ombudsman that the first-instance body had recognized the right on disability insurance related to the complainant's request of 9 February 2000, although it did not act in the renewed procedure in accordance with the second-instance decision of 26 November 2002 (which means that the renewed procedure that should have lasted for 30 days according to Article 242, Paragraph 2 of the Act on General Administrative Proceedings was already lasting for over four years!). The Central Service of the HZMO should have implemented the prescribed powers in this case as the second-instance body, for the purpose of proper settling of this administrative matter, instead of accepting such poor treatment of the first-instance body, to the detriment of the party.

Case outcome: Unknown.

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

By passing the Act on the rights of the Croatian Homeland War Veterans and Members of their Families in 2004 (and the implementing rules), and a new structure of the Ministry of Family Affairs, War Veterans and Intergeneration Solidarity (hereinafter: the Ministry), the number of complaints concerning the work of the competent bodies in relation to the realization and protection of the rights of the Croatian Homeland War veterans significantly decreased.

During 2006, altogether 20 complaints were received (compared to 38 in 2005).

By introducing the continual work of the Ministry's highly capable teams dealing with receipts and responses (including those over the telephone) to the parties' inquiries, and by settling individual requests within a reasonable deadline, the number of the complaints to the Ombudsman decreased. Intensive work of the war veterans' associations regarding those matters should be mentioned, too.

The absence of a large number of complaints from this group of citizens indicates that the competent bodies of the Republic of Croatia, with their expertise and attention, and respect for the established legal framework, have thoroughly changed the approach to settling individual requests, i.e. potential problems directly linked to the Ministry's work and their decision-making.

Most of the complaints referred to unduly long administrative proceedings before the Administrative Court.

The Ombudsman informed the President of the Court in these cases, too, by delivering him complaints as a party's rush note, or as a proposal for considering possibilities for faster reaching of decisions.

Example:

Case description (P. P. – 586/06) Ž. V. of G. filed a complaint about the unduly long procedure of solving the appeal against the decision of the State Administration Office in K., Section for the Croatian Homeland War Veterans of 25 April 2005.

Undertaken measures: The Ombudsman requested on 31 August 2006 from the Ministry's competent body a statement on the measures undertaken in the complainant's legal matter.

The Ministry reported on 20 September 2006 that the second-instance decision was reached on 8 September 2005, by which the complainant was recognized the status of the Croatian war invalid of group IX with 30 percent bodily damage (temporarily by 30 June 2006), that the case file was forwarded to the First-Instance Medical Commission at the Clinical Hospital D. for damage assessment, and that the complainant was not invited to a personal examination due to a large number of cases that the abovementioned commission was then dealing with.

It furthermore stated that it was established on 9 October 2006 in a telephone contact with the secretary of the Commission, that the complainant would be sent invitation for personal examination in early October 2006.

The Ombudsman requested in his official letter of 31 October 2006 a statement from the competent Ministry (as a rush-note/notification) on the development of the procedure in the complainant's case.

On 21 November 2006, the Ministry delivered a notification that the State Administration Office in K. reached a new first-instance decision on 31 October 2006 in the right recognition procedure. The same decision was together with the appeal forwarded to the Ministry on 8 November 2006, for the purpose of implementing the revision procedure and solving the appeal, which would be considered prompt.

Considering the fact that the competent body failed to notify the Ombudsman, even after the expiry of the legal deadline, on the continuation of the procedure, the Ministry was on 24 January 2007 requested a report on the activities undertaken for the purpose of realization and protection of the complainant's rights.

Case outcome: The requested report was delivered on 2 February 2007, with a copy of the Ministry's decision of 16 January 2007, and it was established that the first-instance decision was revised and that the complainant's appeal statements were decided upon in the decision by which the appeal was partially recognized.

Social welfare

Altogether 40 complaints from the sphere of social welfare were received in 2006.

Most cases from this field referred to the realization of the right to financial aid, and fewer 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, as well as to supporting a spouse after divorce.

Most of the complainants were persons living in a difficult socio-economic situation, but did not meet the prescribed conditions for permanent form of aid since they realized average

income marginally exceeding the prescribed income census, so they addressed the Ombudsman for help.

In most cases the Ombudsman did not establish violation of the constitutional, i.e. legal rights of the complainants.

If it was the matter of elderly and frail or chronically ill persons, the Ombudsman sent recommendations to the competent social welfare centres for the initiation of the procedure ex officio, for the purpose of determining the conditions for the recognition of the corresponding right within the social welfare system (allowance for help and care, etc.), i.e. with recommendations for re-examining the conditions for approving one-time aid or some other belonging social welfare right.

The prescribed census for the recognition of material rights in the social welfare system (particularly – support aid as the most common and significant form of financial aid within the social welfare system) depends on the rate of the base for social welfare payments established by the Government of the Republic of Croatia.

The Government raised this base during 2001 to 400 kuna from 350 kuna, and it has not been increased until today, although the total state budget for the period of 2001 – 2007 has been increased by 118 percent (the total state budget for 2001 amounted to some 49 billion, and some 107 billion for 2007).

Such determined base for social welfare support (its multi-annual lack of change proportionally with certain factors such as: increased costs of living, the lowest salary or pension, budgetary base or some other adequate rise that would condition its continual change) has caused most dissatisfaction with the beneficiaries of the social welfare rights.

Since the social welfare centres cannot influence this circumstance, they approve in such cases one-time aid by which the beneficiaries' basic living needs are only periodically/temporarily met. By such acting (too frequent approval of one-time aid to the beneficiaries of support aid, as well as to those who do not meet the conditions prescribed for this aid), social welfare centres have introduced the remedy for inadequate census/rate of support aid. Due to the abovementioned, and because of the limited budgetary means available for approving one-time aid, there has been inconsistent application of the Act on Social Welfare (of 1997, with corresponding amendments). Specifically, the intention of the provision of Article 40 of the Act on Social Welfare is to provide help to an applicant due to his/her existing circumstances as a result of which they are unable to partially or completely satisfy their basic living needs. However, the past practice of the social welfare centres has shown that they often grant one-time aid in the amount that does not entirely satisfy the applicant's specific, current living need, but it is regularly approved on the basis of their arbitrary estimate, although the possible maximum amount is 1,200 kuna, which does not require special previous consent of the competent body.

Since a large number of citizens of the Republic of Croatia consider themselves poor, it can be expected that the number of complainants from the sphere of social welfare will increase in the coming period. The first representative research of poverty in the Republic of Croatia, carried out by the State Statistics Bureau in cooperation with the World Bank during 1998 showed that 10 percent of the Croatian citizens lived below the threshold of *absolute poverty* (they were unable to cover their basic living needs), whereas 80 percent of the polled citizens

considered themselves poor, which was fairly high percentage of subjective poverty (World Bank, 2000). Since poverty indicators have been monitored according to uniform methodology only in the past few years, and the creation of the Draft of the Social Welfare Support Reform Strategy is underway, it can be expected that a uniform base will be introduced for all social welfare supports in near future, which will more efficiently soothe the consequences of poverty and social exclusion, particularly for the beneficiaries within the social welfare system. We hope that the abovementioned base will be harmonized with the standards of the European Union, i.e. that the "relative line of poverty" will be introduced as the national line of poverty, which will ensure the beneficiaries of social welfare support (including the beneficiaries of help from social welfare) not only an existential minimum, but also a minimum, but decent living standard, which presupposes that the beneficiaries would not be socially excluded and deprived, i.e. that they would participate in the socially accepted activities.

Examples:
(1) Case description (P. P. – 1074/06): Mrs. D. J. of Z. addressed the Ombudsman and stated that she and her son R. J., who finished serving his prison sentence, were not recognized the belonging social welfare rights, and that her request for the exemption of the competent social worker for the general social work was not decided upon.

Undertaken measures: After considering the complaint and obtaining the statement and documentation from the competent services, the Ombudsman intervened and provided legal advice, i.e. recommendation. It is evident from the delivered statement and documentation that D. J.'s average monthly income based on pension exceeds the prescribed census for realizing support help. For this reason she is often approved one-time aid she holds should be given to her each month. In accordance with the decision of the City Office for Health Care, Labour, Social Protection and War Veterans, she has been realizing help for covering the housing costs (by paying the bills up to 456 kuna).

Her son R. J. realizes, as a single person, support aid in full sum (it amounts to 400 kuna for the persons capable of working). However, her son is unable to cover his basic living needs out of this help, so he insists on the monthly approval of single help, but not in the usual amount of 500-700 kuna, but in the maximum amount of 1,200 kuna.

Case outcome: The request for the exemption of the competent social worker for general social work has been recognized, in order to achieve better communication and cooperation with the social worker.
One-time aid has been approved.

(2) Case description (P. P. – 20/01) R. B. of K. filed a complaint to the Ombudsman regarding the realization of his social welfare right – help for covering the housing costs. He stated that he was realizing support aid through the Social Welfare Centre K., in the amount of 400 kuna, but that it was not sufficient for covering the basic living needs (paying utility fees, water, garbage removal and groceries).

Undertaken measures: The Ombudsman collected the statement and documentation from the Centre, but the municipality of K. failed to deliver the requested statement. The complainant is a beneficiary of support aid, and the municipality of K. approved him one-time aid for covering the housing costs, for the firewood supply.

The Centre familiarized him with the possibility of getting periodical one-time help, in case he found himself in such circumstances in which he could not be able to partially or completely cover any of the living needs.

Case outcome: The complainant was authorized one-time aid for firewood and he received social work services – counselling.

(3) Case description (P. P. – 1432/06): Mr. I. J. of Z. addressed the Ombudsman, stating that he lived in a five-member family, in difficult socio-economic circumstances: he was a subtenant, he and his wife were unemployed, had three underage children, two of which suffered from severe health impairments. The settling of his status as a Croatian Army war invalid is underway. He asked for help with the settling of his existential issue – allocation of a city flat in lease for a definite period of time.

Undertaken measures: The Ombudsman recommended the Section for Housing Issues that he be awarded a flat in lease outside the priority list, in accordance with the valid Ordinance, since the family lived in exceptionally difficult social circumstances, with two of their children suffering from severe health impairments, so in this sense they satisfied the prescribed condition. It follows from the delivered statement that flat lease is not possible, as the following condition is not met: ten years of continual residing on the territory of that city, before submitting the petition.

The Social Welfare Centre was recommended to initiate the procedure for the recognition of the right to support aid and suggest the city department for social welfare to approve them help for covering housing costs in the maximum amount, under exceptional conditions.

The Ombudsman asked the regional Ombudsman for human rights in the Federation of Bosnia and Herzegovina to send a rush note to the competent service in Bosnia and Herzegovina for the purpose of settling the complainant's status as a Croatian Army war invalid.

Case outcome: Help for covering the housing costs in the amount prescribed by the decision of the city has been approved; the family is entitled to help in kind, and the procedure of realizing the right to support aid for his five-member family is underway. The complainant is still unsatisfied since his family's housing problem has not been solved due to too high criteria in the city's decision – 10 years of residing in the city area – although they are in a difficult material situation.

(4) Case description (P. P. – 1790/04) N. T. of S., beneficiary of the right to work half-time to be able to take care of her child, suffering from severe development disorder, filed a complaint with the Ombudsman during 2004. The Ombudsman received during 2005 complaints from several associations gathering the parents of children with severe development disorders. The complaints referred to the calculation of the salary compensation paid by the social welfare centres on the basis of the recognized right to work half-time to be able to provide care to the child with major development disorders. They pointed out that their taxes were calculated contrary to the Act on Income Tax and that they were not receiving contributions for pension insurance.

Undertaken measures: The Ombudsman carried out investigating procedure in which he requested a statement from the Ministry of Health and Social Welfare. It follows from the

statement of the Ministry and from the opinions from other bodies that the social welfare centres have been properly applying the Act on Income Tax, since they have not been calculating or paying income tax on the salary compensation, i.e. the amount of compensation is calculated in accordance with Article 9 of the Ordinance on the rights of parents of children with major development disorders to a leave or half-time work for the purpose of providing care to their children (Official Gazette, No. 92/03; hereinafter: the Ordinance). The Ombudsman holds that the problem lies in the method (technique) of calculating the sum of compensation.
Specifically, Paragraph 1 of Article 9 of the Ordinance reads as follows: "A parent who works half-time is entitled to a salary compensation for the time leftover to the full time in the amount of the difference between the salary he/she realizes by working half-time and the salary that he/she would be realizing if he/she worked full time". Paragraph 3 of this Article prescribes that the social welfare centre should pay out the compensation to the parents on the basis of the employer's confirmation on the paid salary, i.e. the salary that was supposed to be paid out to the parent working half time.

The Ombudsman recommended the Ministry of Health and Social Insurance to amend Article 9 of the Ordinance in a way: "that legally prescribed exemption from paying tax and surtax for the compensation goes to the benefit of the tax payer, beneficiary of the compensation." Salary compensation, paid to the complainant by the social welfare centre, is lower than the salary that her employer pays her for the other half of the work time. The difference between the salary and the compensation is exactly the sum of the calculated tax and surtax against the salary. The abovementioned Ministry requested expert opinions from other state bodies, after which it will consider the initiation of the procedure to amend the disputable provisions of the Ordinance, in accordance with the Ombudsman's recommendation.

As regards new N. T.'s new complaints, in which she stated her dissatisfaction about the delivered responses, particularly with the unduly long settling, not only of her problem, but of the problems of a larger number of other parents in a similar situation (it is the matter of 2,660 persons, according to the data of the Ministry of Health and Social Welfare), the Ombudsman requested statements from the competent bodies and from the Vice-President of the Government of the Republic of Croatia.

The Vice-President of the Government requested urgent actions on the part of the competent bodies of the state administration and delivered opinion to the Ombudsman on 14 March 2006. The already given opinions are repeated in the unified official letter of the Ministry of Health and Social Welfare – i.e. that the competent social welfare centre does not pay out salary but the "salary compensation" and that tax and surtax are not calculated against it for that reason. As regards contributions for pension insurance, it is stated that the obligation to pay contributions against the compensation for salary is not prescribed within the meaning of Article 77 of the Act on Pension Insurance, and that the "compensations for salaries from Article 4 of the Ordinance on the Method of Calculating the Salary Compensation due to Half-Time Work, with the purpose of providing care to the child, do not affect the pension rate of the insured employer", and that the complainant's rights have not been violated by calculating the compensation for salary for the work hours leftover to the full work time.

Case outcome: The Ministry of Health and Social Welfare failed to notify the Ombudsman on the actions undertaken for the purpose of potential amendment to the disputable Article 9 of the Ordinance. He therefore again requested a statement on the subject.

The Ombudsman delivered to the complainant the collected opinions, and explained her that his recommendations were not binding for the state administration bodies, and referred her to seek the protection of the rights in court.

Health care and health insurance

The Ombudsman received 23 complaints from the health care sphere in 2006. Fewer referred to health care and most referred to health insurance. The received complaints varied by their contents, and they referred to the quality of health services, the procedure upon the request for taking professional exam, violation of the contract on the implementation of the contracted health care out of the basic health insurance, establishing the status of insured persons, right to financial compensation during temporary incapability to work, right to compensation of transport costs for the use of health care, etc.

It is important to mention that the health insurance system in the Republic of Croatia was changed in 2006. Health insurance was in the Republic of Croatia until 2 August 2006 regulated by the Health Insurance Act from 2001. In accordance with the quoted Act, health insurance was structured as basic, supplementary and private. Health insurance is currently regulated by three acts: Act on Obligatory Health Insurance, Act on Voluntary Health Insurance and Act on Employees' Health Protection, passed by the Croatian Parliament on 13 July 2006, and applied since 3 August 2006. Health insurance is structured as obligatory and voluntary.

Obligatory health insurance is implemented by the Croatian Institute for Obligatory Health Insurance, which is obliged to coordinate its structure with the provisions of the Obligatory Health Insurance Act by 3 August 2007. Since the regulations related to health insurance have been in force for four moths only, the Ombudsman could not note possible problems in their application on the basis of the received complaints.

Examples:
(1) Case description (P. P. – 222/06) M. K. of K. addressed the Ombudsman with the complaint against the Ministry of Health and Social Welfare. She stated that she completed her internship at the pensioners' home in Zagreb according to the plan and programme prescribed in the 2004 Ordinance on internship of medical employees. Her internship record is registered in her internship book, certified in a prescribed way. The head nurse at the abovementioned home submitted an application in February 2005 for five nurses to the Ministry of Health and Social Welfare, among them the complainant, for taking professional exam. She also enclosed the prescribed documentation. The Minister of Health and Social Welfare failed to reach decision until the date the complaint was filed on the approval of taking professional exam, so the complainant addressed the Ombudsman.

Undertaken measures: The Ombudsman requested in his official letter of 10 March 2006, on the basis of Article 11 of the Ombudsman Act (Official Gazette No. 60/92), from the Ministry of Health and Social Welfare to deliver him opinion about the statements made by Mrs. M. K. within 30 days, with the reasons of the Minister's failure to, in accordance with Article 10 of the Ordinance on internship of medical workers, approve the complainant's taking professional exam.

The Ministry of Health and Social Welfare failed to act within the prescribed period in accordance with the Ombudsman's request, so the Ombudsman sent a rush note on 24 April 2006.

Case outcome: Upon receiving the rush note, the Ministry notified the Ombudsman that the Minister of Health and Social Welfare reached on 28 April 2006 a decision by which he approved to the complainant to take professional exam on 3 June 2006. A copy of the decision was delivered together with the response.

Note: Successful intervention.

(2) Case description (P. P. – 997/06) Mr. H. D., M.D., general practitioner, approached the Ombudsman with a complaint against the Croatian Health Insurance Institute. He stated that his general practice office concluded on 18 April 2006 a contract with the Croatian Health Insurance Institute on the implementation of the contracted health protection out of the basic medical insurance for 2006.

An authorized HZZO's employee carried out control over the implementation of his contractual obligations, on which he drew a report on 6 July 2006, class: 500-07/06-01/24, ref. no.: 338-19-17-06-2. The report proposed a measure to initiate a procedure for the breach of the contract. The complainant filed objection against the report to the HZZO, but decision on whether it was founded was not reached.

Undertaken measures: As regards H. D.'s complaint, the Ombudsman requested in his official letter of 7 September 2006 a statement from the Croatian Health Insurance Institute.
The received statement of 20 September 2006 said that the complainant's objection against the report on the carried out control of contractual obligations with the HZZO of 6 July 2006 was assessed as unfounded. Therefore the Management of the HZZO pronounced on 10 August 2006 a reprimand before the breach of the contract, with a decrease of the belonging monthly sum by 30 percent.

The explanation of the determined measure stated that it was established that the complainant repeatedly exceeded the contracted consumption on the occasion of prescribing medicines, i.e. that he prescribed medicines outside the contracted activity, thus violating Article 14 of the Contract. It also stated that he exceeded the contracted sick leave rate by five percent in the first quarter of 2006 and in April and May, which was contrary to the assumed contractual obligations.

The HZZO management holds that, considering the identified violations, conditions have been met for the breach of the contract. However, taking into consideration the needs of the health system, the proposed measure of breaching the contract was replaced by a reprimand before the breach of the contract, with a 30-percent decrease in the belonging monthly sum.

Case outcome: Unfounded complaint. The complainant was notified of the outcome of the inquiry procedure.

(3) Case description (P. P. – 384/06) J. S., M.D., dentist and owner of a private dental office in S. addressed the Ombudsman. Due to certain complications during her pregnancy, the complainant took a sick leave on 1 February 2006. The Ministry of Health and Social Welfare

authorized her in its decision temporary suspension of the activity of the dentist's office as of 1 February. The complainant took a maternity leave on 18 March 2006.

The complainant submitted the required documentation for the purpose of realizing the right to salary compensation during her sick leave and maternity leave to the HZZO, Regional Office S. As stated in the complaint, she was orally notified that salary compensation during her sick leave in the period from 1 February to 18 March would not be paid out to her since she failed to pay contributions for health insurance as an independent entrepreneur.

The complainant emphasized that she settled the debt related to the health insurance contributions on 16 March 2006 for January 2006 with the belonging interest on arrears, but that she was still not paid the salary compensation during her sick leave.

Undertaken measures: The Ombudsman requested on the basis of Article 11 of the Ombudsman Act from the Croatian Health Insurance Institute, Regional Office S., to deliver him within 30 days a statement on Mrs. S.'s allegations, containing the reasons for failing to pay her the salary compensation during her sick leave.

The Croatian Health Insurance Institute, Regional Office S. delivered the requested statement to the Ombudsman within the set deadline. It stated that it reached decision on 18 May 2006, class: UP/I-502-03/17, ref. no.: 338-17-14-06, by which it recognized the complainant's right to the salary compensation during her sick leave taken because of certain complications during her pregnancy from the first day of the sick leave, i.e. since 1 February 2006. Based on the quoted decision, salary compensation for the sick leave in question will be calculated and paid out to the complainant via the HZZO Regional Office S.

Case outcome: Successful intervention. After the Ombudsman's intervention, the competent regional office of the HZZO paid the complainant the salary compensation that she was entitled to during her sick leave.

(4) Case description (P. P. – 772/06): Mr. J. P. of S. addressed the Ombudsman. He stated in his complaint that he was an employee at the company "B-R" Ltd. with the principal office in Z. Furthermore, he stated that he was on a sick leave since 5 July 2004. From December 2005, he stopped receiving the salary compensation during the sick leave from his employer, with an explanation that the HZZO, Regional Office Z., was not returning the paid compensation since August 2005. The complainant stated that he was ill and without any income for the past seven months, so he asked for the Ombudsman's help as regards the protection of his rights.

Undertaken measures: The Ombudsman requested from the HZZO, Regional Office Z., to deliver him a statement on Mr. J. P.'s complaint within 30 days, and to explain the reasons for which the complainant was not receiving the salary compensation during his sick leave.

The response of 9 August 2006 stated that the HZZO, Regional Office Z., would investigate into the paid salary compensation that the employer "B-R" paid to its employee J. P. for the period from 5 July 2004 to 30 June 2006. The paid compensation will be compared with the sums that the employer set to the HZZO in its requests for the refund. Inspection will be carried out when the employees of the accountancy service of the company "B-R" return from their vacations.

The Ombudsman requested in his official letter of 11 October 2006 from the HZZO, Regional Office Z., to notify him within 30 days if the inspection was carried out in the company "B-R" and of the results thereof, so that he could assess whether the complaint was founded.

The HZZO stated in its response that the inspection of the salary compensation that the employer "B-R" paid to the complainant for the period from 5 July 2004 to 30 June 2006 was carried out on 8 September 2006. The inspection found that the employer owed the complainant 27,761.54 kuna in salary compensation during his sick leave in the period from 1 January 2006 to 31 August 2006.

The HZZO sent an official letter on 11 September 2006 to the company "B-R" Ltd. in which it invited it to pay the complainant the sum of 27,761.54 kuna for the salary compensation. The employer was also warned of the provision of Article 134 of the Act on Obligatory Health Insurance prescribing that a legal person would be fined 80,000 kuna to 150,000 kuna for failing to pay the insured person salary compensation in accordance with the calculation delivered by the HZZO.

Case outcome: The Ombudsman did not receive information on whether the employer paid the complainant the sum in question.

(5) Case description (P. P. – 838/05): Nurses from the Clinical Laboratory for Functional Lungs Diagnostics within the Pulmonary Diseases Clinic J. addressed the Ombudsman and stated in their complaint that they, as opposed to the doctors, were not receiving the bonus to their salary in the amount of 25 percent due to specific work conditions, which was contrary to the Collective Agreement for the medical activity and health insurance.

The list of posts and jobs of medical and non-medical workers entitled to a bonus to their salary is set in Article 65, Paragraph 2 of the Collective Agreement. The posts of II and III type, with medical workers working with patients undergoing treatment for active TBC are also on the list (2/3 of work hours).

The text interpreting Article 65 of the Collective Agreement, that the Croatian Medical Association and the Croatian Pulmonary Association delivered to the Ministry of Health and Social Welfare in their official letter of 25 April 2005, states the following: *"The term '2/3 of the working hours spent in treating patients suffering from active tuberculosis presupposes the total number of hours spent on the job regardless of the number of interventions with the patients suffering of active pulmonary tuberculosis. The abovementioned refers to the doctors and nurses working at the sections and polyclinics where diagnostics and therapy of active lung tuberculosis is performed"*.

Undertaken measures: The Ombudsman requested a statement from the manager of the Pulmonary Diseases Clinic J. The statement said that, in accordance with the Collective Agreement for the medical activity and health insurance, only nurses of the VI section treating active lung tuberculosis (2/3 of working hours) were entitled to a salary bonus in the amount of 25 percent for special work conditions.

Nurses at the clinical laboratory for functional pulmonary diagnostics, according to the same Agreement, are entitled to the salary bonus in the amount of eight percent for special work conditions. It stated that functional respiration tests, performed at the clinical laboratory for

functional lung diagnostics were significant only after the end of the treatment of M lung tbc, when a patient's M tbc result, i.e. expectoration result, is found negative.

The Ombudsman notified the complainants about the contents of the received statement.

The Union of Nurses and Technicians then addressed the Ombudsman in a complaint stating that the Pulmonary Diseases Clinic J. did not respect the Collective Agreement, as a result of which the nurses were denied the belonging salary bonus for special work conditions (tb), as well as the other rights following from it.

The Ombudsman referred the Union to address the Commission for the interpretation of the Collective Agreement, in accordance with Article 18 of the Collective Agreement, which is what they did, but the requested interpretation was not delivered even after the expiry of a 30-day deadline.

The Ombudsman therefore recommended the Ministry of Health and Social Welfare on 3 February 2006 to request from the abovementioned Commission the interpretation of the provisions of the Collective Agreement and to notify him on the measures undertaken as regards his recommendation within 30 days. As he did not receive any response, he sent a rush note.

The Minister of Health and Social Welfare informed the Ombudsman in his official letter of 10 October 2006 that the Joint Commission for the interpretation of the Collective Agreement for medical activities and health insurance provided on 13 September 2006 their interpretation of the provisions of the Collective Agreement. The Commission accepted the opinion of a neural expert according to whom the term of 2/3 of hours of work with the patients treated for active tuberculosis implied a total number of hours spent at work, regardless of the number of interventions with the patients suffering from active lung tuberculosis. This refers both to doctors and nurses working at the sections and polyclinics where diagnostics and therapy for lung tuberculosis is performed.

The complainants notified the Ombudsman on 19 October 2006 that they made a settlement with the Pulmonary Diseases Clinics Jordanovac.

Case outcome: The complainants notified the Ombudsman that they were recognized the right to a salary bonus in the amount of 25 percent due to special work conditions. According to the concluded settlement, they were paid the belonging bonus for special work conditions for the year before, in that the complainants waived their right to claim default interest.

Schooling

(1) Case description (P. P. – 186/07): I. M.'s complaint referred to the conduct of the responsible person in the procedure of foreign language competition of elementary school pupils, carried out at three levels: school, county and state. It is evident from the complaint that the complainant's daughter (and two other pupils) was disqualified from further competition after the end of the competition at the school level. It follows from the official letter (enclosed with the complaint) from the president of the county commission, in which the commission's decision on disqualification is explained, that the pupil did not commit a single action that would justify her being disqualified, but that the arguments for her disqualification laid in irregularities in the conduct of the school commission, which pointed

to the contradiction and possible violation of the pupil's rights. Specifically, omissions made in the method of the test assessment (colour and type of pen) and the omissions of the person responsible for filling in the competition application, etc., were stated as irregularities.

Undertaken measures: Since there was too little time left in this subject matter for the usual correspondence (county competition was due in three weeks), the Ombudsman e-mailed a memorandum to the secretary of the State Commission, stating that the pupil was disqualified from further competition due to irregular conduct of the teachers (responsible persons) who were assessing the tests. The Ombudsman therefore held it necessary to draw attention to such an improper and unjustified approach, since "*each pupil must be aware that he/she will bear consequences if he/she breaks certain rules, but he/she also must know that the system is functioning and that every mistake will be corrected, and their rights protected."*

This is the way to build up their self-esteem and strengthen their motivation for future work, and in the long term, give them the sense of belonging to the society that respects human rights and is truly democratic.

"Although the deadline is short (6 March 2007), we believe that you will have the opportunity to hastily investigate the circumstances of this case and remove possible irregularities, in order to eliminate doubts about unfair treatment of pupils as a result of their teachers' conduct."

Case outcome: The Ombudsman received an e-mail from the president of the State Commission two days later, with the notification that all the three disqualified pupils were invited to the further competition at the county level.

Finally, the complainant notified the Ombudsman on 6 March 2007 by e-mail that his daughter won the second place in the county competition and that she would participate in the competition at the state level. The case was successfully concluded.

(2) Case description (P. P. – 1042/06): E. B. of M. E. addressed the Ombudsman as regards the problem with daily transport of her son P. to elementary school.

This rather vague complaint stated that the village in which the complainant lived was 7 kilometres away from the City of O., where her son attended the fifth grade of elementary school. The village is over five kilometres away from the nearest bus stop, so she asked for the Ombudsman's help.

It is unclear from the complaint which body she had previously addressed. It is only clear that she did not accept the offered possibilities of transport to school. She stated that she did not believe that moving the bus stop 800 metres closer would solve the transport problem, and stated the reasons for refusing to take her son to school by her own car, with the compensation of the costs in the amount of 800 kuna a month.

It followed from the complaint that the complainant's son was not attending school, and that the complainant was in fear of possible measures that the competent social welfare centre might undertake.
The complainant stated that she was a foreign citizen, and that she also had an underage daughter from her first marriage and a four-year old son with her current husband, that she and her husband were unemployed and registered with the employment bureau.

Undertaken measures: Due to the circumstances of the case, the Ombudsman requested a prompt report from the Social Welfare Centre O. on their family situation and a notification on all of their knowledge on P's school attendance in the current school year, so that he could decide on further actions.

The report from the Centre for Social Welfare O. stated that the complainant was pronounced a measure of supervision over the enforcement of her parental right to her underage daughter T. from her first marriage and the underage P. Furthermore, it stated that, according to a report from the school, P. did not attend classes for five days due to illness and one day due to visiting the State Administration Office in the K. County for the purpose of organizing his transport to school.

The report stated that the family was in a moderate material situation, with child's allowance for the two children, in the amount of 598 kuna, and the support contribution paid by P.'s father, in the amount of 750 kuna a month, being the only permanent income.

After he received the report from the Social Welfare Centre O., the Ombudsman requested from the State Administration Office in the K. County, Department for Education, Culture, Technical Culture, Sports and Information, a notification of the way the issue of P. H.'s transport to school was settled and if the statement of the Social Welfare Centre that P. regularly attended school was correct.

The abovementioned Office informed the Ombudsman that the elementary school in O. organized transport for P. H. and several other pupils by their own van, until the road to the village of B., on which a regular bus would ride, was put into operation. It was established in a check-up with the Principal of the elementary school O. that P. H. regularly attended school.

Case outcome: Partially owing to the Ombudsman's intervention, the issue of P. H.'s transport to school was settled, by which he was enabled to exercise the constitutional right to primary education.

(3) Case description (P. P. – 30/06): Mrs. A. R. B. from Split addressed the Ombudsman and stated in her complaint that she completed four semesters of the postgraduate scientific study of the history of art at the Faculty of Philosophy within the University of Zagreb, in the academic year of 1996/97, 1997/98 and 2001/2002. Since the Council of the Postgraduate Study of the History of Art accepted at its session of 2 May 2002 the topic of her MA paper, the complainant paid the costs of assessment and answering the paper on 1 October 2004. The Council of the Faculty of Philosophy in Zagreb failed to appoint the commission for the assessment of her MA paper. The complainant expressed her fear that her right to answer her MA paper was thereby violated, particularly as she learnt that some other candidate was approved the same topic of MA paper.

Undertaken measures: The Ombudsman requested from the Dean of the Faculty of Philosophy within the University of Zagreb to respond to the statements from the complaint. Iin his official letter of 14 February 2006, he stated, among the rest: "After the complainant enrolled in the postgraduate study, the Act on Scientific Activity and Higher Education of 2003 came into force. Its Article 116, Paragraph 2 stipulates that the students enrolled in the postgraduate master's study before organizing the undergraduate and postgraduate studies in accordance with the provisions of this Act, are entitled to finish the study under the

curriculum and conditions that were valid when they enrolled in the first year of their study and acquire adequate academic degree according to the rules that were valid before the new Act came into force.

It follows from the quoted regulation that the procedure of assessment and answering of Mrs. R. B.'s MA paper does not necessitate coordination with the Act on scientific activity and higher education, since the complainant is entitled to finish the postgraduate master's study in accordance with the curriculum and conditions that were valid when she enrolled in the first year of the study."

Case outcome: After receiving two rush notes, the Faculty of Philosophy within the University of Zagreb informed the Ombudsman in its official letter of 13 June 2006 that the Council of the Faculty of Philosophy in Zagreb appointed in its session of 31 May 2006 the Commission for the assessment of the complainant A. R. B.'s MA paper.

Civil matters

The Ombudsman received 11 complaints in 2006 from the field of civil matters. The complaints mostly referred to the issuing of excerpts and certificates from the state registers. Apart from that, the citizens posed questions and sought for advice as regards realization of the rights in this field.

The problem that the Ombudsman dealt with for a long time during the report-drawing period needs to be particularly pointed out. The Ombudsman was since late 2005 and throughout the whole 2006 dealing with the issue of the convalidation of marriages concluded between 1993 and 1997 in the areas of the Republic of Croatia that were under the protection or management of the United Nations.

The OSCE Mission in the Republic of Croatia, Principal Office, and a significant number of the citizens from the territory of Osiječko-Baranjska County and Vukovarsko-Srijemska County addressed the Ombudsman, filing complaints against the work of state registry offices. The registry offices refused to issue excerpts from the register of marriages to the citizens who contracted marriage in the period from 1993 to 1997 and referred them to file lawsuits in order to establish the existence of their marriage, within the meaning of Article 25 of the Family Law (of 2003). The complainants set forth the consequences of such actions on the part of the registry offices for the children born to such marriages and the legal-property relations among the spouses, primarily for their inheritance right, right to family pension, etc.

After the Government of the Republic of Croatia signed an Agreement with the UNTAES on the recognition of the entries in the registers and the hand over of the registers from 25 September 1997, the registers were transcribed, and the citizens were granted documents. Only after the instruction from the Central State Office of 19 January 2006, registrars took to entering the notes on convalidation, i.e. non-convalidation of the entries. The entries in the register of births and the register of deaths and the register of marriages for the marriages contracted by 17 October 1993 were undisputable, but the marriages contracted after this date were contracted without the presence of a councillor, due to which they were declared null and void on the basis of Article 28, Paragraph 2 of the Act on Marriage and Family Relations (of 1978), that was in force at that time. The registrars would write a next to the entries of such marriages indicating that the entry was not convalidated and they would refer the parties

to file a lawsuit for the purpose of establishing the existence of marriage, within the meaning of Article 25 of the Family Law (of 2003).

The Ombudsman sent an official letter to the Central State Administration Office in which he stated that the court could not establish the existence of a marriage from the moment of its contraction in the dispute the complainants were instructed to initiate. The marriages in question were concluded in the absence of a councillor, disregarding the prerequisites for concluding marriage, within the meaning of Article 28, Paragraph 1, Item 3 of the Act on Marriage and Family Relations. According to the provision of Article 28, Paragraph 2, legal consequences of marriage do not follow if one of the prerequisites from Paragraph 1 of the same Article is not met when contracting marriage. Therefore, the court could in its decision only deny the lawsuit for establishing the existence of marriage.

The Office for Legislation of the Government of the Republic of Croatia passed on 22 November 2006 its opinion on the convalidation of the marriages contracted from 1993 to 1997 in Hrvatsko Podunavlje.

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 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 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.

Among the rest 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 Law (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.

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 Osječko-Baranjska and Vukovarsko-Srijemska County, 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.

Examples:
(1) Case description (P. P. – 1428/06): Mr. D. M. of Osijek addressed the Ombudsman with a complaint against the conduct of the Registry Office in Vukovar. The complainant stated that he submitted on 23 June 2006 to the State Administration Office in Vukovarsko-Srijemska County, Register Vukovar, a written request for the issuing of an excerpt from the Register of Births, which he needed as evidence in the procedure for the realization of the right to old-age pension. By referring to Article 7, Item 12 of the Act on Administrative Fees, stipulating that fees did not have to be paid for all files and activities for the realization of the right out of pension insurance, the complainant did not pay the fee.

The Registry Office in Vukovar informed the complainant that it was not authorized to exempt him from paying the fee pursuant to Article 7 of the Act on Administrative Fees. It stated in the same official letter that it would meet his request for the issuing of an excerpt from the Register of Births insofar as he delivered it state stamps in the value of 20 kuna, and four kuna in cash for the form.

The complainant filed an objection to the state secretary of the Central State Administration Office on 11 July 2006 against the conduct of the Registry Office in Vukovar, and an objection to the President of the Government of the Republic of Croatia on 12 July 2006. As the Central State Administration Office failed to respond to his objection, Mr. M. addressed the Ombudsman.

Undertaken measures: At the request of the Ombudsman, the Central State Administration Office delivered a copy of the official letter of 17 November 2006, sent to the complainant, which stated the following:
"All the files and actions for the realization of the rights out of pension, disability and health insurance and social welfare, according to Article 7, Item 12, of the Act on Administrative Fees are free of administrative charge.

Therefore, you will not be paying administrative fees for the realization of the rights out of pension and disability insurance in the procedure before those bodies. However, issuing of the documents from the state registers is a separate administrative action, the undertaking of which is not established in the Act on Administrative Fees as being free of administrative charge."

After he received the response from the Central State Administration Office, the Ombudsman sent a recommendation to the Government of the Republic of Croatia.

Article 12, Paragraph 2, of the Act on Administrative Fees stipulates that the Ministry of Finance is in charge of supervising the charging and payment of administrative fees. At the request of the Ministry of Finance, the Office for Legislation of the Government of the Republic of Croatia provided their expert opinion on 1 September 2004 on the application of Articles 7 and 12 of the Act on Administrative Fees, in which it stated the following: "Pursuant to the provision of Article 7 (Act on Administrative Fees), administrative fees are not paid for the files and actions that are stated in Paragraph 2 of the same Article. In our opinion, the abovementioned exemption from paying fees refers to the complete procedure and all administrative activities that need to be performed in the procedure in order to obtain the requested deed, regardless of whether they are performed before the body before which the procedure is initiated or before some other body."

We consider it necessary to emphasize that the Office for Legislation of the Government of the Republic of Croatia, based on Article 25, Paragraph 1, of the Act on the Government of the Republic of Croatia, is authorized to give expert opinions to the central state administration bodies in relation to the application of laws and other regulations. The Ministry of Finance familiarized the Central State Administration Office on 8 November 2004 with the quoted expert opinion of the Office for Legislation of the Government of the Republic of Croatia.

The Ombudsman shares the opinion of the Office for Legislation of the Government of the Republic of Croatia. In the concrete case, we feel that Mr. M. should have been freed from paying administrative fee for the issuance of an excerpt from the Register of Births that he was obliged to pay as evidence in the procedure for the realization of the right to old-age pension. Obtaining a document from the state register is only a part of the procedure for the realization of the right out of pension insurance. The provision of Article 136, Paragraph 3, of the Act on General Administrative Procedure (Official Gazette No. 53/91), stipulating that an official person conducting the procedure is obliged to gather information ex officio on the facts that another state body keeps records of, i.e. another institution or another legal person, with the aim of establishing the facts and circumstances vital for the decision, goes in favour of this attitude.

The registry offices at the state administration offices in the counties, according to the attitude of the Central State Administration Office, charge administrative fees contrary to the opinion of the Office for Legislation of the Government of the Republic of Croatia on the application of Article 7 of the Act on Administrative Fees. Different application of Article 7 of the Act on Administrative Fees undermines the constitutional principle of equality of citizens before the law. Based on Article 9 of the Act on the State Administration System, the Government of the Republic of Croatia has been coordinating and monitoring the work of the state administration. The Ombudsman therefore sent a recommendation to the Government of the Republic of Croatia, based on Article 7, Paragraph 1, of the Act on Ombudsman, to coordinate the application of Article 7 of the Act on Administrative Fees, within its jurisdiction. Since the recommendation was sent at the time of drawing up this report, there was no response yet.

(2) Case description (P. P. -126/06): M. T. of Zagreb addressed the Ombudsman and stated in his complaint that he contracted marriage with L. P. on 12 July 1968 in D. L. The fact of contracting the marriage was registered into the Register of Marriages run for the place B. under the ordinal number of 2. The complainant has original excerpts from the Register of Marriages from 1975 and 1992. On the occasion of the complainant's request for the issuing of a new excerpt from the Register of Marriages, the State Administration Office in Ličko-Senjska County, Service for General Administration, informed the complainant that they were unable to meet his request since the Register of Marriages had been destroyed during the Homeland War. The complainant was in the same official letter referred to initiate the proceedings before the competent municipal court for the purpose of passing decision confirming the existence of the marriage, on the basis of which the register would make an entry into the Register of Marriages. The complainant addressed the Ombudsman for help.

Undertaken measures: The Ombudsman requested a statement from the State Administration Office in Ličko-Senjska County, General Administration Service, about the statements from Mr. M. T.'s compliant, as well as for response why the county office,

pursuant to Article 51 of the Act on State Registers, failed to immediately start with the reconstruction of the destroyed or missing state registers.

Case outcome: The State Administration Office in Ličko-Senjska County, General Administration Service, informed the Ombudsman that it reached decision, on the basis of Articles 27 and 51 of the Act on the State Registers, by which it approved the re-entry of the fact of concluding the marriage into the Register of Marriages within the office of D. L., concluded on 12 July 1968 between M. T. and L. P. It also delivered a copy of the decision in question. The complainant was notified that he could obtain an excerpt from the Register of Marriages at the Registry Office D. L.

Note: The intervention was successful.

(3) Case description (P. P. – 580/06): A. D. of Z. filed a complaint to the Ombudsman against the Registry Office in Z. that refused to grant her an excerpt from the Register of Births for her daughter without her providing the information on her nationality.

Undertaken measures: The Ombudsman did not establish any violation of the complainant's rights, which he explained to A. D. in the following official letter: "The Act on State Registers (Official Gazette No. 96/93) establishes what facts are to be registered in the state registers. Article 9, Item 1, thereof prescribes that, when making initial entry in the register of births, one must register the child's birth data, i.e. name and surname, sex, date, month, year, hour and place of birth; nationality and citizenship. Item 2 of the same Article stipulates that the following information on the parents must be registered: name and surname (and mother's maiden name), date and place of birth; nationality and citizenship; occupation and address.

Article 42, Paragraph 2 of the Act on State Registers stipulates that an excerpt from the state register must contain the data registered in the state register at the time of issuing the abstract. Paragraph 3 of this Article stipulates an exception to this rule. Only the information on the biological parents of a child adopted with kinship effect does not have to be contained in an excerpt from the register of births.

The issuing of an excerpt from the Register of Births for your daughter without the information on her nationality would be contrary to Article 42, Paragraph 2 of the Act on State Registers."

Note: The Ombudsman did not establish any violation of A. D.'s rights.

Status-related rights of the citizens – acquiring citizenship of the Republic of Croatia

During 2006, 39 complaints were received from this field. Altogether 15 from the previous years were in progress, so altogether 54 were being processed in 2006.

Of the newly received complaints in 2006, five did not contain the basic facts necessary for the investigation to be carried out. Also, the complainants failed to complete them subsequently at the Ombudsman's invitation. Therefore, 34 complaints were acted upon, of which 29 were examined, whereas the investigation of the rest five is underway. Of 29 examined complaints, the Ombudsman assessed four as well-founded, whereas the rest were unfounded.

Of the four well-founded ones (due to unduly long proceedings), decision has been reached in three cases related to complainants' requests, whereas the competent body has not yet decided on one case (which is described below).

While examining the reasons for overstepping legal deadlines for making decisions on the requests for acquiring the Croatian citizenship, the Ombudsman found by analysing the reports that the reasons for unduly long proceedings could not be attributed to the lack of promptness of the competent body, but to the passivity of the complainants.

For example, there were complaints against the work of the Interior Ministry in which the Ombudsman was asked to intervene for the inability to acquire the Croatian citizenship although the complainants failed to submit the requests, or they failed to deliver the necessary documentation at the request of the Interior Ministry: a document on their citizenship status, evidence on dismissal from their previous citizenship, excerpt from the register of births, etc.

Furthermore, a certain number of foreigners filed complaints about the work of the Interior Ministry, i.e. against its decisions ordering the former to leave the territory of the Republic of Croatia. It was established in the investigation procedure that they failed to report their stay in the Republic of Croatia in accordance with the legal obligation, i.e. that they failed to submit a request for permanent stay, although they were instructed to do so at the police station (which is evident from the delivered report).

There was also a complaint against the work of the Interior Ministry for its refusal to issue a travel document to a complainant without giving him any explanation, but the Ombudsman subsequently found that the complainant never responded to multiple invitations of the General Consulate for the take over of the Interior Ministry's decision.

Finally, as regards examining the complaints from this field, it must be pointed out that the Interior Ministry and all police stations that the Ombudsman directly addressed were prompt at delivering the requested reports. The reports contained concrete statements about the Ombudsman's inquiries and detailed reports on the undertaken actions.

However, the conduct of the Interior Ministry could not be considered proper in one of the cases, illustrated in the following example:

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 treatment 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: The Ombudsman requested on several occasions 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 official 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, which 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 received an official letter on 30 November 2006 notifying her that in case her son received no decision within a reasonable deadline she should notify the Ombudsman on it.

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).

Case outcome: The case was not solved after five years passed since the request was submitted. The Ombudsman addressed the Interior Minister in his official letter of 28

February 2007, and warned him of this case and requested urgent notification on the undertaken actions.

The complainant's right was violated in this case, due to unduly long duration of the procedure, i.e. beyond the legal and reasonable deadline.

Labour relations of state and local officials

1. Violations of rights in the field of state and local officials' labour relations

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, and legal persons with public powers, referred to violations of the rights in the sphere of public officials' and labour relations.

The complainants pointed to the irregularities and violations of the rights in the procedure of employing into state service, local service or contracting employment relations with employees, transferring officials for the service needs, realization of the Croatian Homeland War veterans' right to employment priority, disposal of employees after dissolving a body or post, termination of service and other violations of labour rights, but also to unduly long procedures before the defending bodies and before the Administrative Court of the Republic of Croatia.

During the investigation procedures, the Ombudsman warned the defending bodies of the violation of rights and proposed conduct in accordance with general and specific substantive laws (Act on Civil Servants and Employees (Official Gazette No. 27/01), Act on the Police (Official Gazette No. 129/00), Act on Security Services of the Republic of Croatia (Official Gazette No. 32/02 and 38/02), Act on Civil Servants (Official Gazette No. 92/05 and 142/06), Labour Act (Official Gazette No. 137/04 and 68/05 – Decision USHR), etc.), and undertaking of extraordinary legal remedies stipulated by the Act on General Administrative Procedure, which is subsidiary applied to the procedure in the sphere of state and local officials' labour relations.

Civil servant-related legislation, applied to the status and rights of civil servants, affects the violations of the state and local officials' rights due to its frequent and inconsistent amendments.

Also, individuals and groups of citizens employed in the sphere of economy with private employers or with utility legal persons owned by the local self-administration units, submitted complaints due to violations of their labour relations rights, in which they requested the Ombudsman's mediation aimed at achieving faster interventions of labour inspectors and other inspectors of the State Inspectorate of the Republic of Croatia.

2. Individual kinds of officials' rights violation

2.1. Transfer of officials due to service needs

Examples of violation of officials' rights are common in the case of transfers due to service needs, contrary to the provision of Article 96 of the Act on Civil Servants and Employees, which at that time applied to state officials, too.

In such cases, violation of rights occurred due to disrespect for the prescribed conditions of transfer related to the degree and kind of professional qualifications, i.e. complexity of work at the post the officials were transferred to or from, if the transfer was carried out within the same qualification level and other conditions, but mostly because of the failure to establish the facts related to the service need for transferring the officials.

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. According to the Act on Civil Servants and Employees and the subsidiary application of the Act on General Administrative Procedure, a transfer that is contrary to those conditions and procedure, represents violation of the complainants' rights and a reason to dispute the decision on the basis of objection, but also in the administrative dispute, 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.

The conditions prescribed in relation to the level of qualifications and the service necessity to transfer officials, particularly in the case of permanent transfer, must be established and evident from the explanation of the decision on transfer.

These kinds of violations present forms of severe violation of the fundamental rights guaranteed by the Constitution of the Republic of Croatia and are confirmed by the administrative court and constitutional court practice.

Due to violation of the complainants' rights in the procedure of transfer in the state service, the Ombudsman delivered the complaints to the Ministry, together with the proposal to re-examine the disputed decisions related to the administrative dispute against the decisions on the transfer of the police officials. Despite the warning of the identified violations, the Ministry failed to act upon the Ombudsman's proposals, and it left the assessment of legality of those decisions to the Administrative Court of the Republic of Croatia to decide on.

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

Complaints were also filed against the violation 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 provisions of Articles 103 to 107 of the Act on Civil Servants and Employees.

Complaints regarding the violation of those rights referred to civil servants, at the time the Act on Civil Servants and Employees applied to them and to the officials within

administrative bodies of the local and regional self-administration units to which this Act still applies, i.e. to the officials in security services, to which it was applied according to the instruction of the Act on Security Services, in the part of the procedure concerned with putting employees at disposal.

The Ombudsman found that the violations of rights mostly referred to the following: failure to reach decisions on the status of the non-reassigned officials or, after dissolving bodies or posts, failure to establish facts on the inability to reassign complainants. The officials were therefore unable to prove violations of the rights resulting from the assignment of officials who did not meet the conditions, or the existence of other vacant jobs they could have been reassigned to, instead of just being formally put at disposal and having their service terminated upon the expiry of the disposal deadline (period of notice).

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 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 realization of the right to reassignment or transfer to another body in the disposal period, i.e. to the Central State Administration Office, performing those activities on behalf of the Government of the Republic of Croatia.

Also, the opinion of the Central State Administrative Office was delivered at the request of the Council for the Supervision of Security Services, by which it was confirmed that, pursuant to the Act on Civil Servants and Employees, the rights of the officials during the disposal period were denied, due to failure to deliver decisions on disposal of the non-reassigned officials.

State officials put at disposal without a bid 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 these complainants.

Pursuant to adequate application of 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 organizing 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 of the local, i.e. regional self-administration 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.

Due to legal violations of the complainants' rights, the Ombudsman holds that the past practice of the state administration bodies and other state bodies, as well as the practice of administrative bodies of the local and regional self-administration, must be changed.

This has been confirmed in certain examples from the practice of the Administrative Court of the Republic of Croatia and the practice of the Constitutional Court of the Republic of Croatia in the cases of constitutional suits, by nullifying the rulings of the Administrative Court of the Republic of Croatia, decisions on disposal of non-reassigned officials and termination of the state service upon the expiry of the disposal period.

The Ombudsman will in the cases of such violations of legal rights continue warning the defending bodies, proposing the Central State Administration Office consistent implementation of administrative and inspection supervision and undertaking legally prescribed measures, in accordance with the competences established in Article 264 of the Act on General Administrative Procedure, and submitting requests for the annulment or revocation of the decisions reached by right of supervision.

2.3. Violation of rights out of labour relations of employees in the economic sphere

Both individuals and groups of employees of various companies submitted their complaints to the Ombudsman, rushing the conduct of labour inspectors and other inspectors of the State Inspectorate of the Republic of Croatia. According to the complainants' statements, the conduct of their employers severely violated their fundamental human rights and other constitutional and legal rights.

The Ombudsman requested from the State Inspectorate to act upon these cases and to deliver him a report on the undertaken actions. The inspectors of the State Inspectorate identified in all cases a series of illegalities on the part of employers, and filed misdemeanour charges and ordered the elimination of the established irregularities. However, the Ombudsman's actions were thereby over, as his powers refer only to whether the State Inspectorate acts or not.

Examples:
(1) Case description (P. P. -445/06): B. C. of D. drew attention to the violation of the right resulting from the transfer from the post of the head of the Department at the Police Department P., the chief police inspector by profession, to the post of a police officer for which the occupation of independent police inspector was established.

Undertaken measures: Based on the statement from the complaint, decision on the transfer and other presented evidence, and after the investigation procedure, the Ombudsman established that the rights of the complainant were violated.

Decision on the complainant's transfer was reached by referring to provision of Article 102 of the Act on the Police, but the contents of the ruling and the statement of reasons in the

decision in question do not indicate a legally prescribed procedure of transfer for the service needs.

Based on Article 102 of the Police Act (Official Gazette, No. 129/00), due to service needs, a police officer may be transferred to another post within his/her qualifications, in the same or other structural unit of the Ministry, in the same or other place of work. Also, pursuant to Article 79 of the same Act, provisions of the Act on Civil Servants and Employees (Official Gazette No. 27/01), which was in force and applied to the state officials at the time of the complainant's transfer, also apply to the transfer within the police, and pursuant to provision of Article 3, Paragraph 3 of that Act, decisions on the status and rights out of state service are administrative acts.

Provisions of Article 209 of the Act on General Administrative Procedure subsidiary apply to the procedure of passing decisions as administrative acts, which suggests the obligation to explain the decision, i.e. in the case of the police officer's transfer, to explain the service needs.

Prescribing the explanation of the decision as obligatory part of the administrative act pursuant to provision of Article 209 of the Act on General Administrative Procedure aims at protecting the party in the administrative procedure from arbitrary deciding on the part of the state administration body in the application of laws and other rules, and protecting state officials from discrimination in the transfer procedure.

As the course of the transfer procedure and the service need is unclear from the explanation of the Interior Ministry's decision on the complainant's transfer, the Ombudsman believes that the procedure prescribed by law was not implemented and the complainant was not transferred due to service needs.

Based on the implemented investigation procedure, the Ombudsman warned the defending body that the complainant's right was obviously violated.

The complainant initiated administrative dispute before the Constitutional Court of the Republic of Croatia against the decision on his transfer and for the abovementioned reasons, and the Ombudsman proposed the Interior Ministry to re-examine the decisions reached in relation with the administrative dispute pursuant to Article 261 of the Act on Administrative Procedure.

Case outcome: The Ombudsman's proposal was denied, with an explanation that the Ministry could not accept all reasons for the appeal, although the complainant requested the annulment of the decision for the reason that the service needs were not established. The fact that the complainant broadly explained the circumstances that, according to him, led to the transfer, leads to the conclusion that the procedure of establishing the service needs was not implemented. The defending body left the decision on the outcome of this case to the Administrative Court of the Republic of Croatia.

(2) Case description (P. P. -67/06): The complainant pointed to the violation of his rights out of the service in a security service. His rights were violated in the procedure of making decision on his disposal, and subsequently on the termination of his service, because there were vacancies for which the complainant met the prescribed conditions after the restructuring, and was still meeting them.

The failure to deliver the decision on disposal to the Government of the Republic of Croatia, i.e. to the Central State Administration Office, performing that work on behalf of the Government of the Republic of Croatia, the complainant was not enabled to exercise his rights of employment priority in other state bodies during the disposal period and on the occasion of filling the vacancies.

Undertaken measures: It is evident from the submitted documentation that the complainant was put at disposal after the new Regulation on the structure of… was passed, due to dissolution of the post. However, the reasons on which the decision maker founds its putting the complainant at disposal, point to the alleged irregularities within the service, and the facts concerning the impossibility of reassignment were not established, which is contrary to the procedure and reasons for his being put at disposal as a result of dissolving the post.

Pursuant to the provision of Article 103 of the Act on Civil Servants and Employees (Official Gazette No. 27/01), that was in force at the moment of putting the complainant at disposal, an official may be put at disposal as a result of dissolution of a post, in a way and under conditions established in the quoted Act, but not for potential violation of service and official duty.

Due to the conduct at work that has the features of violation of official duty, disciplinary procedure is underway, and an official's service terminates only if he/she is pronounced a punishment of service termination, on conditions stipulated by the Act.

Also, during the disposal period, pursuant to Article 107 of the abovementioned Act, an official may be reassigned or transferred to the same or another state body. The state administration bodies and other state bodies are obliged to check, before advertising a vacancy, with the official records of the Central State Administration Office if there are some officials at disposal who meet those conditions, and only if there are not any, they may begin the employment procedure via competition.

The reasons for failing to deliver the decision on the disposal to the Government of the Republic of Croatia, due to confidentiality of data on the employed official, to which the defending body refers, were not established. If it is the matter of confidential acts, they are delivered to both the complainant and the competent bodies in accordance with the prescribed way of treating the confidential mail.

The Ombudsman identified violation of the right to the detriment of the complainant and proposed to the defending body a way to eliminate the violation.

Case outcome: The procedure is underway and the Ombudsman will continue undertaking measures aimed at removing the violations of the complainant's rights.

Local self-administration

As regards realization of the citizens' rights before the competent representative, executive and administrative bodies of the local and regional self-administration, the Ombudsman acted upon the cases of such violations based on the received complaints and other knowledge, and

gained certain knowledge on those violations, that require more efficient supervision of the legality of the central state bodies, over the implementation of laws from the jurisdiction of the local and regional self-administration units and realization of the right to local self-administration.

Violations of citizens' rights by general acts

Violations of the right that the citizens reported refer, above all, to general acts passed by representative bodies of those units, supervised by the state administration offices in the counties, individual central state administration body, authorized for the administrative area to which the contents of general deeds refers and the central state office authorized for the local self-administration, i.e. Central State Administration Office.

If the competent body establishes that those general acts violate a law or the Constitution of the Republic of Croatia, they reach decisions on the suspension of the implementation of the general act, and then the competent central body proposes the Government of the Republic of Croatia to submit to the Constitutional Court of the Republic of Croatia a request for the assessment of the legality and constitutionality of that general act.

However, regular supervision of general acts, according to the received citizens' complaints has obviously not been established. The provisions of the Act on Local and regional Self-Administration do not prescribe the procedure of delivery of general acts to the head of the State Administration Office in each county, so it cannot be established with certainty if each unit on the territory of a county delivers its general acts for the supervision purposes.

The second part of the violation of the citizens' rights refers to the acts passed by the government that go beyond the framework of the implementing act and assume characteristics of general acts, which violate citizens' rights and are contrary to the Act on Local and Regional Self-Administration and individual special laws. 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.

It was established from the complaints that the governments of municipalities and cities reach decisions as general acts, by which they establish citizens' obligations of paying cadastral surveys on the territory of those units. The investigation procedure found that the Act on State Cadastral Survey…. stipulates that the costs of the state cadastral survey shall be covered by the state and the local self-administration unit. However, the local self-administration unit is obliged to meet this obligation from its budget, but not at the expense of the citizens, particularly not based on the decision passed by the government of that unit. A representative body may bring that decision as a general act and on the basis of the law, but not the government contrary to the Act on State Cadastral Survey… and the authority for passing general acts pursuant to the Act on Local and Regional Self-Administration Unit.

The procedure of supervising the legality of these and other general acts on the part of the state administration bodies in charge of supervising the implementation of special laws from certain administrative fields, is not regular and is mostly absent, so the citizens are forced to initiate the procedure of assessment of legality and constitutionality before the Constitutional Court of the Republic of Croatia themselves, although it is the state's duty to ensure the supervision of the legality of those acts.

Furthermore, the state administration offices and certain central state bodies authorized for supervising those general acts are not sufficiently capable and equipped to implement supervision, and that cannot ensure better protection of the citizens and their individual rights and obligations, based on those deeds.

Consequently, the Ombudsman pointed out the need for more consistent implementation of administrative supervision, in accordance with the procedure and authority for its implementation based on the Act on Local and Regional Self-Administration and special laws, based on which the local and regional self-administration units pass general acts and individual acts.

Violation of citizens' rights by individual acts in the local self-administration

The citizens filed complaints to the Ombudsman against irregular or untimely realization of individual rights before administrative and other bodies of municipalities, cities and counties, based on general acts or other implementing acts of those units.

The citizens complained about the non-functioning of the competent local bodies (beside state bodies) in preventing illegal noise, particularly in tourist cities and towns, as populated places, coming from the catering facilities during the tourist season, but also in other cities, where dwelling facilities are in the immediate vicinity of catering facilities.

Pursuant to decisions of the bodies of the local self-administration units, individual acts approve late work hours to numerous catering facilities in the populated parts of cities, and allocate public area for various tourist entertainment programmes in the open. In such conditions and with insufficiently coordinated work and supervision on the part of all competent local bodies and state administration bodies (the police, sanitary and economy inspectorate), the citizens remain unprotected from unbearable noise that does not cease until late night hours or until the morning.

Since special laws stipulate competencies and measures for all the abovementioned bodies (including the fines), the Ombudsman pointed to the application of those rules and to joint cooperation in the undertaking of the prescribed measures and warned the competent bodies to influence the improvement of the situation in order to protect the citizens' rights.

Also, the citizens warned in their complaints of violations of their individual rights on the basis of acts of legal persons with public powers who reached those acts with the consent of the representative or executive unit bodies, pursuant to special law. Apart from the citizens' complaints about the prices of drinking water on which the Ombudsman warned in his 2005 report, he also pointed to some other examples of violation of citizens' rights in the sphere of utility activities that affect uncontrolled and unfounded prices of utility services, illegal utility waste dumps and to the construction of obligatory municipal infrastructure on behalf of the utility contributions paid by the citizens, pursuant to special law.

The complainants emphasized the irregularities and violation of legal rights in the procedures before the local self-administration bodies, in the procedures of public bids or misuse without public bids or without the prescribed rules of procedures of the purchase of vacant building land owned by the self-administration units, lease and sale of business premises, and

procedures of lease and sale of agricultural land owned by the Republic of Croatia, and which, according to special law is implemented by the competent bodies of the self-administration units. The citizens complained about the insufficient supervision of the implementation of those procedures, and on the local level, about the prevalence of individual local interests instead of the procedural rules.

The citizens pointed to the same or similar irregularities in the implementation of the procedures for the award of concessions for taxi transport on the territory of the local and regional self-administration units. As regards this administrative field, there is disorientation in prescribing and implementing tender procedures for the award of concessions and protection of participants from various forms of illegality.

Apart from questionable prescribing of concession award procedure, in accordance with special laws and insufficient supervision on the part of the competent ministries of the legality of the decisions as general acts of the local self-administration units , the complainants and others participating in those procedures know little on the authority of those bodies and the protection of the market competition via the Agency for the Protection of Market Competition of the Republic of Croatia, and decisions, as individual acts, on the award of concessions on the occasion of the advertised bids do not contain prescribed instructions on the rights of the participants in those procedures.

The Ombudsman has been submitting proposals for the implementation of administrative control, within his competencies, and has been warning of the oversights, and will continue doing that in order to protect the citizens' rights before these bodies.

Examples:
(1) Case description (P. P. – 104/06): A. B., M. P. and M. J. of D. delivered a complaint in which they pointed to the irregularities in the implementation of the procedure of public bid for the award of concessions for taxi transport on the territory of the City, announced by the City of D.

Undertaken measures: According to the statements from the complaint, the procedure related to the announced bid was not implemented within a legal deadline, after which a new one was announced without annulling the previous one, by which the complainants' legal rights were violated.

The request for the award of concession filed by the complainant A. B. was denied in the procedure following the announced bid, so he submitted appeal and requested insight into the documentation of the bidders who were granted the concession, but both his appeal and request for gaining insight into the documentation were denied.

During the procedure, the complainant requested for the supervision of the deeds of the government of the city of D. Acting upon the complainant, the Central State Administration Office forwarded the complaint to the Ministry of the Sea, Tourism, Transport and Development, as the entity authorized for inspection supervision.

The Ombudsman kept rushing the undertaking of actions in the case of the abovementioned complainant. The State Inspectorate stated itself as unauthorized and the Ministry delivered a report on the undertaken actions.

Case outcome: The Ministry carried out supervision of the decision on the award of concessions for taxi transport and the implemented tender procedure. The record of the implemented supervision served to order measures for the elimination of the identified irregularities and set the deadline for their removal. The Ombudsman will in the further development of the procedure request a report on the implementation of the ordered measures.

(2) Case description (P. P. -217/05): The Green Party – Branch V. submitted a complaint to the Ombudsman on behalf of the citizens of the Municipality of V., in which they pointed to the violation of individual rights of the citizens due to irregularities in the procedure of establishing the rate of costs for the state cadastral survey at the expense of the citizens.

Neither the Act on State Survey and Cadastre of Real Estate (of 1999) and the Decision of the Municipal Council of the Municipality of V. on drawing up a new state cadastral survey for the cadastral municipality of V. of 25 March 1999 nor any other regulation prescribed principles for setting the amount of funds for the costs of survey, ensured by the local self-administration unit at the expense of the citizens.

In spite of the non-existence of the prescribed standards and authority, the Municipal Government of the Municipality of V. determined in its Decision of 26 June 2002 on the amount of co-financing the cadastre of real estate and reconstruction of the land register for natural persons and small companies the method of establishing the sum for the citizens' participation in the costs of the state cadastral survey on the territory of that unit.

On behalf of the costs of the state cadastral survey, the Decision also set the amount of co-financing the state cadastre survey for natural persons and small companies as owners of real estate.

For these reasons, the complainant initiated before the Central State Administration Office a procedure of supervision of the Decision of the Municipal Government as regards authority for passing it and establishing the amount of costs of survey at the expense of the citizens, without legally established powers and prescribed standards.

The Ombudsman requested a statement on the undertaken actions on several occasions from the Central State Administration Office, which notified this Office in its official letter of 17 February 2006 on the change of jurisdiction in the procedure of supervising general acts.

Due to the change of jurisdiction of the bodies for the supervision of general deeds, the Ombudsman requested in his official letter of 2 February 2006 from the State Geodetic Directorate to act upon this matter and deliver him a report on the undertaken actions.

According to the report received on 31 March 2006, the State Geodetic Directorate did not get involved, due to their lack of knowledge as regards normative regulation of this subject matter, into the assessment of the authority for prescribing the citizens' obligations to participate in the costs of the state cadastral survey pursuant to the abovementioned Decision of the Municipal Government.

Furthermore, due to the State Geodetic Administration's failure to undertake legal measures, as the competent central state administration body for the assessment of coordination of that by-law with the Act, the Ombudsman requested from the Ministry of Environmental Protection, Physical Planning and Construction, pursuant to Article 23 of the Act on the

Structure and Jurisdiction of the Central State Administration Bodies (of 2003, with its amendments), to implement supervision of the work of this state administration body and rushed the delivery of the report on the undertaken actions.

Case outcome: In spite of sending rush notes during 2006, the Ombudsman did not receive any report on the actions undertaken in this case.

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

Of altogether 1,655 complaints in 2006, 314 referred to the work of 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, 43 referred to the problems related to the restitution of the temporarily taken over property and compensations for the damage resulted from the inability to use one's own property, 63 complaints referred to the procedures concerning settling housing issues, and 207 referred to the reconstruction of family houses. Since the number of complaints against the work of the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia 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.

In his official letter of 11 April 2006, he drew the Minister's attention to the problems in the application of the Act on Areas of Special State Concern, Article 27, Paragraph 4, referring to the right of the owners of the temporarily taken over property to damage compensation.

The second official letter of 3 August 2006 referred to the application of the (former) Regulation on the Disposal and Management of Flats in the Areas under Special State Care, and in relation to managing the reconstructed flats in the state ownership.

The third official letter of 12 January 2007 drew the Minister's attention to numerous problems in the application of the rules on reconstruction, restitution of property, compensation for damage resulted from the inability to use one's own property and irregularities in the procedures of settling housing issues. He also pointed to the need for staffing the Reconstruction Directorate, dealing with nearly 14,000 appeal-related procedures, but disposed of fewer officials than a year before. He proposed organizing a meeting for the purpose of exchanging information on all these issues, particularly in relation to drawing up an annual report for the Croatian Parliament for the past year.

Finally, the Ombudsman sent an official letter on 2 March 2007 on the occasion of one case in which serious violations of the regulations of the Republic of Croatia were identified, and he proposed the Minister, in accordance with his powers from Article 7 of the Act on Ombudsman to initiate disciplinary procedure against the responsible public official.

The Minister failed to respond to the Ombudsman's official letters.

The Ombudsman (as well as the European Commission, OSCE, Human Rights Watch and other organizations) pointed in his previous reports to inadequate conduct in the procedures in the jurisdiction of the Ministry of the Sea, Tourism, Transport and Development – Reconstruction Directorate and Exiles Directorate. Unfortunately, despite sending warnings about the irregularities for several years in a row, there has not been any significant progress. Human rights are still violated in many procedures before the abovementioned bodies.

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.

The Government must undertake necessary measures so that all citizens could enjoy equal protection of their rights before the law, and provide protection, in accordance with the Constitution of the Republic of Croatia, to the most threatened ones. The right to home and peaceful enjoyment of ownership certainly present the highest values to those citizens, too, who have not managed to realize this right 16 years after the Republic of Croatia became independent, and 11 years, i.e. eight years after integrating all of its formerly occupied territory into the legal system of the Republic of Croatia.

Reconstruction

There were numerous complaints about the way of settling requests for the reconstruction of houses, particularly of settling appeal procedures. The problems with the work of the Reconstruction Directorate of the Ministry of the Sea, Tourism, Transport and Development are illustrated in several annual reports of the Ombudsman and in the annual report to the Croatian Parliament for 2005, too. The situation did not change in 2006: 207 complaints were received (there were 191 complaints in 2005).

Altogether 14,787 unsettled cases were registered at the abovementioned Directorate in January 2006, and 13,296 in January 2007.

The number of staff working on the settlement of these cases was already insufficient in January 2006: of seven state officials who dealt with the appeals, four of them being senior administrative advisors (of which one is the department head and one the section leader), two independent administrative clerks and one trainee. These are the data on the staff in January 2007: of 11 persons working on the appeals, two were employed in late 2006, one advisor cancelled employment relation, two have been on a sick leave for over half a year, two officials "do not find their way in the subject matter", so disciplinary procedure has been initiated against one of them.

It follows from the abovementioned that the majority of work related to appeals is done by four employees, frequently working overtime.

It has been noted from the complaints (and also recorded in the reports of the OSCE and the European Commission) that the county commissions for inventorying and estimating war damage bear a great part of responsibility for the long duration of the procedures of the reconstruction of houses, due to irregularities in making evaluations. Errors in making estimates and inventorying the damage frequently repeat, and there have also been cases of denying requests for the repeated estimate. First-instance deeds are for this reason often annulled upon receiving appeals and rulings of the Administrative Court of the Republic of Croatia and cases are sent for the procedure renewal.

The second-instance body requested in many appeal procedures reassessment of damage, but the competent commissions failed to deliver the requested information even after a year passed. Ličko-Senjska County is a drastic example, where the abovementioned commission did not even exist for two years, so the appeal procedures were not possible in that period.

It is therefore necessary to find the causes for such way of work of those commissions and promptly undertake necessary actions in order to improve their work.

County state administration offices are partially responsible for unduly long procedures. This particularly refers to the cases in which the procedure was returned to first-instance, and nothing was undertaken in order to reach a new decision within the legal deadline. It must be pointed out that the parties themselves were occasionally partially responsible for such long-lasting procedures, as they failed to deliver the requested information on time.

The Reconstruction Directorate requested for the administrative supervision of the Central State Administration Office in a number of cases, after finding irregularities in the work of the county state administration offices, but it turned out that the Central Office did not have enough employees to carry out the supervision.

A conclusion can be drawn from the above stated that the Reconstruction Directorate still do their work in difficult conditions, and that the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia has not done enough in the past two years to strengthen this Directorate, which results in continual violation of the citizens' rights due to failure to reach decisions within a reasonable deadline.

Examples:
(1) Case description (P. P. – 52/06): I. R. submitted on 27 August 2004 a request for the reconstruction and equipping of his house in U., damaged during the war, but decision was not reached until the date he filed the complaint.

The complaint refers to the work of the Service for Physical Planning, Environmental Protection, Construction and Legal-Property Activities of the State Administration Office in Ličko-Senjska County.

Undertaken measures: The Ombudsman received on 18 April 2006 a statement of the State Administration Office in Ličko-Senjska County, saying that such long duration of the procedure was the complainant's fault, as he failed to undertake a series of actions in the administrative procedure, and that the case was pending second-instance settlement.

The Reconstruction Directorate responded the following to the Ombudsman's inquiry: "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 Ličko-Senjska County 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 Ličko-Senjska County 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.

Case outcome: The case has not been concluded yet.

(2) Case description (P. P. – 1136/02): Complainant Z. W. addressed the Ombudsman on 27 August 2002, seeking help with the unduly long procedure related to her request for the reconstruction of her house in P.

The course of procedure was as follows:

- The complainant filed a reconstruction request in 1995,
- The complainant filed appeal against the decision of 16 July 2003, which has not been settled yet,
- According to the complainant's lawyer, the appeal was forwarded to the competent Ministry as late as 23 June 2004,
- The Ministry delivered the appeal to the complainant's lawyer in June 2006, since it was not signed.

Undertaken measures: The Ombudsman requested on 17 December 2002 a statement from the Office for Physical Planning, Housing and Municipal Activities, Construction and Environmental Protection – Section for Reconstruction, within the State Administration Office in Zadarska County. He did not receive the statement, and the party did not address the Ombudsman until 2006, when she approached him again as her appeal, submitted against the decision of June 2004, was not being dealt with.

The Ombudsman requested in his official letter of 10 May 2006 a report from the Reconstruction Directorate of the Ministry of the Sea, Tourism, Transport and Development on the reasons of such long duration of the appeal procedure. The statement of 30 May 2006 stated that decision was not reached due to a large number of second-instance cases, and that

the appeal had not been signed, and was therefore returned for signing, after which a second-instance decision would be passed.

Case outcome: The case has not been concluded yet, although it has been conducted for 12 years.

(3) Case description (P. P. – 867/05): V. T. of K. complaint against the conduct of the Service for Physical Planning, Environmental Protection, Construction and Legal-Property Relations – Section for Reconstruction within the State Administration Office in Šibensko-Kninska County, in the procedure of a family house reconstruction. The first-instance decision was reached on 14 November 2002, and the complainant then filed appeal against it. The Reconstruction Directorate annulled the first-instance decision in its decision of 29 September 2004 and the case was returned for renewed procedure.

Undertaken measures: The Ombudsman requested a report from the Service for Physical Planning, Environmental Protection, Construction and Legal-Property Activities – Section for Reconstruction of the State Administration Office in Šibensko-Kninska County on the reasons of such long-lasting procedure, in his official letter of:

- 5 September 2005,
- 7 March 2006, and
- 11 May 2006, with a rush note stating the Ombudsman would inform the competent committee of the Croatian Parliament on this case.

The competent body failed to respond to this official letter, so the Ombudsman notified the Human Rights Committee of the Croatian Parliament and the media on this case.

The requested statement was finally received.

The Ombudsman was in the statement of the State Administration Office in Šibensko-Kninska County, delivered on 5 February 2007, informed that the case was concluded in the decision passed on 29 March 2006.

Case outcome: The case was concluded after the expiry of legal and reasonable period, violating the complainant's right. The competent body failed to meet its obligation to deliver the statement to the Ombudsman within a legal deadline.

(4) Case description (P. P. – 1083/06): A. R. of P. complained against the conduct of the Reconstruction Directorate, which failed to pass decision on the appeal against the decision of the State Administration Office in Požeško-Slavonska County – Branch Office P. of 26 November 2005. The complainant stated that she submitted appeal on 14 December 2005.

Undertaken measures: The complainant sent a rush note to the Ministry on 6 March 2006. The Reconstruction Directorate requested on 20 March a statement from the State Administration Office in Požeško-Slavonska County – Branch Office P., on whether the complainant's appeal against the abovementioned decision was received, as it was not recorded at the Ministry.

The Ombudsman requested on 25 September 2006 a statement from the State Administration Office in Požeško-Slavonska County – Branch Office P. about the reasons they failed to forward the appeal to the Ministry. After the intervention, the competent State Administration

Office forwarded the appeal to the Ministry on 16 October 2006 – ten months after its submittal.

The Ombudsman sent a request to the head of the State Administration Office in Požeško-Slavonska County for the initiation of disciplinary procedure against the official person who disrespected the legally set deadline of 15 days in which the appeal had to be forwarded to the Ministry.

The State Administration Office in Požeško-Slavonska County delivered the Ombudsman on 29 November 2006 a copy of the proposal for the initiation of a disciplinary procedure against a senior clerk at the Sub-Section for Construction and Reconstruction at the Branch Office of the state administration in P. due to severe violation of official duty.

Case outcome: The disciplinary procedure has not been completed yet. The complainant has been informed on the measures undertaken in the case in question. The complainant's appeal has still not been decided on.

(5) Case description (P. P. – 1051/03): D. K. of D. L. addressed the Ombudsman as the Reconstruction Directorate failed to reach decision on the appeal against the decision of the Office authorized for the reconstruction activities in Ličko-Senjska County, submitted in 2001.

Undertaken measures: The Ombudsman requested on several occasion in the period from 2003 to 2006 a statement from the Reconstruction Directorate on the case status and the reasons for such long duration of the procedure, and received responses from which it was evident that the statement of the County Commission for Inventorying and Estimating War Damage was not received yet.

The Ombudsman sent a rush note to the State Administration Office in Ličko-Senjska County. It follows from the delivered statement that the County Commission for Inventorying and Estimating War Damage attempted to carry out the requested additional on-site investigation (requested by the Reconstruction Directorate) on 7 September 2006, but nobody was at home. In order to speed up the procedure, the Ombudsman instructed the complainant to address the competent body for the purpose setting a new on-site investigation.

The complainant notified the Ombudsman in his official letter of 9 January 2007 that nothing was done for the procedure to be concluded. The Ombudsman then sent a warning to the head of the State Administration Office, stating that a citizen's right was violated, and requested that necessary actions be undertaken within 30 days, or else he would request the competent inspection to act. The statement of the Office stated that the Commission for Inventorying and Estimating War Damage carried out on-site investigation on 19 October 2006 and delivered it to the Reconstruction Directorate on 20 October 2006.

The Ombudsman sent a new rush note to the Reconstruction Directorate and enclosed these information, requesting that the case be rushed, after which he received a response from the Reconstruction Directorate that the Commission's findings were received on 30 January 2007 (so the delivery took three months), and that the appeal would be decided upon within a month.

Case outcome: The case has not been concluded yet. A reasonable deadline for concluding this administrative procedure has been overstepped.

Restitution of the temporarily taken over property

Only a few parties addressed the Ombudsman in a complaint against the duration of the procedure for the restitution of property. The total number of real estate that the owners have still not been returned is unknown. The competent Directorate has been publishing incomplete data, since they have left out the cases in which court proceedings have been initiated for the purpose of evicting the current users.

Such statistics presents a distorted picture.

This problem also involves the conduct of the state prosecution in numerous cases of selling citizens' real estate to the Republic of Croatia in a way that a false authorized representative sold someone else's real estate to the state.

It is the matter of more than 60 cases in which the same person (K. V.) used forged authorization of the owner to conclude contracts on the sale of their property to the Agency for Transactions and Mediation in Immovable Properties (APN) and took the money, without the owner knowing anything about it. According to the information from the non-governmental organizations, there were altogether 200 such cases, in which other persons were involved.

The following is disputable in the conduct of the state prosecution: since it has been established in several court proceedings that K. V. used forged authorizations, and the Republic of Croatia's request for registering ownership in the concrete cases was denied, it is fair to expect that the dispute should be solved in a conciliation procedure with other owners. Instead, the state prosecution has been regularly investing legal remedies despite the established factual state, long-lasting court procedures and costs of these procedures.

The fact that it is the matter of a group of citizens living in exceptionally difficult material circumstances, and that their constitutionally protected values (ownership right, right to home) have been endangered, that the state of the local judiciary is worrying considering a large number of cases and their long duration, and that those are the citizens that found themselves in such situation without their own fault.

The following example illustrates disrespect for the provisions of the Act on Areas of Special State Concern, which determine the duty of the competent ministry to initiate lawsuits against the temporary users who refuse to hand over the property to their owners, although the formers' right to a temporary use of real estate has expired.

Case description (P. P. – 1188/06): A married couple D. addressed the Ombudsman in a complaint on 26 September 2006, seeking help with the procedure concerning their request for the temporarily occupied property (house) and the damage compensation for their inability to enjoy their own property. They submitted the request for the restitution of property in 1999.

The complainants own a house (a weekend house) in K., by the sea, into which temporary users moved on the basis of the decision. The competent housing commission annulled on 12 January 2000 the decision of 1996, but their moving out was postponed until finding an

alternative solution of their housing issue. The same users have been refusing for six years to hand over the property to its owners. The complaint stated that there were multiple interventions at the Regional Office for Exiles for the purpose of their eviction, but they received identical explanation each time: that it was the matter of dangerous persons and that the owners should address the state prosecution and the Exiles Directorate in Zagreb. The Directorate in Zagreb stated itself as unauthorized and referred the parties to the Regional Office.

Also, the complainants stated that they were not paid the compensation for the damage that resulted from their inability to enjoy their property belonging to them pursuant to Article 27 of Paragraph 4 of the Act on Areas of Special State Concern.

Undertaken measures: The Ombudsman requested a statement from the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia, Directorate for Exiles, Returnees and Refugees, in his official letter of 9 October 2006.

Two months later, the Directorate informed the Ombudsman that it requested from the Regional Office to establish the factual state, and a month later, the same Directorate delivered a copy of the rush note, since the Regional Office failed to deliver the requested statement at the first request.

Finally, the Directorate for Exiles delivered the Ombudsman on 27 February 2007 the requested report. It stated that the on-site investigation was carried out, that nobody was found at the facility and that a number of depositions were gathered from the neighbours, saying that the former temporary users still possessed and enjoyed the house in the summer, and that they had a usable dwelling facility in Zagreb, plus that they used a flat in Benkovac without any legal basis. As data in the land registers for the flat in Benkovac are not regulated, it is not possible to initiate court proceedings for the eviction.

The Directorate recommended the owners in the same statement to initiate court proceedings for the eviction and hand over of their property.

The Ombudsman then sent a new official letter to the Directorate, in which he warned them of several oversights:

- it is inexplicable how a house by the sea could be provided for temporary use to the persons owing a house in Zagreb,
- the competent state prosecution (not the owners) should file a lawsuit for the eviction, based on the request from the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia,
- the question demanding the reasons of failure to pay damage compensation (Article 27, Paragraph 4 of the Act on the Areas of Special State Concern) has not been responded to,
- as a result of arbitrary conduct of the temporary users, the Directorate is obliged to pay the owners the abovementioned damages, thus damaging the state budget, so the sum cannot be demanded regressively from the temporary users,
- if it is established that the temporary users are no longer using the house, the delivery of the property to the owners should be urgently carried out, with drawing up a record on the state of the property.

Case outcome: The case has not been concluded.

Note: Multiple violations of the regulations of the Republic of Croatia have been established in this case: recklessness in the use of the state budget means and violation of the rights of the owners, who are unable to enjoy their property even eight years after submitting the request, and allocation of private property to temporary users who own a house of their own.

Besides, it is evident that there is certain real estate owned by the state that is used without any legal basis, and which would be adequate for settling applicants' housing issues; however, this is not possible due to unregulated state of the land registers.

Compensation for the damage resulting from the inability to enjoy one's own real estate

Compensation of damage to the owners unable to enjoy their own property as it has been temporarily taken over and allocated to other users, was introduced in 2002 by the Act on Amendments to the Act on Areas of Special State Concern. Since then, many violations of the owners' rights have been noted in the work of the Exiles Directorate, in a way that they have been stalling the payout of the compensation in certain cases. After many attempts, citizens still address the Ombudsman for help in the realization of this right, to which they are entitled pursuant to Article 27, Paragraph 4 of the Act on Areas of Special State Concern. Although the contents of this provision is clear, it seems that the Directorate has not been paying out damage compensations since the expiry of the deadline for the statute of limitation concerning these claims nears. This has been confirmed by the cases for which the Directorate stated that there would be no payout since the statute of limitation came into force.

The Directorate concludes special contracts on the payment of the damages with the owners, in the form of a settlement. However, in some cases parties signed the "Settlement" with the Directorate, but they did not receive the compensation even a year after, so they addressed the Ombudsman for help.

The abovementioned provision of Article 27, Paragraph 4 of the Act on Areas of Special State Concern reads as follows:

"(4) The owner who has filed a request for the restitution of property and is not returned their property within the deadlines from Paragraphs 2 and 3 of this Article shall receive damage compensation from the state." (Deadlines from Paragraphs 2 and 3 are: 1 November 2002 or 1 January 2003, depending on whether the owner submitted the request for the restitution of property before or after the 2002 Act on Amendments to the Act on Areas of Special State Concern came into force).

The amount of compensation is determined by the Decision on the rate of compensation of damage to the owners whose property is not returned within the deadline, and it amounts to 7 HRK/m2 of dwelling area (Paragraph 1 of the Decision).

Paragraph 2 of the Decision reads that compensation shall be paid "starting from 1 November 2002 and 1 January 2003 until the eviction of the temporary user out of the owner's property."

We believe that this clearly determines:

- legal deadlines in which the competent ministry must meet its obligation of property restitution,

- obligatory compensation for damage to the owners whose property is not returned within these deadlines.

The quoted provision of Article 27, Paragraph 4 of the Act on Areas of Special State Concern stipulated important condition for the payment of damage compensation, which is the owner's filing a request for the restitution of property.

In the following example, the Directorate received the owner's request in the form of official letter, titled "Request for the restitution of property". However, the Directorate considers that the owner *did not* file the request, as it was not drawn up on a special form, which is an example of violation of the provisions of the Act on General Administrative Procedure (hereinafter: ZUP).

It is evident from the quoted provision of Article 27, Paragraph 4 of the Act on Areas of Special State Concern that the owner is not obliged to submit a request for the damage compensation, but that the request for the restitution of property is sufficient, plus the fact that his/her property is not returned within the deadline.

The procedure is not complex.

The Directorate should, at the latest by the eviction of the temporary user, establish the case file contains the following:

1. the owner's request for the restitution of property,
2. proof of the property ownership,
3. information on his/her bank account for the payment of the compensation for damage,

and, if needed, it should request from the owner to deliver the missing information.

However, this is not the case in practice.

The Directorate for Exiles, Refugees and Returnees regularly fails to respond to the parties' official letters asking for the payment of the compensation, sometimes for several years. For this reason, some cases have become statute-barred.

There were several cases this year in which the Directorate denied requests for the payment of damages, for the reason that the owners submitted request for the compensation of damage after they were handed over their property, but this irregularity was corrected after the Ombudsman's intervention.

As those are the citizens with low income, it was to be expected that they would not attempt to realize their rights in the civil proceedings before regular courts. It remains unknown how many owners were damaged as a result of their not addressing the Ombudsman.

The abovementioned "Settlement" contains several provisions, but two of them are particularly disputable.

The first, which states that by giving his/her signature, the owner waives his/her rights to claim interest (although the payment is overdue for several years).

The second disputable provision is the one stating that the "Settlement" shall be "cancelled… if the Ministry fails to meet its obligation to pay the compensation for the damage from Item…of this settlement for 3 (three) months in a row…"

It is inexcusable to impose on the other side to sign the provision by which the contract would be cancelled if one party (the debtor) failed to meet its legal duty within three months!

It needs to be asked why the parties even sign this "settlement". Because they have no choice: if they refuse the offered, they are only left with the possibility to initiate a court procedure (which presupposes hiring a lawyer and a multi-annual conduct of the court dispute). The abovementioned response can be applied to some other objections to the work of the Directorate for Exiles that will be illustrated in the text below.

The Ombudsman feels that this is the matter of making a settlement between two parties that are in an unequal position, where one of the parties abuses the difficult economic position of the other. It is hard to imagine that anyone would sign such a settlement (by their free will) without being forced to do it.

Another objection to the conduct of the Directorate for Exiles, Refugees and Returnees must be mentioned. Numerous owners of real estate on the territory under special state care offer the Directorate their houses for sale, and the Directorate makes decisions on it and gives order to the Agency for Transactions and Mediation in Immovable Properties for the conclusion of the contract on purchase.

However, the situation from the previous chapter repeats when concluding this contract. The Owners are offered a standard contract on purchase containing the provision that the owner, by signing the contract, waives claiming the compensation for damage arising out of the inability to enjoy their own property and obliges to withdraw the lawsuit, if he/she has filed one. This provision has been added to the text of the contract at the request of the Directorate for Exiles, Returnees and Refugees, as explained in the statement of the APN, requested by the Ombudsman.

This kind of conduct is unacceptable, for two reasons at least:

- we believe that this is also a kind of relationship between the two contracting parties that are not in an equal position,
- purchase of a house is a legal work that has nothing to do with claiming compensation for damage, recognized by law.

The described conduct of the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia – Directorate for Exiles, Refugees and Returnees, is contrary to the provisions of the Act on Administrative Procedure and the principles found in many documents and provisions of the Act on Areas of Special State Concern (Article 7), intended to encourage the return of the population that used to live in the areas under special state care before the Homeland War.

(1) Case description (P. P. -209/06): M. M. owns a house in G. K. that was in September 1996 allocated to M. T. for temporary use. The owner submitted in February 2003 a request for the restitution of property, and he asked for the Ombudsman's help in February 2006 as his property was not returned to him.

After the Ombudsman's intervention, the property was returned to its owner, but he was denied compensation for the damage that resulted from his inability to enjoy his own property, so the Ombudsman proceeded with the procedure.

The complainant enclosed with the complaint an excerpt from the land register and a copy of the postal confirmation of delivery from which it was evident that the request for the restitution of property was delivered to the Ministry of Public Works, Reconstruction and Construction on 6 February 2003.

Undertaken measures: The Ombudsman requested a statement on the complaint from the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia, Directorate for Exiles, Returnees and Refugees in his official letter of 6 March 2006 (to which he received no response) and of 26 May 2006. He also enclosed a copy of the postal confirmation of delivery in the official letters.

In August 2006 (three months later), the Directorate delivered the statement, saying that the owner had not filed request for the restitution of property, and that the commission's decision on the temporary takeover and use of property was annulled in 2003 and that the property was by this decision returned to its owner.

A new official letter was then sent to the Directorate, with a copy of the postal confirmation of delivery and a warning that the Directorate had not made a statement on the confirmation on delivery.

There was no response to this official letter either, so the Ombudsman sent a new, identical one to the Directorate on 30 November, to which he received response more than two months later.

It stated that the owner had not filed request for the restitution of property, and that he came into the possession of his property in September 2005 (which is not accurate, since the record on the introduction of the owner into his property contains the date of 16 August 2006, i.e. after the Ombudsman's intervention).

After it became obvious that the Directorate avoided making a statement on the postal confirmation of delivery from which it was clear that the request for the restitution of property was filed, insight was gained into the case file of the Directorate for Exiles, Refugees and Returnees, where the complainant's official letter (request) from 2003 was found.

It was established in an interview with an official person that the Directorate considered such a request as invalid, as it was not drawn up in a special form.

The Ombudsman considers such procedure illegal for more reasons:

- there is no regulation prescribing the form for submitting the abovementioned request,
- Article 66 of the Act on General Administrative Procedure stipulates that the body authorized for receiving requests is obliged to receive them,
- Article 68 of the Act on General Administrative Procedure stipulates that, if a submitted request contains a formal omission, the competent body must instruct the party to correct the omission and set the deadline within which it must be done.

The Directorate for Exiles acted contrary to the abovementioned provisions.

Since the Ombudsman's attempts did not produce fruit, he addressed the Minister in an official letter describing in details the abovementioned conduct of the Directorate and the reasons for which such conduct was unacceptable.

This official letter was not responded to by the Minister either, but by the Directorate for Exiles, Refugees and Returnees.

This statement repeated that the owner had not filed request for the restitution of property, and that the form for this request was "prescribed" by a guideline, delivered to the housing commissions. This guideline was not published, and we believe that even it had been, the party should have been instructed to correct the request and the deadline for its correction should have been set, in accordance with the provisions of the Act on Administrative Procedure.

New facts were for the first time stated in the same statement:

- that the house address was disputable in this case, so that it was impossible to link the party's official letter (of 2003) to the real estate, and
- that there were more persons with the same name and surname.

At the end of the statement, the signed assistant minister stated that this case was being "dealt with in accordance with the law."

This statement cannot be accepted either, as it is clear that each of the following documents in the file contained the same cadastral plot (1655/165) and the complainant's name and surname:

- the card of the check-up of the decision on allocating the property for temporary possession and use,
- the decision on the annulment of the decision by which the property was handed over to the user,
- the record on introducing the owner into his property, and
- an excerpt from the Land Register of the cadastral municipality of K.

Case outcome: The Ombudsman will demand implementation of administrative supervision of the Central State Administration Office. The complainant is left with the possibility to file a lawsuit before a regular court for the payment of the compensation.

Note: The above described conduct of the Directorate for Exiles is an example of violation of human rights and rules of the Republic of Croatia. Considering multiple warnings of the Ombudsman, "not finding one's way in the rules" is out of the question.

Housing relations – settling housing issues

The Ombudsman reviews the housing relations through the procedures implemented for the rights arising out of tenancy right – procedures for the transfer of tenancy right to a family member and for the purchase of flats. These procedures are solved in most cases. The jurisdiction of the administrative body for settling relations in the sphere of tenancy ceases after completing the procedures related to the tenancy right. However, since not all of the procedures have been completed, the citizens are still addressing the Ombudsman, complaining against the violation of their tenancy right.

The Office of the Ombudsman received altogether 107 complaints in 2006 from the sphere of tenancy.

Of those, 63 complaints referred to the settling of housing issues (there were only five such complaints in 2005), and 44 complaints were related to the purchase and lease of apartments, moving out of apartments, and other relations concerned with settling housing issues.

Since the implementation of the procedure for settling housing issues has only just begun, it can be expected that the number of complaints against the Ministry of the Sea, Tourism, Transport and Development will rise.

Although the authority of the administrative bodies for settling relations in the field of housing ceased after the Act on Apartment Lease came into force in 1996, the then Act on Housing Relations remained in force until today on the basis of explicit order from the provision of Article 52, Paragraph 1 of the Act on Apartment Lease. The Act on Housing Relations applies to all procedures that were initiated but not completed before the Act on Apartment Lease came into force. The notion of tenancy right is still important for the purchase of apartment to which tenancy right is acquired, since not all the cases of sale have been validly resolved. The reasons for which they have not been solved yet are often related to the conduct of other procedures, for the purpose of eviction, or establishing the nature of the dwelling space, or a legal basis for the apartment use, etc.

It can be expected that the number of complaints from the housing sphere will rise for the reasons illustrated below.

The notion of settling housing issue of former holders of tenancy right has raised the issue of the tenancy right again in the legal system of the Republic of Croatia. The work of the Directorate for Exiles within the Ministry of the Sea, Tourism, Transport and Development, competent for making decision on this right is in the centre of attention. However, according to the situation in 2006, the number of requests for settling housing issues and the degree of regulation of the available housing fund, the Directorate for Exiles is still not strictly specialized or teamed to settle housing issues in a fast, simple and efficient way and to implement procedures as a typical administrative body for housing relations.

The process of settling housing issues is slow (which is evident from the OSCE report of June 2006 and the report of the European Commission of November 2006). The housing issue has been solved for only an insignificant number of the former holders of tenancy rights.

As regards requests of the former holders of tenancy right for their housing issued to be solved, it has been noted that procedures are stalled for as long as several years from the day the requests are submitted. These citizens frequently address the competent ministry, but do not get any response.

Only after the Ombudsman's intervention does the Directorate for Exiles deliver the citizens *notifications* on whether their housing issues will be settled or not, but without stating the information as to the deadline (many complainant are elderly citizens), thereby jeopardizing the citizens' legal security.

Settling housing issues presupposes protected lease of apartment, currently without the right to purchase. As opposed to the citizens who were buying off apartments in accordance with

the Act on the Sale of Apartments to which there was tenancy right, only a person who does not own a family house or a flat on the territory of the Republic of Croatia and on the territory of the states developed by the break-up of the former Socialistic Federative Republic of Yugoslavia is entitled to have their housing issue settled, and if they did not misappropriate a house or a flat after 8 October 1991. So, although it is the matter of the same legal system, the criteria for recognizing the right arising from the acquired tenancy right, in this case, the right to have their housing issue resolved, differ from the criteria in the rest of the territory of the Republic of Croatia that were valid, e.g. for the right to apartment purchase (holder of the tenancy right cannot own a flat or a house in the same place).

The criteria according to which one can realize their right to an apartment on the territory under special state care are not transparent or clearly defined or distinct by kind, type and legal basis for the award of a state apartment.

Besides, the established list for settling housing issues is not publicly available, which would be a way to control the regularity of processing requests. A large number of citizens whose request was not settled stated irregularities in the order of solving housing issues, often stating the criterion of Serbian nationality, nepotism and suspected corruption.

Since those are mostly the citizens of Serbian nationality, all necessary actions need to undertaken to avoid the picture on their potential discrimination.

Application of the Act on Administrative Procedure

The Ombudsman seriously objected to the work of the competent Directorate for Exiles related to the requests for settling housing issues.

Settling housing issues is the right stipulated by the Act on Areas of Special State Concern. This Act does not contain any procedural provisions by which the competent body is to act after the party submits the request. However, Article 1 of the Act on General Administrative Procedure stipulates that the state administration bodies (and the bodies with public powers) are obliged to act upon this Act *"when deciding, in administrative matters, by immediate application of the rules, upon the rights, obligations or legal interests of the citizens…"*

Although these procedures concern making decisions on the parties' rights, no one actually implements administrative procedures or passes administrative deeds under these requirements.

A state apartment is granted for use by a document titled *"Consent for temporary settling of housing issue by granting an apartment for lease on the territory under special state care."* Consent is not granted after regular and complete administrative procedure was implemented, it does not have the character of administrative deed and, although other legal protection is not ensured, it does not give the applicant the possibility of protection through regular legal means (appeal), or the judicial control of the legality of individual deeds of administrative authority (Article 18 and Article 19, Paragraph 2 of the Constitution).

Some citizens filed complaints against the work of the Directorate for Exiles, Returnees and Refugees, which first delivered them the abovementioned *"Consent"*, and later a notification

titled *"Denial of consent for temporary settling of housing issue by granting the lease of apartment on the territory under special state care."*

As a result of such conduct in a number of cases, the Ombudsman sent a warning to the Directorate for Exiles, Returnees and Refugees, requesting from the Directorate to coordinate its actions with the Act on Administrative Procedure, but without any success, despite the meeting held at the Directorate.

The Directorate believes that the problem lies in the following: Should the requests for settling housing issues be decided on by administrative act, the parties could request the enforcement of the acts, although dwelling units and budgetary means might not be ensured for it at that moment. The Directorate was particularly warned about the cases in which the request would be denied, so it was not the matter of the problem of enforcement of an act, but of the legal insecurity of the citizens who were not provided with a legal remedy.

The solution of this problem is not simple: the number of requests has been constantly rising so it is impossible to draw up the final list of applicants, and the state does not dispose of sufficient financial means to settle all the requests at once or within the shortest deadline.

The following opinion of the Ombudsman was given to the Directorate: A possible solution lies in potential amendments to the Act on Areas of Special State Concern, in a way to integrate into it provisions that will regulate the procedure in detail, and primarily regulate the jurisdiction of the first-instance body (the legislator should have predicted this when passing the regulations, so it is unacceptable that the citizens should bear the consequences of this omission).

The citizens' requests would in this procedure be decided upon in a decision (i.e. by an administrative act) by which their rights and deadline for the realization of that right would be decided on. Additional act would decide on the concrete real estate or other details concerning the way of settling housing issue (since the state still needs to ensure the needed dwelling units).

This way enables the protection of the citizens' rights guaranteed by Articles 18 and 19 of the Constitution (i.e. the use of legal remedies).

The way in which the competent Ministry will further act is unknown.

The areas under special state care are a part of the Republic of Croatia in which the legal system of the Republic of Croatia has been in force since August 1995 ("Oluja", i.e. "the Storm"), i.e. January 1998 (reintegration of the Croatian Podunavlje). The citizens' legal security in settling housing issues has not been restored after eleven, i.e. eight years.

Furthermore, the citizens who have a lease contract for the use of a state apartment or a house on the territory under special state care are obliged to take over the costs of regular maintenance of the housing facility. However, the "*activities of regular maintenance"* also include those activities (work) that really need to be done in order to put a housing facility in the state for decent use (reconstruction). Those are houses that are mostly in poor construction state (due to multi-annual lack of maintenance and/or use and/or due to war damages). The owner is obliged to cover the maintenance costs from the reserve means.

Another noted problem is that some of the houses that have been allocated for lease (according to the complainants' statements) are inadequate for use, and the complainants still have to pay for the lease.

The Ombudsman's objection has several bases.

Firstly, it is not the matter of facilities granted for lease for the purpose of realizing profit, but, as follows from numerous expressions of political will, that provision of the Act on Areas of Special State Concern (Article 2, Paragraph 2) "…for eliminating the consequences of war, faster return of the population that had lived in those areas before the Homeland War, for encouraging demographic and economic development and achieving a more proportionate development of all territories of the Republic of Croatia."

The second argument is of legal nature, and it is contained in the provision of Article 12, Paragraph 1 of the Act on Apartment Lease: *"(1) The provider of lease shall hand over to the leaseholder an apartment in an adequate dwelling state."*

Although the application of the provisions of the Act on Lease is explicitly stated in Article 7, Paragraph 4 of the Act on Areas of Special State Concern, the competent Ministry does not apply the quoted provision.

Leaseholders are often in a difficult social position and are not in the situation to refuse the offered contract, as they could end up permanently without a place to reside in. They are at the same time unable to bear the costs taken over by the lease contract.

The Ombudsman proposed changes to the contract on the lease of housing facilities in the areas under special state care, in a way to determine the duty for the leaseholder to bear the costs of regular maintenance, but not beyond the costs for: painting the walls, ceilings, external and internal woodwork and minor urgent interventions.

Additional reason for inadequate (slow) realization of the procedure of settling housing issues lies in unregulated legal-property relations as regards the state-owned real estate. The condition for the state to grant a facility for lease is that the state must be registered in the land registers as the owner. Failure to carry out ownership registration and the unregulated state of the land registers represent major obstacles for the award of apartments in the procedures of settling housing issues. An example confirming this thesis is illustrated in one of the previous chapters (*see: Restitution of the temporarily taken over property*).

This problem has been noted throughout the country, but is particularly present in the areas of special state concern. When it is the matter of real estate owned by the state or by the local self-administration units, there is no justification for the current negligent attitude to this problem.

The efforts that the Directorate for Exiles has put into approaching more seriously to this problem and into enabling more urgent registration of real estate, registration of ownership and regulation of the state of land registers have been evident in the past few months.

Examples:

Most cases at the Office of the Ombudsman from the sphere of settling housing issues are identical and can be described in the following way. The applicants addressed the Ombudsman after waiting for two to five years for their request to be solved, without receiving any information on the status of the case. At the Ombudsman's intervention, the competent Directorate for Exiles would deliver information on the applicant's case, stating the following:

a) that the request has been registered (under a certain number), that the Directorate does not dispose of sufficient number of housing units, that the applicant will be taken care of in accordance with the valid regulations, or
b) that the applicant does not meet legal conditions for his housing problem to be solved.

Despite multiple warnings that such practice was not in accordance with the Act on General Administrative Procedure and that administrative procedures should be conducted in regard to the requests, the abovementioned Directorate failed to change the way of conduct in these cases.

Further text of the Report illustrates some specific examples of the cases from the housing sphere.

(1) Case description: S. M. owns a house near Plaški, which was damaged in the war, so he was granted the right to the reconstruction of the house. He submitted a petition in 2003 for the exchange of the right to reconstruction of his house in exchange of a house in Plaški, so that his children could attend school. The family has six members, and their only income is the social welfare support. The family was temporarily allocated a private house in Plaški for use until the purchase of the house they would be settled in. The complainant stated there were other vacant houses in Plaški that were falling apart as a result of non-use.

However, the owner of the house initiated court proceedings in which decision was reached that the complainant was obliged to pay the rent in the amount of 700 kuna. So he was to be evicted. After three year of waiting, he addressed the Ombudsman to speed up the settling of his housing issue, after which investigation procedure was initiated as regards the Directorate for Exiles and the APN.

Undertaken measures: The Directorate for Exiles responded in its statement that the procedure of settling his housing issue was underway and that decision would be reached in accordance with the regulations in force.

The APN was then requested to make a statement on the reasons of such long duration of the procedure of buying off the house. The APN informed the Ombudsman that the house the complainant was settled would be bought off *"when the Directorate for Exiles, Returnees and Refugees issues consent for the purchase of the facility in question"*, since the owner offered the house for sale.

A new statement was then requested from the Directorate for Exiles, Returnees and Refugees, and a notification was received (in the official letter of 9 February 2007) *"…that the purchase of the APN's facilities was suspended for the time being"*, and that the complainant was entitled to have his housing problem solved, and that the *"Final decision would depend on the possibilities at the given moment, and S. M. would be informed of it"*.

It is not clear from the abovementioned statement what this is all about: what the reasons for suspending the purchase of the facilities are and when the purchase will be continued.

As the Ombudsman believed that the state of uncertainty resulted in justified dissatisfaction on the part of the citizens, and that they should be given the reasons and an explanation for the newly occurred situation, he requested a statement on the abovementioned.

Case outcome: The case has not been concluded yet, and the Ombudsman is still undertaking actions to speed up its settlement.

(2) Case description (P. P. – 647/06): R. S. (born in 1931) stated in her complaint of 9 May 2006 that she submitted a request on 27 March 2003 for her housing problem to be solved, but it remained unsolved until today. She had the tenancy right during 35 years to the apartment she left during the "Storm". She returned five years later, but the apartment was occupied. Mrs. R. S. is in a difficult situation as she has no family, she lives in other person's house that the owner is selling and she will have to move out. She is an invalid; she lost her leg in a bombing during the World War II.

The complainant stated that there were vacant flats in Benkovac and that the solution for her housing problems could be found.

Undertaken measures: The Ombudsman sent an official letter to the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia, Directorate for Exiles, Returnees and Refugees, requesting them to speed up the case. The Directorate for Exiles wrote in its statement that the procedure of solving the complainant's housing issue was underway, but that they did not dispose of sufficient number of vacant housing units at the time, so they could not meet the complainant's request.

The Ombudsman subsequently (on 5 October 2006) contacted the Regional Office in Zadar, but he received information that the complainant was not a priority case and that they did not have information that the house she was currently living in was to be sold.

The Ombudsman sent an official letter on 29 December 2006 to the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia, Directorate for Exiles, Returnees and Refugees, in which he again described the complainant's situation, demanding urgent undertaking of every possible action. However, the Ministry's response was identical to the previous one.

Case outcome: Although four years have passed since the complainant filed the request, there is still no information on when her housing problem will be solved, or on her position on the request list or on the reason why her request is not on the priority list. The Ombudsman will keep monitoring this case and insisting on resolving it.

(3) Case description (P. P. – 1501/06): Mrs. M. S. obtained tenancy right to an apartment in G, Kneza B. Street, apartment 15 on the II floor, of 34.13 m2. The apartment was in 1986 allocated to her by the then RO, with the participation of Mrs. S. with 35 percent means of the apartment value. During the transformation implemented by the Privatization Fund on 10 February 1993, the value of apartments was not calculated into the stock capital of the company "K". The apartments were turned over for the management to the then competent funds in the housing and municipal economy.

Based on the acquired tenancy right to the apartment on the freed territory, the complainant submitted on 23 December 1996 to the Municipality of G. a request for the purchase of the apartment. The Municipality of G. neither requested from the Government of the Republic of Croatia, in the period from the receipt of the request for the purchase to the submittal of the complaint, approval for the sale of the apartment, nor did it undertake any actions in the procedure of the apartment sale.

Ten years after submitting the request for the purchase of the apartment, the Directorate for Exiles issued only the Consent for temporary solution of the complainant's housing problem, by granting her for lease an apartment on the territory under special state care.

As a holder of the tenancy right, the complainant has until today not realized her legal right to purchase the apartment via court, in a lawsuit aimed at reaching decision which entirely replaces the contract on the purchase of apartment.

A ban on disposal of the apartment has not been established for the apartment in G. and it remains unclear why the request for the purchase of the apartment with the Directorate for Exiles was taken as a request for settling housing issue. This *Consent for settling housing issue* actually takes away the legally guaranteed right to apartment purchase. It only announced the conclusion of a contract on the apartment lease. The consent was not issued after the implemented regular and complete procedure, it has no character of administrative deed and it does not give the applicant the possibility to protect the acquired right (Articles 18 and 19 of the Constitution).

Undertaken measures: Starting with the form and contents of the *Consent* of 7 November 2006, the Ombudsman warned that decisions on the citizens' rights could be reached exclusively by administrative acts.

Case outcome: The Office of the Ombudsman did not receive the statement about the objection against the denial of the right to apartment purchase.

(4) Case description (P. P. – 1136/06): M. O. and her family live in a state apartment in K. She never left the apartment and has lived in it for 36 years, since 14 January 1970. She proves the fact of uninterrupted tenancy with the contract on the use of the apartment concluded between the housing firm K. and M. O. She was late with submitting the request for the purchase of the apartment on the basis of the acquired tenancy right due to her unawareness. She signed the Contract on the lease of the apartment with the protected lease on 4 April 2006, and it was delivered to the other contracting party, i.e. to the Directorate for Exiles, Returnees and Refugees, on 6 April 2006. However, the signed contract was not returned to the Regional Office in K. for the purpose of its delivery to the tenant, until the day she submitted the complaint. She believes she has been put into the state of legal insecurity without any reason and legal basis.

Undertaken measures: This is the matter of an inarguable and simple case (acquired tenancy right was neither taken away nor could it cease, since she never left the apartment), and the Directorate for Exiles was requested to make a statement about the complainant's objection that she was being kept for ten years in the state of legal insecurity.

Case outcome: The Directorate for Exiles failed not only to deliver the statement about the objection against the stalling of the case, but also to deliver notification on whether the contract on the apartment lease was concluded. It only delivered a notification that the Directorate offered on 22 March 2006 the conclusion of the contract on the apartment lease.

Property confiscated during the Yugoslav communist rule

During 2006, altogether 49 of the citizens' complaints from this sphere were being processed, of which 29 were newly filed and 20 were left over from the previous years. Compared to 2005, when 40 new complaints from this sphere were received, and altogether 60 were in process, this year saw a significant decrease.

The reasons for this do not lie in major improvement concerning their settlement, but it can be ascribed to the discouragement of potential applicants. 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.

Such complaints are entirely justified if taken into consideration that these administrative procedures not only break records, in terms of their duration, in the administrative matters in general, but exceed the duration of individual civil proceedings before the courts, to whose unduly duration the public is especially sensitive.

These are mostly elderly citizens who understand that they will probably not live long enough to see the procedure end and to get their property back, i.e. to get compensation for the confiscated property, or to see the injustice that was done to them corrected.

The bodies of both instances which make decisions on the requests and the bodies with the position of a party in the procedure – State Prosecution of the Republic of Croatia, Croatian Privatization Fund and the Fund for the Compensation of the Confiscated Property, which file appeals, almost without an exception, against the decisions on the restitution, i.e. on the compensation for the confiscated property, bear most of the guilt for the stalling of the procedures.

It must be pointed out that certain first-instance bodies failed to deliver the reports requested by the Ombudsman even after they were sent a number of rush notes.

As it has already been pointed out in the last year's report, the Ombudsman again has serious objections to the work of the Ministry of Justice, which fails to deliver the requested reports within legal deadline.

Even when the report arrives after several months, the Ministry's explanation is always the same in each report (see the described examples).

Due to the described situation, the Ombudsman requested a special report from the Ministry of Justice, with the information on the entire state related to reaching decisions in this sphere, as well as on the number of available executors, with a summons to the Directorate to propose measures that need to be undertaken to decrease the number of the leftover cases pending

decisions and to enable prompt acting on the part of the Section for the Second-Instance Administrative Procedures.

However, the Ombudsman did not receive the requested report even upon the expiry of the set deadline, to the conclusion of this Report.

Unfortunately, conclusion can be drawn that, regardless of the decrease in the number of complaints, no improvements have been made in this field compared to the state described in details in the last year's report.

Since the cases from this sphere have been conducted for ten years, the Ministry of Justice should put their efforts into the analysis of the problems and state their opinion on the causes of such situation.

Examples:
(1) Case description (P. P. – 1231/06): Complainants T. J., N. J. and S. J. of Vukovar addressed the Ombudsman in a complaint against the long duration of the entire, and of the second-instance procedure before the Ministry of Justice, as regards their request for the restitution, i.e. compensation for the confiscated property. They stated that, after they had filed request on time (30 June 1997), they received from the first-instance body a decision on denial on 30 January 2004, i.e. seven years later. They filed appeal against the decision within the legal deadline (4 March 2004) with the Ministry of Justice, but the appeal has not been decided upon yet.

Undertaken measures: The Ombudsman requested on 17 October 2006 a report from the Ministry of Justice on the reasons of their failure to reach decision on the appeal within the deadline set in Article 247 of the Act on General Administrative Procedure.

Case outcome: The Ministry of Justice notified the Ombudsman on 15 November 2006 that they did not reach decision on the complainants' appeal due to a large number of second-instance appeal cases. It stated that they dealt with the cases by order – to avoid objections concerning the preferential treatment of certain parties.

Note: The final decision has not been reached in this case although the administrative procedure has been lasting for more than nine and a half years.

The violation of the complainants' right to get decision on their request has not been removed. The complainants have not used their legal right from Article 26 of the Act on Administrative Disputes.

(2) Case description (P. P. – 1817/05): Mrs. G. Ž. of Mali Lošinj addressed the Ombudsman on several occasions, in a complaint against the work of the Ministry of Justice, due to unduly long procedure related to her appeal of 23 July 2001 against the decision of the State Administration Office in P. County, Branch Office M. L., in the procedure of the restitution of the confiscated real estate. The complainant stated that her rights were violated, since the appeal was in the second-instance process since 7 September 2001.

Undertaken measures: The Ombudsman requested from the Ministry of Justice a report on the reasons of their failure to reach decision on the appeal within the deadline set in Article 247 of the Act on General Administrative Procedure.

Since the Ministry of Justice failed to act upon the Ombudsman's request of 14 February 2005, the Ombudsman sent a rush note on 28 November 2005.

Case outcome: The Ministry of Justice responded a year later. It informed the Ombudsman that the second-instance decision was reached on 24 March 2006, with an explanation that the appeal in question could not be decided on sooner due to a large number of he second-instance appeal cases.

Note: There has been severe violation of the complainant's rights to have her appeal decided on within a legally prescribed deadline. The Ministry of Justice reached decision on the case after four and a half years.

Slowness in dealing with the case and ignorance of the duty on the part of the state body, prescribed in Article 11 of the Act on Ombudsman is evident. The Ministry delivered the report to the Ombudsman a year and nine months after the latter's request, and eight months after the decision on the appeal was reached.

(3) Case description (P. P. – 642/05): Mrs. V. D. K. of Z. addressed the Ombudsman due to her inability to realize the right to compensation for the property confiscated from her family in 1948. The key objection from the complaint was the one on disrespecting the deadline in which administrative procedure was to be conducted before the State Administration Office in Zagrebačka County, Branch Office D. S. and concluded by the decision on the compensation.

Undertaken measures: The Ombudsman warned the competent Branch Office in D. S. on 1 September 2005 of the violation of the complainant's rights by failing to reach the decision, and requested a report in the case in question.

It follows from the report received from the Branch Office D. S. on 12 September 2005 that the first-instance decision was reached on 20 July 2005, against which the Croatian Privatization Fund and the Fund for the Compensation of the Confiscated Property filed appeals. The Ombudsman was also notified that the procedure needed to be supplemented by the expert evaluation on the spot, which the competent service obliged to do within as shortest period as possible after appointing an expert witness from the construction profession.

In the further development of the investigation procedure, the Ombudsman requested in his official letter of 13 March 2006 a notification from the Branch Office in D. S. on whether the procedure was in the meantime concluded.

Since the Ombudsman did not receive the requested notification, he sent a rush note to the competent service at the Branch Office 60 days later (on 15 May 2006) and set a 30-day deadline for the delivery of the report.

As the competent service at the Branch Office in D. S. failed to deliver the report to the Ombudsman after further 120 days passed, the Ombudsman sent another rush note on 19 September 2006 for the delivery of the report, with the warning to the competent service of its duty to fulfil the obligation as a state body from Article 11 of the Act on Ombudsman.

After another 60 days passed since the last request of the Ombudsman (23 November 2006), i.e. after altogether eight months passed since the request for the report was sent, the

Ombudsman sent a final call to the competent service at the Branch Office in D. S. to deliver him the report without delay, or he would notify the Croatian Parliament and the public about it.

Case outcome: The Ombudsman has not received the report requested from the Service for Physical Planning, Environmental Protection, Construction and Legal-Property Affairs within the State Administration Office in Zagrebačka County, Branch Office Dugo Selo, despite of the warnings (and after one year has passed), so he is via this Report for 2006 notifying the Croatian Parliament of this case.

Construction and physical planning

Altogether 59 received individual complaints in 2006 in the field of construction and physical planning, compared to 109 complaints in 2005, can lead to a conclusion that the citizens turned to the Ombudsman in much smaller number of cases than in the previous reporting period, in order to protect their violated or jeopardised legal and constitutional rights due to construction works or changes in spatial situation. However, the nature of complaints has been changed, and so have the reasons for which they were filed in 2006. On the other hand, the overall number of citizens that complained is much higher than the overall number of individual complaints because complaints about the implementation of enforced removals and about the completion and enactment of physical plans for municipalities and cities, even though submitted in effect by groups of citizens, were registered and considered as a single complaint.

Construction

Complaints related to building permits were in 2006 mostly submitted by investors, or those citizens that initiated a procedure for building permit issuance, unlike in earlier years when the Ombudsman's protection for that reason was largely requested by neighbours. In this reporting period complaints were received for the cases of renewal of validly completed procedures for building and location permit. Renewals of procedures are a consequence of the annulment of valid administrative acts (location and building permits), in an extraordinary procedure by right of supervision. The basic reason for an annulment of a valid act is the violation of the rules of administrative procedure, most often because of the violation of the rule related to act delivery to parties/interested neighbours. It is usual that, in the case of a renewal of the procedure, administrative acts are first examined only in that part in which the administrative procedure has been violated, and only later, following the repeated appeal of a party, also because of the violation of substantive rights. A procedure based on a request for building permit issuance is even several times sent back to the first-instance procedure. In such cases a renewed procedure, and in particular the first-instance renewed procedure in which only those irregularly carried out actions should be done in a regular manner or a documentation which is an integral part of building permit should be completed or corrected, is mostly carried out beyond the legal deadline determined for bringing decision, or beyond a reasonably established period during which such a renewed procedure can objectively be completed.

Citizens mostly regard that the work of the construction inspectorate is not prompt. Such an opinion comes from neighbours whose way of enjoying their real estate is disturbed by illegal construction or such construction inflicts damage to them. The citizens think that, following a report, the building inspectorate does not pursue supervision in the shortest term, and even

when it does, it takes several years – six, seven or eight years at best – for the final outcome, something that does not make the situation simple and easy. The previous report from 2005 also warned about this problem when it also suggested a way by which the ministry's inspectors could be relieved of a part of their duties and deadlines shortened. However, in the meantime the Construction Act has not changed, and consequently no improvement in promptness has been reached.

Subjective impression of the citizens about the work of the building inspectorate gives a negative perception of the building inspection. Such perception is a consequence of discordance between regulations and practice. Even though this discordance is obvious, it can not be stated that a rule is not proper or that it is unconstitutional nor it can be said that the work of the building inspectorate in practice is completely illegal or wrong.

The thing is in the following: for implementation of an enforcement procedure, i.e. removal of an illegal building, it is established that an appeal against an inspection decision does not postpone the actual enforcement, which means it can be done without any postponement. On the other hand, the same Construction Act allows dragging on with the enforcement because of a 10-year statute of limitations rule.

According to the building inspectorate's practice so far, enforcement procedure is regularly not carried out immediately, and certainly not before there is a valid decision that illegal construction took place and before all facts related to the real estate to be removed are checked (with other competent bodies). Ensuring a valid decision means that an illegal constructor was beforehand in position to take advantage of all legal means, and that procedures taking into account all those legal means were completed by a decision and verdict.

However, it remains unclear to what extent rules and practice fulfil the real goal for which there was a reason for an order by a construction inspector (an order for suspension of building is most often followed by an order for removal), if that goal is reached after a number of years. The citizens can not protect their right simply, quickly and effectively, while the Ombudsman can in such cases engage in the protection of the complainants' rights only on the basis of the principle of justness.

Protection of the violated right to keeping housing facilities was also requested by the citizens who did not enforce themselves the inspection decision on the removal, but it was done by the Ministry, via other person. The key objection of these complaints is that, on one hand, there was no legalization procedure ex officio in the period from 1992 to 1995, i.e. procedure for keeping the facilities, whereas now, on the other hand, tearing down is ordered ex officio. However, as these were complaints with general objections, and not individual cases with concrete data, there was no separate investigation procedure as regards these complaints.

It must be pointed out that not in a single case in which the Ombudsman carried out investigation procedure was it established that the self-administration unit stated request for the enforcement of inspection decision, to carry out the enforcement within shorter deadline or within the one determined by the construction inspector. The reason for it may have been the fact that the unit would in such case, with the local self-administration rushing the removal, have to cover the costs of enforcement until receiving payment from the executor.

Illegal construction is entirely left to the exclusive responsibility of the central state authority and at the expense of the state budget.

As opposed to construction inspectorate that delivered comprehensive reports within the delivery deadline, thereby providing the Ombudsman with the necessary data, the Service for Appeals and Administrative Supervision of the Ministry of Environmental Protection, Physical Planning and Construction failed to deliver the requested information and reports regularly, but only after the Ombudsman sent a number of requests. It must be pointed out that the Service did not accept the Ombudsman's proposals given in individual cases, i.e. it did not act upon the proposals.

Complaints from the sphere of physical planning 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.

Examples:
Building permit
(1) Case description (P. P. – 567/06): Lj. T. of V. G. obtained valid location and construction licence and performed works on the facility. The complainant found herself in a dead-end situation when, based on the urban inspectorate's instruction, procedure was initiated for the annulment of the valid location licence, based on the right of supervision. Extraordinary administrative procedure was initiated because the urban inspectorate found that advertising location permit on the notice-board of the first-instance body, which was done after three unsuccessful deliveries of the licence to the first neighbour, could not be considered a properly done delivery of an administrative deed.

Mrs. Lj. T. addressed the Ombudsman since she believed that the valid location and construction permits, as well as the construction started and performed on the basis of these deeds after they became valid, were subjected to unreasonable procedures of the Ministry of Environmental Protection, Physical Planning and Construction, and that there was no logical and legal justification for these procedures. The complainant also held that the Ministry's procedures and actions put her in an unequal position compared to the other interested party.

Undertaken measures: It was assessed in the investigation procedure initiated before the Ombudsman that the complainant's rights were severely violated. The Ombudsman therefore decided to intervene for the protection of her rights before the conclusion of the administrative matter with the Ministry.

As regards location permit, the Ministry was warned of the oversights in the second-instance procedure. This permit was nullified for the reasons that could not be considered as having influence on the annulment of the legal consequences that the valid permit already produced. The Ombudsman's warning was confirmed by issuing a "new" location permit in the renewed procedure, by which the requested construction of the family house was approved in all elements in the same way. The Ombudsman's attitude was confirmed by the last second-instance decision of the Ministry, of 6 October 2006.

Due to the nullified location permit, a new procedure was initiated for the purpose of issuing a valid construction permit, so this permit was nullified, too. The Ministry was therefore

proposed a way to complete the renewed procedure concerning the issuance of construction licence, i.e. primarily for the purpose of settling the issue of Mrs. T.'s house in a way that would not be detrimental to the party. The Ombudsman's intervention was necessary because of the Ministry's attitude as regards the settling of such cases. According to the legal practice, a new or another construction licence has to be issued in each case of issuing a new or another location permit.

However, it was established in this case that at the time of passing the second-instance decision on the construction licence, the factual state remained the same as at the time of issuing (the former, nullified) construction licence. There is a final administrative deed – location permit, on the previous issue, of the same contents, but with different classification mark and date of its issue.

Since administrative decisions are reached on the basis of the factual and legal state at the time of their issuing, it is considered that the second-instance body can solve the issue of the construction licence in this case legally and validly by returning the case to the first-instance body, with an instruction to replace the former decision ex officio with a new one, i.e. with a new construction licence.

The practice of the Ministry according to which the investor, in spite of having a valid construction licence, an identical new location permit and all necessary consents, and after having paid municipal contributions, the main project and fulfilling all other conditions, should now, according to the Ministry, have to initiate a separate procedure again for issuing a construction licence, is not acceptable.

It is impermissible to force the investor for formal reasons to initiate a new procedure due to omission made by the state body outside the regular course of procedure. It would constitute actions to the detriment of the investor. The same attitude was taken at the session of the Legal-Property Department of the Administrative Court of the Republic of Croatia of 13 March 2006.

Case outcome: Unknown. The Office of the Ombudsman did not receive the requested statement within the set deadline. For unknown reasons, the second-instance procedure was not concluded within a legal deadline. The complainant is not familiar with the legal status of the construction licence she owns.

(2) Case description (P. P. – 1315/05): L. D. of Z. addressed the Ombudsman for the purpose of realizing his right to obtain a construction licence. He complained against the work of the Ministry of Environmental Protection, Physical Planning and Construction as the second-instance body. After the Ministry authorized renewal of the procedure related to the valid location permit, the construction licence was subsequently twice nullified in the second-instance procedure.

L. D. decided to ask the Ombudsman for help after he came into possession of the Ministry's official letter, by which the county Service for Physical Planning, Environmental Protection, Construction and Legal-Property Affairs was given additional remarks and a guideline for the enforcement of a new procedure concerning the construction licence, outside the second-instance decision. According to the complainant, the second-instance body took the side of the complainant by this instruction, by expanding the appeal statements and thereby the case to be acted upon.

Undertaken measures: The construction licence was for the second time sent to a renewed procedure. Due to suspicion that constitutional and legal rights of the investor/complainant were violated in the second-instance procedure, investigation was conducted with the Ministry of Environmental Protection, Physical Planning and Construction.

The Ministry was requested to gain insight into all files and re-examine: (1) the extent to which the appeal reasons actually presented a basis for the nullification of the construction licence and (2) if the second-instance procedure was carried out in a way to violate the investor's/complainant's rights, by indirectly benefiting the persons with the status of a party and complainant in this procedure regarding the construction licence.

Although it was specifically pointed out that the nature of this legal matter did not allow for postponement, the Ombudsman did not receive the requested data within the set deadline of 30 days. The Ombudsman therefore repeated the request, with a note that the proposal for re-examining the reasons for the nullification of the construction licences, particularly the "second construction licence", was given so that the facts that were stated as questionable could be established (i.e. if the delivery of the location permit to the interested parties was carried out). It must be emphasized that the key reason for the Ombudsman's intervention were the circumstances of this individual case, referring to the previous administrative deeds and individual actions, for which remained unclear why they were undertaken in the procedures that immediately preceded or followed the administrative deeds.

The Ministry stated their attitude on the Ombudsman's rush note, saying that all the measures that the Ministry undertook in this case were founded, and that they were undertaken in order to speed up the conclusion of the administrative procedure.

In the meantime, the County Service for Construction granted a construction licence on 30 June 2006 in the renewed procedure. Appeal was filed against this licence, and the case file was on 17 July 2006 for the third time sent to the Ministry to be dealt with.

The investigation procedure was continued by searching for the data on the last decision. It was expected that this procedure would only include a check-up on whether the (last) construction licence was granted in accordance with the instructions from the earlier second-instance decision, which meant that decision on the appeal could be could be reached within a two-month deadline from Article 247, Paragraph 1 of the Act on Administrative Procedure.

The second-instance decision was reached after the expiry of the legal deadline of two months. The Ministry notified the Ombudsman of the outcome of the last second-instance procedure only over a month after the decision was reached. The construction licence was nullified again and the case was returned to the first-instance body for a renewed procedure. The construction licence was this time cancelled because the projects were not coordinated with each other or with the textual part of the construction licence.

Although the location permit acquired the character of finality, a part of the explanation of the second-instance decision refers to the shortcomings of that permit. On the other hand, objections to the main project mostly referred to the lack of coordination of that project with the location permit.

The explanation is extensive and unclear, since it does not explicitly state if the renewed procedure should eliminate the shortcomings of the location permit from the previous procedure, or just eliminate the shortcomings in the architectural project, which are described in details.

Case outcome: Since administrative procedure has been initiated, but a renewed procedure should be initiated, too, the investigation procedure before the Ombudsman is for now over. The complainant has been in the state of legal insecurity since 2002. He initiated administrative dispute against the Ministry's decision by which his construction licence was for the second time nullified. He also announced that he would request court protection against the last decision by which the construction licence was for the third time sent for a renewed procedure.

(3) Case description (P. P. – 121/06): V. K. of Z. asked for the Ombudsman's protection since she believed that the permitted construction of a replacement facility on the neighbouring plot violated her right to the past way of dwelling and peaceful enjoyment of her apartment. Construction changes to the apartment on the neighbouring plot have decreased the value of the dwelling facility of the complainant, apartment's exposure to the sun has been reduced and the green area has been endangered. According to the complainant, the reasons for this state lie in unequal criteria and the way of work of certain services of the Ministry of Environmental Protection, Physical Planning and Construction, authorized for the implementation of the second-instance procedure and supervision of the construction. She therefore asked the Ombudsman to re-examine the procedures related to issuing location and construction licences and promptness of the work of the construction inspectorate.

Undertaken measures: Investigation procedure was initiated at the Ministry of Environmental Protection, Physical Planning and Construction and with the City Office for Construction. The Ombudsman requested from the construction inspectorate to implement the procedure of supervision of the construction licence ex officio, and to deliver him a report on the supervision carried out at the construction site and on the established factual state.

As the Ministry implemented two separate procedures for the location permit, i.e. appeal-based procedure and supervision procedure, in which different decision were made in the same administrative matter (appeal was rejected, location permit was nullified by right of supervision), a special report was requested on it.

Due to a changed factual state resulting from the nullification of the location permit, the City Office for Construction initiated the renewal of the procedure ex officio concerning the construction licence. The investigation procedure was for this reason implemented with the first-instance body, too, for the purpose of gathering information on the validity of the construction licence.

Case outcome: After receiving all the requested reports, it was established that the construction inspectorate carried out supervision of the construction and that the construction was carried out in accordance with the construction licence, both as regards the number of storeys and the ground plan. Although, based on the construction inspector's proposal for the annulment of the location permit by right of supervision, it was established that the location permit was not issued in accordance with the provision of Article 60 of the Decision on the Enactment of the Mater Plan for the city of Z. for overstepping the deadline for reaching decision by extraordinary legal means, the permit became valid (ruling of the Administrative

Court, No. Us-771/2006-5 of 6 September 2006). After the location permit became valid, the reasons for the implementation of the procedure of renewal of the construction licence ceased.

As the administrative deeds by which the form, size, location on the plot and construction were approved became valid, the investigation procedure before the Ombudsman was over.

The complainant was referred to realize the protection of her violated ownership rights (right to possession, peaceful and undisturbed enjoyment of ownership, neighbouring rights) in court.

Note: The Ombudsman did not investigate to what extent the influence of this (then planned) construction on the neighbouring land and facilities was taken into consideration in the procedure of issuing the location permit, to what extent the neighbouring housing facilities presented the factor of limitation in the space, and whether the existing state was sufficiently taken into consideration, since these were the questions that required special expert opinion of the architectural profession. The Ombudsman did not discuss the issue of endangerment of the neighbouring existing facilities resulting from the construction of the replacement facility (whether the facility was secured against sliding, as the terrain was sloped), since it required opinion of the construction profession.

Construction inspection

(1) Case description (P. P. – 1128/06): Mrs. A. B. of Z. filed complaint against the work of a construction inspector related to her report of illegal construction. She believed that, as the submitter of the report, she clearly stated that she was an indirectly interested party.

However, as she did not participate in the supervision procedure on the spot, she suspected that the construction inspector did not carry out the supervision at all. She indicated the possibility of extending preferential treatment to the investor D. B., as he was a permanent court expert witness for real estate.

Undertaken measures: The Ombudsman requested from the Directorate for Inspection Activities of the Ministry of Environmental Protection, Physical Planning and Construction to deliver the record on the supervision carried out on the marked site, i.e. on the supervision of the constructed paved roofed terrace, of 1 x 3 metres in size, erected on the concrete foundations, at a four-step height.

Case outcome: Instead of delivering the requested record on the implemented supervision, the Office of the Ombudsman received a report, on the basis of which it was established that an on-site investigation was carried out again, for the purpose of establishing a complete factual state. The repeated procedure identified the construction which required a construction licence. Since the investor did not obtain the necessary licence, order was issued for its elimination.

(2) Case description (P. P. – 766/06): D. D. of O. complained against the work of the construction inspectorate. Mrs. D. stated that the investor failed to follow the construction inspector's order to suspend the construction that he performed contrary to the construction licence, but instead, he continued with it. According to the complainant, the construction inspector did not act upon her report of the further (illegal) construction or upon the request for the implementation of competent procedure. The complainant addressed the Ministry of

Environmental Protection, Physical Planning and Construction on two occasions (8 July 2002 and 26 September 2005), but both times unsuccessfully.

Undertaken measures: The Directorate for Inspection Activities was requested to inform the Ombudsman on the reasons for which the procedure of the construction inspector was not carried out and completed in this case in accordance with the Act on Construction.

Case outcome: The entire procedure in this individual case, from the date the irregularity was established to the enforcement, lasted beyond a reasonable period. However, there was no objection to irregular work, as the deadline was extended due to implementation of the second-instance procedure.

The procedure of forceful enforcement, according to the report of the Directorate for Inspection Activities, will be implemented after the completion of the second-instance procedures, initiated by the appeal against the decision on the removal and the conclusion of the enforcement permission.

(3) Case description (P. P. – 1047/06): S. and M. K. of Z. stated that the failure to implement the procedure of enforcement of inspection decision violated their right to healthy life and living in healthy environment (Article 69 of the Constitution). It is the matter of removing a business facility (a printing house). The complainants believe the business facility threatens the fundamental rights of their family, and their next-door neighbours. It has been illegally built on the narrow area of the protected water-pumping site M. M., poisons of II and II group are used for their business activities and the packaging waste is not handled properly. In order to prove the statements from their complaint, the complainants provided the Ombudsman with the official letters on the actions undertaken by the sanitary inspectorate, environmental protection inspectorate, Water Supply and Drainage Ltd. Z.

Undertaken measures: Based on the documentation delivered with the complaint, it was established that the inspection supervision of this business facility was for the first time initiated in 1993, that the procedure for its legalization was unsuccessful, since the location permit was twice nullified by the Ministry's decision. The first order for the elimination was stated in 2001, and the last by the construction inspector's decisions of 27 December 2004 and 11 May 2006. The investors appealed against all the inspectorates' decisions. The complainants were in June 2004 informed that the procedure of verifying the fact related to enforcement was underway. The enforcement procedure was not implemented until the date the complaint was filed on.

The Directorate for Inspection Activities delivered the requested report on the measures that the construction inspectorate and the environmental protection inspectorate undertook as regards the business facility (printing house) since 2001 and on the procedures and measures undertaken by the economy and sanitary inspector and the City Office for Physical Planning and Construction.

The Construction Inspectorate disposes of the information that the investors obtained three location permits for this business facility in November 2006: for the construction of a family house, home for the elderly and frail persons and for the access road to their and other plots. Those were location permits for the transformation of the existing (business) facility. The investors obviously gave up performing printing and publishing activities, after the "Water

Supply and Drainage Ltd." refused to give its consent for a printing house on the narrow area of the protected water-pumping site M. M.

As earlier decisions were nullified, a new inspection procedure was implemented. The decision on the transformation of the facility and the information that the location permits for the transformation of the business facility are not final and valid are the reason for which a forceful removal has not been enforced. Decision on the continuation of the procedure of administrative enforcement of the inspection decision will be reached after the completion of the administrative procedures for the transformation of the facility.

Case outcome: Investigation of this case has not been concluded yet. Despite the ban, ordered indirectly via decision on the removal, business activities are still uninterruptedly performed on the site on which they are not permitted. The procedure with the city water-law inspectorate has been proceeded with.

(4) Case description (P. P. – 646/06): Mr. D. Š. of H. reported the case of illegal construction on the site M. bb. According to the complainant, those were the facilities of the tourist company titled "T. f. p.", owned by O. and A. P., i.e. accommodation facilities from the apartment group and a mixed goods store with a parking space. The construction inspectorate ordered in its supervision procedure suspension of further construction and the removal of concrete walls. Construction of the same facilities (two facilities) was also banned by the interim measure of the Municipal Court in S. G. However, the construction inspectorate's orders were not enforced; moreover, based on the decision of the County Service for Economy in H., the apartments (although completed after the order on the suspension of the construction was issued) were classified into III category, marked with three stars. The County Department for Economy, Development and Reconstruction approved a loan for the same facilities with the subsidized interest of three percent in the amount of 1,520.000 kuna, and granted concession for performing activities on the shore-line (rental of sun beds, parasols and boats).

Although these facilities were built and annexed without a construction licence, and although they are used without the certificate of occupancy, the State Inspectorate and the Ministry of Economy, Labour and Entrepreneurship recognize the decision on establishing minimum technical and other conditions of the space and equipment of the tourist-trade craft "T. f. p.", issued to the owner four years ago.

Undertaken measures: The Ombudsman requested a comprehensive report from the Directorate for Inspection Activities within the Ministry of Environmental Protection, Physical Planning and Construction on the established factual state, together with the data on the implemented procedure of supervision of the enforcement of inspection decisions.

Although the Ombudsman requested a report from the construction inspectorate due to illegal construction and use of facilities without having a certificate of occupancy, the construction inspectorate also notified the Ministry of Economy, Labour and Entrepreneurship on this case. According to the explanation delivered to the Office of the Ombudsman, at the time of registering and commencing with the business activities, it was sufficient for the owner to have a decision on the establishment of minimum technical and other conditions regarding the space and equipment of the tourist-trade craft.

The construction inspectorate carried out a control examination on the site. The Office was notified that a check-up of all the facts related to the implementation of the procedure of enforcement of the decision on removing all illegally performed works was underway. Conditions for the implementation of the inspection decision were met after the investor's request for obtaining a location permit was denied and after the final decision established that the post-construction state could not be legalized. The delivered report contained the information that an administrative dispute against the Ministry's decision on the denial of the appeal related to location permit was underway before the Administrative Court of the Republic of Croatia.

Case outcome: The Ombudsman's procedure is considered to be exhausted. It is expected that the procedure of enforcement will be implemented upon the completion of the administrative dispute, i.e. after the issue of location permit (for annex construction) is validly decided on.

Physical planning

Case description (P. P. -355/06): Z. L. of M. filed complaint against the lack of coordination between the proposal of the Physical Plan for the Development of the City of M. and the final proposal of the Physical Plan for the Development of the City of M. According to the complainant, the City Government passed the Final Proposal of the Physical Plan for the development of the city of M. contrary to the proposals and remarks from the public discussion on the proposal. Although the holder of the plan creation accepted the proposals and remarks, they were neither included in the Final Proposal of the Plan, nor was any explanation given.

The key objection referred to the south-east part of the peninsula "O", i.e. to the allotment, due to keeping most of the plots in the "green area". The complaint also contained a serious objection to the procedure of reaching the final proposal for the Physical Development Plan.

Undertaken measures: The Ombudsman requested from the City Government a detailed response to the statements from the complaint. He also requested information on the procedure for establishing the final proposal of the plan and the information whether the procedure of issuing consent for the Plan in question was completed.

As the City Government of the self-administration unit failed to respond to the Ombudsman's call, the investigation procedure was continued with the Ministry of Environmental Protection, Physical Planning and Construction.

The Directorate for Physical Planning of the Ministry of Environmental Protection, Physical Planning and Construction delivered at our request a response to the objection that the Government of the City of M. passed the Final Proposal for the Physical Development Plan for the City of M. contrary to the proposals and remarks submitted in the public debate on the proposal for the Plan in question. A comprehensive and long procedure was therefore implemented with the Ministry, in the procedure of issuing consent for the final proposal for the abovementioned Plan of the city of M., for the purpose of coordinating the Plan with the Act, County Plan and Regulation on the Development and Conservation of the Protected Coastal Area.

The Physical Development Plan for the City of M. came into force on 22 November 2006.

The complainant addressed the Ombudsman again, since the remarks from the public discussion were not included into the Plan after all. As for the plots in question, due to which she filed the complaint, different allotment (greenery) was subsequently determined. She considers the local self-administration unit responsible for the subsequent change of allotment for the use of her plot, for the irregularities made in the procedure of passing the plan, since the one that came into force did not correspond to the plan that was put out for a public debate.

On the occasion of the repeated complaint, the Ministry was asked for a detailed explanation of the actual state of affairs for the plot from the complaint, and to state whether there was any change, and if there was, when it occurred – in the procedure implemented after the delivery of the Plan for consent or earlier.

Case outcome: The investigating procedure has not been completed.

Environmental protection

Protection of nature and human environment of The Republic of Croatia is declared to be the highest asset of the constitutional order, thus the right to healthy living and the ensuring of conditions for a healthy environment is everyone's obligation. Everyone is obliged to take special care of the protection of human health, nature and the human environment. Therefore, by investigating particular cases, the Ombudsman points to the fact that the principle of the rule of law implies the proportionality between public interests and limitations/bans imposed on the owners, entrepreneurs and other persons, and that these limitations have to be founded and necessary.

During 2006, the environmental protection sphere was examined due to the complaints that were filed after the procedures for obtaining location and building permits were finished, and the interested citizens could not to the full extent protect their direct interests and rights to the living conditions they had so far.

The citizens complained to the Ombudsman and asked for protection because they feared the effects of the excessive radiation of the mobile telephony base station, when, for example, the installation of such a station was already approved in a densely populated part of the city.

Furthermore, they asked for protection due to environmental pollution (soil, air, water) because of the uncontrolled storage of the secondary raw material, and the uncontrolled and illegal way of dealing with the industrial waste (storage batteries). The environmental protection inspectorate undertook certain measures – it ordered the owner of such open and unenclosed waste dump to remove the waste and dispose of it with the authorized legal person.

The Ombudsman was also asked to issue a warning for the prevention of construction on the basis of the barred study on the evaluation of the impact on the environment (made in 1980's; hereinafter: SUO), i.e. to warn that the SUO must be harmonized with environmental protection conditions in force, which means that the impact of the construction on unique features of environment and ecosystem should be evaluated again in line with the present norms. Through protection sought from the Ombudsman, the complainants in the end found out that the SUO was subsequently evaluated in the procedure of giving special conditions of

the protection of nature, and in the procedures of building permits: the building permit issued in 1999 and permits renewal during 2005.

During 2006, the case of the illegal business facility constructed without permit in the narrower protected area of the M.M. water well was monitored, too. The complaint to the Ombudsman was filed due to the fact that poisons of the 2nd and 3rd group were being used, while dangerous packaging material was not being properly disposed of. Although the sanitary inspectorate, building inspectorate and environmental protection inspectorate, as well as the economy inspector already conducted a supervision procedure, the inhabitants still have to stand the stench. Through investigation it was established that the complainant got the protection of the right to a healthy environment after those inspections, but that the right has not yet been realized. The company, in spite of the prohibition, indirectly pronounced through the decision on removal still conducts its activities without hindrance at the location where such activities are not allowed in the nature of things.

Therefore, to prevent possible harmful effects of greater significance, the Ombudsman proceeded with the case by pointing out that ownership and entrepreneurial freedom were not absolute rights an did not have an unconditional constitutional guarantee, but could be, and must be, limited in order to protect nature, human health and environment.

Conduct of the police officers

Sixteen complaints were filed in 2006 about the conduct of the police officers, which is a small increase in comparison with 2005. In twelve of these cases the Ombudsman acted on the basis of the information learnt from the media, in accordance with Article 5 of the Ombudsman Act.

As in 2005, the complaints mostly refer to the exceeding of police officers' authorities when employing coercive means (disrespecting legal use of coercive means), or to illegal use of coercive means. On several occasions, the Ombudsman - through his official letters - pointed to the above mentioned. In September 2005 an official letter was sent to the Police Administration, which stated the necessity to sanction all illegal or unprofessional conducts of the police officers whether on or off duty. Based on the above mentioned, a meeting was held with the officials at the Interior Ministry, and the police heads delivered a report on the number of citizens' complaints in the past five years (total number, and the number of founded and unfounded complaints, the reasons for filing these complaints and undertaken disciplinary sanctions).

In September 2006 the Ombudsman again sent an official letter to the Interior Ministry and the Police Administration, in which he stated his concern over the suspicions that many breaches of the regulations of the Police Act and the Police Code were not sanctioned. On that occasion, the need to set the standards for examining citizens' complaints from Article 6 of the Police Act was emphasized. That would enable the establishment of complete and accurate facts in any particular case, and the sanctioning of every conduct that is contrary to The Police Act and the Police Code. In the reply to the mentioned official letter the police heads consented to the stated.

All reports that the Interior Ministry sent to the Ombudsman at his request, stated that the conduct of police officers was in conformity with law and other regulations, no matter if it

was a case of a juvenile who was questioned without the presence of his/her parents contrary to the regulations of the Police Act, a case of a mentally infirm person who had to be taken to a hospital due to bodily injuries after the application of a police officer's authority, or a case of a person beaten up by the police officers in the presence of many eyewitnesses.

For this reason the Ombudsman again sent an official letter to the Interior Minister and the Police Administration. In the letter he pointed to the fact that on the basis of the mentioned reports of the Interior Ministry, no citizens' complaints filed in 2006 had been founded. The reason for that, in the Ombudsman's opinion, inter alia, lies in the fact that during the establishment of the legality of the procedure, very little attention is given to the establishment of facts, testimony about the circumstances stated in the complaint is very rarely taken from witnesses or complainants, and, as a rule, criminal or misdemeanour charges are filed against the complainant. That is the reason for the Ombudsman to regularly point to the necessity of a detailed examining of the complaints filed against police officers and of a complete establishment of all facts and circumstances in a particular case. It is justified to expect that by amending the Police Act (especially Article 6), the conditions for the issuing of the rule book governing citizens' complaints would be created, which could result in a complete establishment of all facts necessary to make a decision on a complaint being founded or not.

The Ombudsman thinks that the police can carry out its main task, that is, protection of fundamental constitutional rights and liberties and protection of other citizens' values protected by the Constitution, and have a good reputation in the society only if every illegal or unprofessional conduct of the police officers is clearly and decisively condemned. A certainty that every illegal or unprofessional conduct of police officers will be judged is certain to result in a lower number of filed unfounded complaints. With regard to the mentioned, the initiative to issue such a rule book is rated favourably, as well as making a draft rule book and the intention to include the citizens in the procedure of establishing violations of citizens' rights.

In this respect, the European Police Code (Articles 59 to 62) points to the importance of ensuring the procedure of impartial questioning, since the transparency and civil monitoring of police activities contributes to the strengthening of citizens' confidence in the police work and to the loss of a feeling that the police and citizens are on opposite sides. A certainty that every illegal or unprofessional conduct of police officers will be condemned is certain to result in a lower number of filed unfounded complaints.

Persons deprived of freedom

During 2006, 159 complaints were filed in relation to the violation of the rights of prisoners, detainees and convicts, which is almost a 100-percent increase compared to 2005. The high increase in the number of these complaints in the past two years can be explained by the fact that the Ombudsman in 2005 examined all penitentiaries, prisons, correctional institutions and the prison hospital in the Republic of Croatia.

As in 2006, the prisoners' complaints mostly refer to the rights stated in Article 14 of the Act on Serving Prison Sentences (e.g. accommodation, work, health care, staying in fresh air etc.). The detainees' complaints in 2006 again mostly referred to the violation of the provisions of the Book on conduct rules in prisons for serving detention (e.g. accommodation, health care, staying in fresh air etc.) and long duration of criminal proceedings.

During 2005, the Ombudsman - in accordance with Article 13 of the Rulebook on the Activities of the Ombudsman – examined all penitentiaries, prisons, correctional institutions and the prison hospital. On 9 March 2006 a special report was made on that, which was examined by the Committee for Human Rights and Rights of Minorities of the Croatian Parliament. After discussion, the Committee unanimously drew conclusions expressing concern over the state of some penal institutions in which the violation of some fundamental human rights was detected, and it demanded that the Ministry of Justice carry out an urgent inspection of such institutions for the purpose of eliminating the most urgent problems.

During 2006, the Ombudsman examined the Prison in Varaždin, the Prison in Bjelovar, the Prison in Sisak, the Prison in Požega and the Prison in Osijek, the Correctional Institution in Požega, the Penitentiary in Požega and the Penitentiary in Glina in order to determine if some measures were taken for the purpose of the elimination of the detected violations. In some of the prisons, since last year's examination (Varaždin, Bjelovar) the walls were painted over, a part of installations fixed (Požega), toilette facilities detached, shades were removed from the windows (Sisak), new mattresses were purchased, while for example in the Prison in Osijek no actions were undertaken, except from improvising one more room for visits. However, according to the report of the Prison System Administration of the Ministry of Justice, almost all mattresses were replaced in the Prison in Osijek.

Overcrowding

The prison system is still overcrowded (closed-type institutions), which causes the deterioration of the conditions of accommodation and of serving a prison sentence in general, and it represents a serious security issue. For example, on the day of the examination it was determined that the occupancy:

- of the Prison in Varaždin increased to 185% from last year's 172%
- of the Prison in Sisak increased to 130% from last year's 115%
- of the Prison in Požega increased to 150% from last year's 115%.

In some prisons (e.g. the Prison in Bjelovar, the Prison in Osijek), efforts are being made to increase the capacity by changing the original purpose of some rooms. However, such solutions have an adverse effect on the course of serving prison sentences, because in that way the prisoners have been left without the already not numerous programs and extracurricular activities that they could be preoccupied with during the day. Overcrowding results in the limitation of prisoners and detainees' rights, for example the right to stay in fresh air for at least two hours a day is violated. A large share of the prison population undoubtedly make the organization of life and staying in prisons more difficult (e.g. on the day of examination in the Prison in Varaždin there were 65 detainees which was also the total capacity of the prison). The detainees of the Prison in Varaždin filed a complaint about the fact that they could not stay in fresh air for two hours. The warden of this prison confirmed it and added that it was because they had to take care that the prisoners would not come into mutual contacts while having a walk; female prisoners had to be separated from the male ones, convicts from detainees etc.

During the examination of the Prison in Osijek 23 persons were placed in a room 38 m2 in size, in which process it must be borne in mind that the legally required minimum is 4 m2 for each person (so a room for this number of people should be 92 m2 in size). Due to overcrowding, three bunk beds are sometimes put up instead of two!

Overcrowding in prisons should also be observed through the fact that persons sentenced to a long term of imprisonment are placed in prisons, because there is not enough space in closed-type penitentiaries. For example, on the day of examination at the Prison in Požega there were 3 prisoners sentenced to more than a 10-year term of imprisonment, while in the Prison in Sisak there was a prisoner sentenced to a 14-year term of imprisonment, although these prisons are intended for serving prison sentences of up to 6 months.

A real increase in the capacity was found in the Penitentiary in Glina (change of the original purpose of a vacant building into a section for prisoners).

The overcrowding issue should also be observed through the fact that the amendments to the Criminal Law that specify stricter repression for numerous criminal offences (abolition of the alternatively prescribed fine, an increase of a special minimum, maximum or of both measures of a prison sentence), and amendments to the regulations on the punishment and the implementation of the punitive sanctions in general part (limitation periods, alleviation of the punishment etc.), will considerably contribute to the increase of the number of persons with a non-suspended sentence. On the other hand, implementation of alternative sanctions is yet to take hold to the full extent and not all courts apply it comparably.

Accommodation

During the examination it was established that accommodation in some premises in prisons was not in accordance with Article 74 of the Act on Serving Prison Sentence, i.e. it was not in line with medical, hygienic and spatial requirements, as well as with climatic conditions. In one of the rooms at Osijek Prison, in which 23 persons are placed, only one out of 4 existing lights works, while the toilette facility with only one sink, no mirror and one toilette bowl is insufficient for that number of people. Added to that, there are not enough stools, so the detainees eat on their knees. One juvenile detainee (at the age of 16) is placed in the same room together with adult persons. The bedding and mattresses are worn out.

In the Prison in Varaždin, on the day of examination 6 detainees did not have their own bed but lay on mattresses on the floor. In the Prison in Sisak, since the last year's examination, toilette facilities have been detached from the rest of the room, but some rooms are still dark and suffocating. The acting warden of the Prison in Bjelovar told us that the wall between two dormitories was completely damp due to old installations and full of stains, with the paint coming off, in spite of the fact that it was recently painted over.

Accommodation is very poor in the prison hospital too, and in this matter it must be borne in mind that it is a medical institution. For example, the roof at the surgical department leaks, the rain drips on the patients' beds, and, added to that, there are not enough toilette facilities for the patients. According to the statements of the Central Office of the Prison System Administration of the Ministry of Justice, the roof has been fixed in the meantime.

Work and the treatment of prisoners

As in the course of the last year, numerous complaints from the prisoners referred to the work of the treatment sections. Bearing in mind the complaints filed in 2006, as well as things noted during examinations, it can be concluded that the prisoners are not enough – or in some

prisons at all – active during the day, and that there are not enough activities that would contribute to the establishment of rehabilitation procedures. It is clear that in that way the prescribed purpose of the punishment cannot be achieved. In some of the prisons, owing to the engagement of the wardens, different jobs are found to provide some work for the prisoners (e.g. the Prison in Bjelovar). In the Penitentiary in Glina, the warden pointed to the fact that the state after the last year's objections of the Ombudsman relating to the printing-office being unused was improved and that the working engagement was being determined by the amount of work, but, according to her statements, courts owed some 600.000 kuna to the Penitentiary.

In the Prison in Požega, two prisoners (one sentenced to a 6,5-year term of imprisonment and the other sentenced to a 7-year term of imprisonment) are placed in a room of 8m2 in size (including the toilette), and locked 22 hours a day in the room in which they cannot squeeze past each other. They have every right to ask if they will be able to walk by the end of serving their prison sentences. The question now arises if these two younger prisoners, after they serve a term in these conditions will be capable to live in freedom.

In spite of the data of the Central Office of the Prison System Administration of the Ministry of Justice about the number of examinations and other medical treatments, a great number of complaints are still filed about the provision of health care. The prisoners state that due to the lack of judicial policemen and vehicles they are not being taken to the arranged medical examinations. They file complaints about the continuity of medical protection and about the work of the treatment sections in the procedures of the application of safety measures for the drug abuse rehabilitation.

According to the data from The Prison System Administration of the Ministry of Justice, there are 5 fulltime psychiatrists in the penal system. During 2005, 711 prisoners – in accordance with the pronounced safety measure or on the basis of the decision of the team of experts – had to be put under medical treatment, of which 639 prisoners due to their alcohol abuse or drug addiction, whereas 72 prisoners undergo psychiatric treatment as a safety measure. Similarly, during 2005, there were 104 prisoners diagnosed with PTSD. Taking into account the fact that other experts and nongovernmental organizations are involved in medical treatment programs, and that prisons and penitentiaries which do not have a fulltime psychiatrist (e.g. the Penitentiary in Lepoglava) conclude work contracts with psychiatrists, it can be concluded that the number of fulltime psychiatrists is insufficient when compared to the number and the needs of prisoners.

It is necessary to emphasize that the Prison Hospital, in which - in accordance with the regulations of the Act on Serving Prison Sentence - the safety measure of psychiatric treatment is being implemented does not have a ward established for the implementation of the measure.

There were no complaints about the work of security officials in 2006, with the exception of the Department for the treatment of female prisoners of the Penitentiary in Požega. While talking to female prisoners during the examination, a large number complained about verbal and bodily abuse by judicial policewomen. The female prisoners were suggested to file a complaint in order to enable the undertaking of certain actions and establishment of circumstances in a particular case, but the majority refused to do so because they were afraid of the consequences. The Central Office of the Prison System Administration of the Ministry of Justice has been informed of these statements and it will conduct inspection in accordance

with Article 18 of the Act on Serving Prison Sentence. Through examination it was established that working conditions in the laundry-room where these female prisoners spend 8 hours every day are very bad, since these rooms are placed in the basement of an old building and there are no adequate toilette facilities. Female prisoners complained that in the spring and summer, after 8 hours spent in the laundry-room, they had to work in the field, and that they were sometimes hungry as tea and cookies were the only thing they would get for breakfast.

Detainees

A large share of the prison population still represents a problem in organizing the prisoners' daily life. The detainees often complain about the long duration of the proceedings, which in spite of Article 25 of the Constitution of the Republic of Croatia (that states that detained or convicted persons have the right to be taken to the court within the shortest period possible, determined by law, and released or convicted within the legal term), and Articles 10 and 104, Paragraph 4 of the Act on Criminal Proceedings (OG No. 62/03) still last for a very long time. A long duration of proceedings sometimes results in the fact that the pronounced sentence is sometimes only a few months longer than the time spent in detention, in which process the fact should be borne in mind that detention and serving prison sentence have completely different purposes, and because of the things mentioned above persons are being included into special programs predicted by the Act on serving prison sentences too late, which puts the accomplishment of the purpose of serving prison sentences into question. The long duration of proceedings (especially from the moment of pronouncing a sentence until its validity) represents a huge problem with short imprisonment sentences, if the safety measure has also been pronounced, too. In these cases, there is not enough time from the validity until the expiry of punishment for taking legal action, while mentally infirm criminals spend the entire time of the pronounced sentence in a detention regime.

Similarly, there is impression that during determining of detention Article 104 of the Act on Criminal Proceedings and Article 16 of the Constitution of the Republic of Croatia, in which it is prescribed that every limitation of rights or liberties must be proportionate to the nature of the need for that limitation in every particular case, are not taken into account.

Duration of detention and reasons for setting detention often result in hunger strikes. For example, the female detainee Đ.K. informed the Ombudsman that she went on a hunger strike because the court determined detention due to the danger that she could destroy, hide, change or forge evidence, while all necessary documents were not available to her, but were given to the court appointed expert, so that she could not commit the crime again, although the firm she had been employed at went bankrupt. The detainee P.H. informed the Ombudsman that he went on a hunger strike because of the duration of the procedure that made the sentence invalid, and he had the status of a detainee.

Underage convicts

During the examination of prisons in 2006, some violations of the juvenile convicts' rights were determined – of the juveniles that were sentenced to detention, juveniles that were sentenced to serving juvenile prison, as well as of juveniles who were subjected to the educational measure.

During the examination of the Department for serving juvenile imprisonment sentence of the Penitentiary in Požega it was determined that accommodation is not adequate and sufficient in view of the detainees' age and that accommodation is in some rooms below the health and hygienic standards. The wall between the dormitory and the bathroom is very damp, so the juvenile convicts that are staying in this room have to tape big nylon carriers to the wall in order to decrease the feeling of moisture since their beds lean against the wall. The prisoners do not have toilette facilities in the rooms, so every time they have to conduct their physiological needs they have to call the judicial police. There is not an adequate water-heater in the bathroom, which is why there is not enough warm water.

In regard to the purpose of serving a term of juvenile prison, different activities should be provided in order influence their behaviour, development of their personality and strengthening of their personal responsibility.

During the examination of the Prison in Osijek there were 4 juvenile convicts that were sentenced to detention. These juvenile offenders are placed together with the adults, and some of them are placed in a room with inadequate hygienic and health conditions (the room with 23 detainees). One juvenile offender is placed in a room together with a person that is on a hunger strike. These conditions undoubtedly have a negative effect on the development of a juvenile offender. The warden has been warned to enable juveniles to stay longer in fresh air, to have better diet, sports activities, and to separate them from the adults.

The Correctional Institution in Turopolje still does not have a separate section for care and supervision, for the placement, pursuant to Articles 59 and 60 of the Rulebook on implementing educational measure of sending to the educational institution, of those juveniles who, upon their arrival or when undergoing certain educational measure, show significant difficulties in adjusting and accepting educational influences and measures established by individual programmes or for the reason of personal safety. This measure is being taken in the Prison in Sisak. In regard to the abovementioned, and the fact that this measure must not be taken in prison, these juveniles are staying illegally in the Prison in Sisak.

Female prisoners

During the examination of the Prison and the Department for the treatment of female prisoners of the Penitentiary in Požega, no violations were noted of women's rights of female prisoners on the basis of their sex. It was established that there were three women (female detainees) on the average in the inspected prisons. There were no complaints about an unequal treatment in relation to male detainees.

The Department for the treatment of female prisoners of the Penitentiary in Požega is the only penitentiary for women in the Republic of Croatia and it has closed, half-closed and open departments. On the day of examination there were 84 female prisoners in the Department. Except for the complaints mentioned before (working conditions and judicial policewomen's conduct), there were no complaints that would point to any discrimination. In the Penitentiary, according to the UN Minimum standard rules for the treatment of female prisoners, there is a department for prenatal and postnatal care, which is also used by juvenile prisoners from the Correctional Institution in Požega.

During the conversation, the prisoners emphasized the issue of meeting and spending time with their children, but they stated that such complaints were filed to the Ombudsman for

children. Similarly, the prisoners complained about being harassed by the judicial policewomen in many different ways, so they would remain obedient.

Mentally incompetent persons

A special problem and violation of human rights was noticed in the cases of mentally incompetent persons, that were subjected to coercive hospitalization, and who, due to long duration of the procedure of determining psychiatric institutions on the part of the Ministry of Health, spend all 6 months, after the validity of the decision, in the prison system (even in prisons without a psychiatrist). After that, they are without a single day of psychiatric treatment or hospitalization released from the prison. It is not necessary to emphasize that in accordance with the regulations of the Act on the Protection of Mentally Infirm Persons, the Ministry of Health must within 3 days from the decision receipt make a decision on the selection of a psychiatric institution for coercive accommodation of a mentally infirm person, but it refuses to do that, which results in the violation of the mentally infirm persons' rights.

Similarly, the detainees that were sentenced to detention due to the possibility of committing a serious offence, should, according to the regulations of the Act on Criminal Proceedings, be put in a hospital for persons deprived of freedom or in some other adequate institution. However, such detainees, due to overcrowding of the Prison Hospital and other medical institutions, are placed in prisons. Similarly, it should be emphasized that the accommodating detainees in the Prison Hospital is not always the best solution. (For example, the detainee from the Prison in Dubrovnik was for the stated reasons transferred to the Prison Hospital. Every time a trial takes place, this detainee is transported to the court in Dubrovnik. It is not necessary to mention what happens when the detainee comes from Zagreb to Dubrovnik and the trial is postponed).

Considering the gravity of these problems, the Ombudsman has started an investigation for the purpose of determining the scope of the violation of rights of mentally infirm persons and persons with decreased mental soundness.

Based on the examined penal institutions, as well as actions undertaken upon receiving the complaints of prisoners and detainees in 2006, the Ombudsman has drawn a conclusion that the realization of the purpose of serving prison sentences from Article 2 of the Act on Serving Prison Sentences – making individuals fit for life in freedom – would be more effective if the prisoners' daily life would be filled with work and other activities. The accommodation circumstances in prisons and penitentiaries are even worse that in the previous year, in spite of the interventions mentioned above, due to a daily increase in the number of prisoners, detainees and convicts.

Examples:
(1) Case description (P.P.-1134/06): The Ombudsman received a complaint about conditions of serving detainment sentence in the Prison in Varaždin.

The complainant stated that while staying in prison he was deprived of the right to stay in fresh air in accordance to the Book on conduct rules in prisons for serving detention. According to the complainant, he spent as little as 60 minutes a day in the fresh air during 10 days (from 19 until 29 October), while on one day he could not go out to fresh air at all.

Undertaken measures: Since, in accordance with Article 54, Paragraph 1 of the Book on conduct rules in prisons for serving detention, the detainees have the right to stay in fresh air for at least two hours a day, the Ombudsman requested a report from the warden of the Prison in Varaždin. It is stated in the report that efforts are being put into enabling the detainees to stay in fresh air in accordance with the regulations of the Rulebook, but this is not possible due to the overcrowding of the prison (of almost 200%). In addition to the overcrowding, the organization of staying in fresh air is made additionally harder by the conduct in accordance with Article 54 Paragraph 3 of the Rulebook which orders that co-perpetrators in a crime should be taken out separately - if that is the court order, as well as female and male prisoners, adult and juvenile prisoners, and those detainees whose interaction could harm the criminal proceedings and the safety of the prison.

Case outcome: The complainant was informed about the established violation of Article 54 of the Book on conduct rules in prisons for serving detention, as well as of the reasons for which the organization of his staying in fresh air was impossible.

(2) Case description (P.P.-1027/05): The Ombudsman received a complaint about conditions of the accommodation and serving prison sentence in the Prison in Sisak.

The complainant was sentenced to imprisonment that expires on 28 February 2015. Because of security precautions, the prisoner had been transferred from the Penitentiary in Lepoglava to the Prison in Varaždin, after that to the Prison in Zagreb, and, finally, in September 2006 to the Prison in Sisak.

With regard to the length of the sentences pronounced, the prisoner filed a complaint about the implementation of the individual programme of serving prison sentence. He states that in the Prison in Sisak he is placed in a room with other 10 persons, some of them being sentenced to only a 30-day term of imprisonment. In his complaint he points out that in the Prison in Sisak he has no opportunity to take up any activities or work, and that he is spending his entire days, except for two hours, locked up in a room.

Undertaken measures: Since this is the matter of the prisoner who was sentenced to a years-long term of imprisonment, and should therefore be placed in a penitentiary that has better possibilities for organizing daily activities and implementing an individual programme, the Ombudsman sent an official letter to the Prison System Administration, stating a recommendation for the transfer of the prisoner to a suitable type of institution. In the letter he pointed out that the Prison in Sisak did not have adequate conditions or possibilities for serving a years-long term of imprisonment, which made the purpose of serving prison sentence questionable. During the examination of the Prison in Sisak he talked to the complainant. On that occasion the warden of the Prison was warned that the complainant had been placed in a room together with prisoners sentenced to a 30-day term of imprisonment. After that, the complainant was transferred to another room. Soon after the examination of the Prison in Sisak, the complainant informed the Ombudsman that he had been moved to the Prison in Varaždin, and a few days after that, the Prison System Administration sent an official letter to the Ombudsman in which it stated that it had been decided that the most adequate accommodation for the complainant had been the Prison in Sisak because the complainant did not express any desire to work. Since the complainant had been moved to the Prison in Varaždin before the mentioned report, a new report was requested from the Prison System Administration. In his official letter, the Ombudsman points to the 2nd General Report of the Committee for the Prevention of Torture and Inhuman or Humiliating Treatment or

Punishing (CPT/Inf(92)3), in which it is stated that frequent moving of prisoners can have negative effects on the psychophysical benefit, and that the overall effect of repeated transfers of prisoners can represent inhuman or humiliating treatment. Similarly, the Ombudsman again pointed to the need to place prisoners into an institution that will provide opportunities for making individuals fit for life in freedom connected to the suggestions of the 11th General Report of the Committee for the Prevention of Torture and Inhuman or Humiliating Treatment or Punishing (CPT/Inf (2001)16), which states that the prisoners sentenced to a long term of imprisonment should be provided with a possibility to serve prison sentences with a series of different activities - especially with work - in order to decrease negative effects of the institutionalization. Similarly, the Ombudsman pointed to the incorrectness of claims that the complainant had not been showing any wishes to work, since he delivered copies of decisions from which it is evident that he had been signing statements expressing his desire to work for the last three years. Since the Prison in Varaždin is one of the most overcrowded prisons in the Republic of Croatia, and again taking into account a long-year's term of imprisonment, the Ombudsman suggested a transfer of the complainant to a penal institution in which the prisoner would be provided with the possibility to realize all rights that prisoners are entitled to pursuant to Article 14 of the Act on Serving Prison Sentence. The Prison System Administration delivered a report to the Ombudsman, in which it stated that the complainant had been transferred to the Prison in Varaždin due to criminal proceedings, and that after their ending he would be transferred to the Prison in Sisak, since it was decided that the accommodation in the Prison in Sisak was the most adequate one for him. The report does not contain any declarations related to the incorrect statements that the prisoner did not want to work.

Case outcome: The prisoner is still placed in the Prison in Varaždin, and he will stay there until the end of criminal proceedings, after which he will be transferred to the Prison in Sisak.

(3) Case description (P.P.-641/06): The Ombudsman received a complaint about the treatment of mentally infirm persons.

As it can be seen from the delivered documentation, the County Court in Slavonski Brod passed on 22 February 2006, in accordance with Paragraph 1 of Article 461 (480) of the Act on criminal proceeding, a ruling in which it was stated that the complainant committed a criminal offence in the state of mental incompetence, so he was also determined coercive accommodation in a psychiatric institution for a period of 6 months. Since the complainant, on the basis of Article 462(481) Paragraph 4 of the Act on Criminal Proceedings on the same day asked for the enforcement of the decision on coercive accommodation before validity, the County Court in Slavonski Brod filed on 2 March 2006 a request to the Ministry of Health and Social Welfare for the placement in a psychiatric institution in accordance with the regulations of the Act on the Protection of Mentally Infirm Persons. The Ministry of Health and Social Welfare is obliged to make a decision within three days from the receipt of the decision on the selection of the psychiatric institution in which a coercive accommodation will implemented.

In line with the Act on Criminal Proceeding, in the stated case, after pronouncing a sentence and decision from Article 461(480) Paragraph 1 the detainment is obligatory, thus the complainant was placed in the Prison in Požega.

At the time of filing the complaint (6 June 2006), the complainant was still in prison, although more than three months passed from the beginning of a 6-month coercive accommodation.

The future term, in this particular case, and in accordance with the regulations of the Act on Criminal Proceeding, starts with the decision on the enforcement before validity (22 February 2006).

Undertaken measures: On 13 June 2006 the Ombudsman requested for a declaration of the Central Office of the Prison System Directorate. Based on the declaration delivered on 27 July 2006, it can be concluded that the Prison System Directorate in this particular case sent a rush note to the Ministry of Health and Social Welfare for the purpose of urgent deciding on the choice of a psychiatric institution. Similarly, the Prison System Administration pointed out that this has been a serious problem for a series of years. Reacting to the statement in the declaration, the Ombudsman sent an official letter to the Ministry of Health and Social Welfare in which he pointed to the failure to respect legal deadlines, and on 18 August 2006 he requested a written report. On the same day the Ombudsman telephoned the warden of the Prison in Požega, who stated that the 6-month term would be over on 22 August 2006, and that the complainant would be released from the Prison. In that way the complainant spent all 6 months of the determined coercive hospitalization in a prison that does not have a fulltime psychiatrist. So, regardless of the court decision on coercive accommodation of a mentally infirm person into a psychiatric institution, the complainant spent 6 months in prison without a single day of medical treatment. The Prison System Administration was requested a supplementary report on the number of mentally infirm persons within the prison system and on the deadlines within which the Ministry of Health and Social Welfare makes decisions on the selection of a psychiatric institution. The Prison System Administration delivered a detailed report, from which it could be seen that this situation was not about a particular case, but that there were huge problems in the procedure of implementing coercive accommodation of mentally infirm persons. After receiving two rush notes, the Ministry of Health and Social Welfare delivered as late as 15 December 2006 its declaration on the official letter sent on 18 August 2006. It stated that psychiatric institutions were overcrowded, and that in only one case so far a mentally infirm person had not been placed in a coercive hospitalization, while all other persons had been accommodated within 6 months. However, it is necessary to point out that, in accordance with the Act on the Protection of Mentally Infirm Persons, decision on a psychiatric institution has to be made within 72 hours! As regards the complainant, the declaration stated that his current state of health did not demand urgent hospitalization. So, regardless of the decision of the court, the Ministry of Health and Social Welfare holds, on the basis of its assessment, that it is not necessary to hospitalize the complainant.

Case outcome: It was established that the complainant's rights were in the particular case violated, due to the fact that the Ministry of Health and Social Care did not make a decision on the selection of a psychiatric institution. During the investigation it was determined that it was not the issue of a particular case, thus the Ombudsman started an investigation on the stated problem with the purpose of preventing the violation of the rights of mentally infirm persons in the procedure of implementing coercive hospitalization which is underway.

Property-related insecurity

The same as in the last year's annual report, 2006 saw an increase in the number of citizens' complaints for financial reasons. There were various complaints, but the majority were not in the jurisdiction of the Ombudsman.

Such complaints mostly referred to the impossibility of realizing material rights on the basis of employment (for example, suspension of salary payment due to distress or bankruptcy,

non-payment of allowance in accordance with Article 19 of the Act on Areas of Special State Concern due to the aging of accounts receivable, denial of jubilee allowance), and other issues related to employment (salary seizure due to collection of unpaid fees, termination of a working contract with the offer of a changed contract, etc.).

Furthermore, the Ombudsman received complaints referring to the conduct and operation of commercial banks. Specifically, those were petitions for help filed by credit sureties repaying loans instead of the main debtors, and the impossibility of regressive reimbursement from the main debtor in a distress procedure (for which they blame the bank's negligence during procedure of approving the loan and determining the main debtor's credit capacity).

Furthermore, the Ombudsman received a complaint that refers to the implementation of a distress repayment of validly adjudicated amounts for the temporary use of properties to their owners (returnees) on the returnees' pensions, although the Government and the Croatian Parliament reached the Conclusion stating that the Republic of Croatia will take over those payments on the basis of the valid sentences (through reaching a settlement with the Prosecutor's Office of the Republic of Croatia). However, so far not a single case of reaching a settlement on the basis of which the state would take over the payment and free the refugees and returnees from that commitment has been noted.

Within the area of property-related insecurity, complaints were received due to: illegal purchase of shares, violation of the secrecy of a current account, computing of interests and capital of a court in distress, response of the insurer by which he/she refuses to pay off the insured amount because of the aging of accounts receivable, information received by telephone from a public company about removal of the compensation of damage at the oral request of the complainant, as well as requests: for helping with repayment of old fees, for the interpretation of distress on pension without implementing court distress (administrative enforcement), for providing protection from grazing goats and sheep on one's own land etc.

These are the cases in which the Ombudsman conducted investigation:

It is the matter of complaints of users of telecommunications services against the service provider with a considerable market power in the Republic of Croatia, due to its failure to provide its users adequate protection from misuse and fraud in the public telecommunications network caused by the third party (diallers), and due to charging its users with such expenses.

Complaints also referred to the pressure that the provider was exerting on them by cutting off the terminal connection before their complaints started to be dealt with in accordance with the Act on Telecommunications.

On the basis of such citizens' complaints, the Ombudsman asked for a report from the Council of users of telecommunication services and the Croatian Agency for Telecommunications, which informed the Ombudsman that the provider refused the proposal for out-of-court settlement.

The Ombudsman warned the stated body that it was obvious that the proposed way of peaceful solution of a dispute in the protection of legally prescribed rights of the users was insufficient and that it would not have the wanted effect. At the same time he pointed to the need for a prompter conduct and appearance in the media due to the threatening distresses. Furthermore, he invited the body to examine the legality of the conduct of the service

provider, as well as to undertake all available measures to protect the users in the most efficient way. The Ombudsman informed the Government of the Republic of Croatia, and the Directorate for Telecommunications and Mail of the Ministry of Sea, Tourism, Transport and Development on these conducts.

After everything mentioned above it is clear that the citizens of the Republic of Croatia have difficulties with bearing the burden of their financial commitments.

However, it can be noticed that citizens are not freed from those commitments that in the spirit of positive regulations of the Republic of Croatia they should not be obliged to endure.

Actually, in the field of banking and telecommunications positive national regulations with their protective provisions and prescribed sanctions so far do not represent any serious obstacle to the more powerful financial interest of big foreign capital, which is why they do not provide adequate protection to its citizens.

Examples:
(1) Case description (P.P.-1039/06): The Ombudsman received a complaint from Mr. O. L. from M. as a user of telecommunications services of the company "T.", about having to pay expenses for telecommunications services caused by abuses and frauds in the public telecommunications network committed by the third party (diallers).

In his complaint, the complainant points to the fact that "T." as a service provider in the Republic of Croatia in its business conduct with its users does not conform to the provisions of Article 42, Paragraphs 2 and 3 of the Law on Telecommunications (OG 122/03, 158/03, 60/04 and 70/05) about adequate protection of its users, as well as to the provision which frees the users of bearing the costs that are caused by the third party by abuses and fraud in the public telecommunications network.

The complainant explained that the ISDN system did not provide the users sustainable and reliable protection from abuses and incursions into their system, and that the provider was advertising and selling the system without any kind of user's manual or warning on the possible dangers from the diallers etc.

Furthermore, he pointed out that although the users of public telecommunications services are not bound to bear the costs caused by the third party at the cost of the users, i.e. the costs resulting from abuse and fraud, the above-stated operator exerts pressure on its users, makes threats and cuts off the telephone lines, and charges these disputable claims through public notaries by using distress. The Commission of the service provider which is authorized for solving the users' complaints, regularly fails to recognize those complaints, but persistently charges its users with the costs caused by abuse, without respecting the laws of the Republic of Croatia.

That was the reason the complainant in March 2006 sent a request to the Council of users of telecommunications services, but nothing has been decided on the issue.

The complainant states in his complaint that this issue is of greater proportion and that the above-mentioned service provider faces some 3.000 similar cases every year, which provokes the citizens' indisposition towards the Republic of Croatia and its administration of justice, which is the reason why complainants seek the Ombudsman's help.

Undertaken measures: Taking into account this complaint, as well as other complaints that the Office of the Ombudsman received and that refer to the same issue, the Ombudsman sent an official letter to the Council of the users of telecommunication services of the Croatian Agency for Telecommunications and requested a report on the overall number of users that have so far addressed the Council of users for mediation and protection, as well as the number of disputes that ended with conciliation or arbitration, and on the number of cases that ended in referrals to instituting legal proceedings, as well as a shorter assessment of the situation in the field of protection and realization of the rights of users of public telecommunications services.

In addition, examination of the statements from the complainant's complaint was requested, as well as the declaration on the reasons for which the Council failed to reach decision on the complainant's request.

Case outcome: The Council of users of telecommunications services informed the Ombudsman that the majority (no figures stated) of the received requests of the users for the settlement of disputes between the service provider and the users of those services was related to the disputable amounts of indebtednesses caused by diallers, which was why the Council of users, in accordance with the accepted conclusions from the Council of the Agency, sent a proposal for the out-of-court settlement to ''T.'' (as the operator to which the majority of complaints and users' requests refer).

The Council of users pointed to ''T.'' the importance of securing the protection of the users in the period of 2004, 2005 and the beginning of 2006, during which the disputable amounts of indebtedness were made. It was the period when anti-dialler software protection, outgoing calls barring service, Web-bill, prevention of automatic traffic towards certain international numbers for which it was determined that their were connected with diallers' activities (starting with December 2005), anti-dialler service (spring 2006) and the service of the limitation of the bill amount (August 2006) were not available.

I follows from the stated report that ''T.'' was stalling with the declaration on the offered proposal for out-of-court settlement, and that it eventually gave a negative response to the Council of users.

The stated negative declaration of ''T.'' of 27 November 2006 was confirmed by the Chief Officer of the Sector for Corporate Communications in the Croatian state television broadcast ''Život uživo'', stating the stand of the operator that users were adequately protected, in accordance with the law.

Since the president of the Council of users of telecommunications services participated in the show and used the opportunity to point to the fact that the Council of users held a conference on 27 November 2006 during which certain conclusions were made in connection with further actions, the Ombudsman subsequently sent an official letter to the president of the Council, stating, among the rest, the following:

…" there is no doubt that the users of ''T.'' should have been adequately protected from abuses and fraud in the telecommunication network, pursuant to provisions of the Act on Telecommunications; it is indisputable that abuse and fraud did occur and cause damage to the users. Although the operator subsequently undertook certain measures in order to protect

users from abuse, it refuses to approach the conclusion of out-of-court settlements for the period starting with 2004 until the introduction of the anti-dialler service and limit of bill service (2006), lead by its financial interests, i.e. profit, and thereby using its position of the operator with significant market power in the Republic of Croatia.

It is thus clear that the proposed way of peaceful settlement of the dispute in the protection of the users' legally prescribed rights is insufficient and it will not have an intended effect.

In regard to the stated above, you are called upon to inform the Ombudsman if the procedure of conciliation on the basis of the provision of Article 50 Paragraph 1 of the Act on Telecommunications has therewith ended, and if not, to inform the Ombudsman of the stage that the particular procedures of conciliation have reached, and specifically of the stage of the complainant's procedure and if he has been adequately informed of it.

Furthermore, since all this leads to the fact that users of telecommunication services should be more effectively protected from the charges of disputable amounts of indebtednesses caused by diallers and from the violation of the provision of Article 42 Paragraph 3 related to Paragraph 2 of the Act on Telecommunications, the Ombudsman and the competent bodies should be informed on whether the Council of users, i.e. the Agency, have sufficient legal authority for more efficient protection of the users of public telecommunication services, for the purpose of possible initiation of amendments to the law.

In this matter we emphasize the need for this Council and the Agency to act and come out in public in a more prompt way, which is conditioned by enforcing distress charges and by the aging of accounts receivable on the basis of general rules on obligatorily legal relations for users in relation to unfounded charging by the operator. For the reason of everything stated above, the Ombudsman invites the Addressee to question the legality of the conduct of ''T.'', as well as to undertake all available measures for more efficient protection of users''.

The Ombudsman informed the Government of the Republic of Croatia, the Directorate for Telecommunications and Mail of the Ministry of Sea, Tourism, Transport and Development, and the complainant on this official letter.

Note: Until the moment of drawing up this report, the Ombudsman did not receive any response from the Council of users.

However, the Ombudsman received a notice from the complainant about him receiving the decision on distress from the public notary. Since he is a pensioner, he would not like to be *dragged* through courts in order to settle this made-up and dishonourable claim through coercive measures of distress.

Since the necessity for urgent actions is obvious due to the distress-warrant issued, the Ombudsman sent an official letter to the Council of users and required an urgent delivery of the requested report on further procedure.

(2) Case description (P.P.-1250/06): The Ombudsman received a complaint from Mr. N. M. from Split about the inability to get the refund of his savings deposit from the ''G.'' Bank Ltd. (in bankruptcy).

In his complaint he stated that he had been employed in Jugoplastika until 1993, when he lost his job. Then he worked as a physical worker in Zagreb, and he was retired in 1999. His monthly pension is 1.300, 00 kuna.

During his working time, he had been sacrificing excessively in order to save up 90.000,00 DEM. He deposited this money in the ‘’G.’’ Bank, that later declared bankruptcy.

Because of the impossibility to get his savings, and because his pension was not enough for covering basic living needs, some marital disagreements occurred, and resulted in the divorce, plus his daughter left him, too (she graduated from faculty, but has no income as she is unemployed).

Due to the described circumstances the complainant tried to commit suicide, but he survived, and after his stomach wound was treated, he was put under psychiatric treatment. He enclosed his medical documentation in the complaint file with the Ombudsman.

He has asked the Ombudsman to help him get back his refund, because he is hungry, old and ill. He has expressed bitterness because of everything that had happened to him and in relation to the previously determined order of payment of claims of creditors in bankruptcy (depositors come last), which is why depositors are to be repaid after the State Agency (for the paid "insured savings deposits").

It is evident from the documentation that the complainant enclosed that he addressed the Office of the Government of the Republic of Croatia, which on 11 April 2006 forwarded his official letter to the State Agency for ensuring savings deposits and restructuring of banks, which on 20 April 2006 sent an official letter informing the complainant that, in accordance with their records, an insured part of his claims had been paid, and that the Agency thus fulfilled its legal obligation to the complainant, while he should realize the rest of his claims in a regular bankruptcy procedure.

The bankruptcy administrator P. H. informed the complainant in his official letter of 24 May 2006 on the status of the bankruptcy procedure, i.e. that the third higher payment priority class was currently being paid out (i.e. State Agency for insuring savings deposits and restructuring of banks), and that he would be notified of the depositors’ turn to be paid out (as the fourth higher payment priority class).

Undertaken measures: Since the repayment of the rest of the savings is in the jurisdiction of the Commercial Court in Z. (the bankruptcy proceeding has started on 30 April 1999), the Ombudsman is not able to help the complainant.

However, in regard to the complainant’s difficult situation, and the fact that he is old, ill, abandoned, that his daughter who has a legal obligation of support cannot help him because she is unemployed, and since it can be seen from the documentation that the complainant received one-time aid based on the decision of the Centre for Social Welfare in Split of 20 June 2005, the Ombudsman requested from the Social Welfare Centre to intervene in order to help the complainant and alleviate his serious condition, in accordance with the law.

Case outcome: The Social Welfare Centre in Split confirmed in its report to the Ombudsman of 7 November 2006 the facts that the complainant stated in his complaint about his condition, as well as the fact that it was in 2005 established that the complainant was in desperate need

of help and attendance, but that he could not get any allowance due to the fact that his pension was higher than 1.000 kuna.

This year the complainant again submitted a request, so the procedure is underway. He was also directed to try to get help out of the social welfare programme of the City of Split.

The Ombudsman informed the complainant of the measures undertaken related to the Social Welfare Centre, as well as of the fact that legal instruments within the Ombudsman's jurisdiction were therefore used up.

After he received the notice, the complainant addressed the Ombudsman again and told him that he was ashamed because of the fact that after 32 years of service and great self-sacrifice to gain the mentioned savings he was forced to address the social welfare service and the City of Split to get help, but he added that he did so only because of his illness. He repeated that he did not address the Ombudsman for that purpose, but for mediating and intervention so that he – an old and very ill man in desperate need of money - could get his savings back, which the Croatian Government promised to do.

The Ombudsman informed the complainant of the impossibility of an intervention because of the case being out of his jurisdiction. The bankruptcy procedure is being conducted before the competent court, and the Ombudsman can neither undertake any actions on behalf of any party, nor mediate in the parties' disputes. The Ombudsman cannot influence the previously determined order of payment in bankruptcy proceedings pursuant to the provisions of the previously valid Act.

Note: The above illustrated case is an example of property-related insecurity of a citizen who deposited his life savings in a domestic bank and could not get it back. Although he has every legal right to his life savings in bankruptcy proceeding, the state refunded itself (because of the legally determined order of repayment, for the paid insured amounts) before its citizens – bankruptcy creditors.

In this example the citizen, who had been sacrificing himself for his entire life and planning his old days free from care, found himself in the position of a periodical beneficiary of welfare support at the burden of both municipal and state budgets, despite his moral principles and will.

PART FOUR

INTERNATIONAL COOPERATION

The employees of the Office of the Ombudsman participated through international cooperation in many activities and international conferences, seminars and workshops in 2006. That led to the advancement of efficacy of the work, exchanging and gaining new experiences that can be applied in their work, and to the improvement and development of the efficiency of the very institution.

The institution of the Ombudsman is a member of the International Ombudsman Institute. The Ombudsman regularly and actively participates in its work, particularly in the work of the European Ombudsman Institute, presided by the Austrian Ombudsman Dr Peter Kostelka, who is also the vice-president of the International Ombudsman Institute.

The meeting of the European ombudsmen and the General Assembly of the International Ombudsman Institute for Europe was held from 11-13 June 2006 in Vienna. The Ombudsman participated in its work. The following topics were discussed at the meeting:

jurisdiction of the European ombudsmen – the status quo review and analyses,
ombudsman and judiciary,
implementation of human rights in Europe,
implementation of human rights and the ombudsman's role.

In September 1996, the European Ombudsman founded a network for the cooperation of ombudsmen and similar bodies in Europe, which is today known as the European Network of Ombudsmen. Each office at the national level in the European Union, as well as Norway and Iceland, appointed their officer for liaison between the network members.

The objective of the network includes the promotion of the free flow of information and their application, exchange of experience and good practice, as well as the facilitation of the transfer of complaints to the body in charge of dealing with them.

A seminar for the representatives of the offices of ombudsmen from the European Union member states was held in Strasbourg from 17 to 20 June. A representative of our office was also invited, although Croatia is neither a member of the European Union, nor a member of the European Network of Ombudsmen. In spite of that, the Office of the Ombudsman has been cooperated well with the institution of the European ombudsman.

The Deputy Ombudsman participated in the activities of the International conference organized by the Ombudsman of the Republic of Macedonia and the European Union – The Office for the Building of Institutions (TAIEX) in Skopje on 20 and 21 October 2006.

A seminar on the topic of '' When citizens file complaints – the Ombudsman's role in the improvement of public services'', organized by the "Public Administration International", was held from 8 to 20 May in London. Owing to the financial support of the British Embassy, the Deputy Ombudsman participated in this seminar.

Mr. Rasmus Gedde Dahl, Deputy Ambassador of the Kingdom of Norway in Zagreb visited the Ombudsman in May 2006. Mr. Dahl wanted to become familiar with the Ombudsman's

activities, especially his field activities, currently financed from the donation of the Government of the Kingdom of Norway. He also expressed his wish to visit one of the counties with the representatives of the Ombudsman's Office, which was realized on the occasion of visiting the Brodsko-Posavska County.

Within their visit to Croatia and upon the completion of the mission in the field of "Anticorruption and Integrity Systems", the SIGMA representatives - Mrs. Anke Freibert and Mrs. Johanna Moehring visited the Office on 18 May 2006.

The Head of the Return and Integration Office of OESC Mission, Mr. Christian Loda, and his co-operators, visited the Ombudsman's Office on 26 June 2006. During the meetings, the emphasis was put on the implementation of Article 27 of the Act on the Areas of Special State Concern (compensation of damage for the inability to dispose of one's own real estate).

In November 2006, the UNHCR representatives - Mr. Wilfried Buchhorn, Mrs. Jasna Barberić, Mr. Mario Pavlović and Mrs. Agneze Andreuzzi visited the Ombudsman's Office. They discussed the problems in the areas of special state concern: reconstruction, convalidation, settling housing issues etc. The Office of the Ombudsman is mainly informed through individual complaints from the citizens. It does not have enough personnel to analytically cover all areas and accordingly direct its activities.

The British Ambassador in Zagreb - Sir John Ramsden - visited the Ombudsman on 24 October 2006. Within the visit he wanted to find out more about the activities of the Office, about the number of citizen's complaints and the main issues in those complaints. The Ombudsman informed him that he mostly acted as a mediator between the citizens and public authorities. Most of the citizens' complaints are related to the issue of reconstruction, settling housing issues, pension, convalidation, status-related issues, the police conduct etc.

The representatives of the European Monitoring Centre on Racism and Xenophobia, Mr. Alsessandro Budai and Mr. Tomaž Trplan visited the Ombudsman on 27 October 2006, and informed him about the Centre's objectives and this organization's development in The Republic of Croatia.

At the end of the year, i.e. on 11 December 2006, the Ambassador of the Republic of the Netherlands in the Republic of Croatia, Mrs. Nienke Trooster, visited the Ombudsman. Mrs. Trooster believes that the institution of the Ombudsman is extremely important for the development of the democratic society. Therefore she expressed her satisfaction over the meeting with the Ombudsman who informed her on the Office's activities, his cooperation with the European ombudsmen, particularly with those in the Netherlands, as well as on his assessment of the development of the civil society in the Republic of Croatia.

PART FIVE

WORKING CONDITIONS

Altogether 4,691.244 kuna were allocated from the 2006 budget and 202,471 kuna from the OESC donation for the work of the Ombudsman's Office in 2006. The donation was mostly used for the field work i.e. for visiting the counties as a part of the project of strengthening the institution of the Ombudsman.

Although the Croatian Parliament in its conclusion of 3 June 2005 obliged the Government of the Republic of Croatia to secure the means for the work of the Office of the Ombudsman in accordance with the two-year plan for the strengthening of the institution, this conclusion was not implemented, so instead of employing seven new counsellors, only two were employed, in late 2006. So, apart from the Ombudsman and three deputies, there were only 8 counsellors and 6 officials working at the Office in 2006, which made a total number of 18 employees.

The implementation of the above-mentioned Conclusion of the Croatian Parliament started through the 2007 budget from which 5,807.000 kuna were allocated for the work of the Ombudsman – 24% more compared to 2006. This increase enables hiring two counsellors in the very 2nd quarter, i.e. one junior administrative clerk and one senior administrative clerk (competition procedure is underway).

The realization of the entire two-year plan requires further increase of 20 percent from the 2008 budget, compared to 2007, i.e. some 7,000.000 kuna. Such budget would enable employing 30 persons with the Office by the end of 2008, as anticipated in the plan.

When discussing about the newly employed, the Croatian Parliament should be warned that the issue of inadequate premises for the work of the Office is still unsettled. As a temporary solution for those employed in 2006, we were allocated one room at No.3 St Marko's Square, but new employees will not be able to start working until this issue of working space is solved. Addressing the State Office for Property Management and the chairmanship and secretary's office of the Croatian Parliament for two years in a row has not produced any results. The Ombudsman, as the Croatian Parliament's commissioner and as a constitutional institution still does not have the necessary working conditions in spite of many conclusions passed by the Croatian Parliament over the past years.

PROPOSAL

At the end of this report I would like to warn the Croatian Parliament of the new circumstances and changes that have occurred both within the domestic legal system and in the relations with international authorities and institutions in the sphere of protection of human rights.

These circumstances and changes considerably affect the institution of the Ombudsman, and the future development of the function of the Ombudsman in the Republic of Croatia.

1
Apart from the Ombudsman, who is the Croatian Parliament's commissioner and a constitutional institution with a mandate which includes all citizens, another two institutions of the Ombudsman with a special mandate have been statutorily established in the Republic of Croatia (one for children and one for the equality of sexes), and new proposals for enacting an act on ombudsman for invalids, and on ombudsman for pensioners and elderly persons are in progress. New initiatives for the establishment of special ombudsman offices have been announced, too.

It seems that this kind of development requires a special parliamentary discussion on the concept and future development of the function of the Ombudsman in the Republic of Croatia.

On one hand, we should assess the rationality of introducing a number of special ombudsmen as independent institutions, and, on the other hand, the weakening and the limitation of the mandate of the only general, constitutionally stipulated institution of the Ombudsman that could and should meet the criteria of the so-called ''Paris Principles'' as a national institution for the protection of human rights (NHRI).

2
The institution of the Ombudsman even today can hardly function as a national institution without some forms of fieldwork in the entire country. As a temporary solution, the fieldwork has so far been enabled by the donation of the OESC Mission in the Republic of Croatia. The present donation covers only this year and it is almost certainly the last one, and, what is more important, it does not cover citizens' needs any more.

3
Citizens and the public see the institution of the Ombudsman as a national and independent institution with the broadest mandate in the field of human rights, regardless of the contents of the constitutional provision that limits the mandate to the undertaking actions related to the bodies of the state and local administration and bodies with public authority. This has been confirmed by numerous complaints of citizens about the work of courts (court administration), public undertakings, public institutions etc.

4
International institutions and bodies also address the Ombudsman as a national institution for the protection of human rights, presupposing that he is well informed of the situation and that he operates in every field and issue related to human rights. In this sense, even the UN bodies and the bodies of the Council of Europe address the Ombudsman.

By adopting the Protocol 14 together with the Convention for the protection of human rights, the commissioner for human rights of the Council of Europe will directly take part in the mechanism of the European court for human rights.

For this purpose, the commissioner will establish an active network of ombudsmen and national institutions for human rights (in some countries the ombudsmen are the NHRI at the same time) within the Council of Europe, with the task to help the commissioner through international cooperation in his work at the European Court, and to act within the national legal system so as to prevent and remove the occurrences and practices that could lead to a large number of complaints from that country to the European Court.

All of the abovementioned suggests that it would be advisable for the Croatian Parliament to organize through the Committee for the Constitution, Standing Orders and Political System and the Commission for Human Rights and the Rights of Minorities a discussion and take a stand on the concept and further development of the Ombudsman and its function in the Republic of Croatia:

1 Should we continue to legally constitute individual functions of the Ombudsman or should we strengthen the constitutional institution of the Ombudsman?
2 Should the Ombudsman at the same time be the NHRI in the sense of the UN ''Paris Principles'' of 1993, with a broad mandate in the field of human rights?
3 Should we in that respect, when making amendments to the Constitution, also change the provision of Article 92 of the Constitution of the Republic of Croatia, and consequently the Ombudsman Act of 1992 which is obsolete and uncoordinated with the amendment to the Constitution of 2000?

All these questions need to be answered with the purpose of finding the best and most rational patterns for the protection of human rights, which could be incorporated into the European networks of such institutions.

ASSESSMENTS AND PROPOSALS

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

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

Administration and citizens – solving administration issues

The basic role of the Ombudsman is to protect citizens, by undertaking actions upon receiving their complaints, from illegal, irregular and poor performance of the state or local administration, and bodies with public authority. In this matter, interventions of the

Ombudsman are not limited only to the assessment of the legality of the administration's work in a narrow sense, but also to respecting the principles and requirements of good and citizen-friendly administrative practice, often from the point of view of the principles of justice and ethics.

Through that kind of protection, the Ombudsman acts in two directions: warns in due time of the threats and violations of rights and helps with their realization, but also contributes to the democratic control of administration and its improvement and development.

In 2006, the greatest number of citizens' complaints to the Ombudsman again referred to the long duration of administrative procedures and conducts, or the failure of administrative bodies to undertake actions connected to that issue, and a smaller number referred to the illegality or irregularity of their decisions and acts.

In this respect, the situation is almost the same as the one we warned of in the reports for 2004 and 2005, which is by all means disturbing and deserves the attention of MPs.

Long duration of procedures and failure to reach decisions within legal (60 days) or at least appropriate or reasonable period are still the most frequent complaints in pension and disability issues, property-rights and housing issues, as well as issues of reconstruction and construction, in both first instance procedures and appeal procedures.

Complainants' rights are also violated by administration bodies' disrespect for legal commitments from Article 296 of the Act on General Administrative Procedure, according to which they are bound to always notify the party in writing of their inability to respect the legal deadlines and state what actions they will undertake in order to solve their cases.

Long duration of the administrative procedure in a considerable number of cases results from the fact that neither bodies of first instance nor bodies of second instance use rights and possibilities and the obligations from Articles 235 to 237, i.e. 242 to 243, of the Act on General Administrative Procedure, according to which they can themselves resolve the appeal-based administrative issue in a different way, or they are obliged do it. Such practice leads to the repeated annulment of decisions and returning cases for a renewal, which prolongs the procedure and results in the violation of the citizens' rights.

Such state partially results from the complexity of procedures in certain spheres, great inflow of cases in a short term and insufficient number of officials, but these circumstances were already well-known or could have been predicted.

That is why the Ombudsman set forth in his last two annual reports (for 2004 and 2005) a few proposals and recommendations for the solution of the issue of long duration of settling administrative procedures, together with the assessment that it is possible to implement them at short notice, simultaneously and relatively independently of other necessary changes and reforms in the administration.

Unfortunately, the realization of only one out of six proposals of the Ombudsman began in 2006. The Central State Administration Office adopted the Guideline from Article 298 of the Act on General Administrative Procedure, which is only the first step in the establishment of the system of monitoring and assessing of settling administrative matters by administrative areas, as well as for the state administration in general. Such a system that still needs to be

established is a necessary condition for an objective comprehension of the situation and for undertaking measures, both at the department level and at the level of the Government of the Republic of Croatia.

Other proposals and recommendations were not realized to a larger extent in 2006, which is attested by reports on particular areas.

The European Court for Human Rights pointed to the justifiability and importance of these recommendations in two rulings in mid-2006 (Božić vs. Croatia and Počuća vs. Croatia) identifying, *inter alia*, the violation of Article 6 Paragraph 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms due to a long duration of administrative procedures.

The stands and messages of these verdicts are as follows:

1 When dealing with an administrative dispute, the overall duration of the procedure on the basis of which the reasonableness of the term is assessed also includes the duration of the procedure before the Administrative Court, as well as the duration of the previous procedure before the administrative bodies. Litigation starts at the moment of filing an appeal against the first-instance decision.
2 The legal order of the Republic of Croatia has no effective legal means for speeding up administrative procedures. The procedure of the ''silence of the administration'' is not an effective legal means, *inter alia*, due to the duration of the procedure before the Administrative Court.
3 Also, there are not enough procedural guarantees in the domestic legal order against the repeated annulments of decisions and returning them for a renewal, which results in a long duration of numerous cases.
4 Human rights are violated in the Republic of Croatia because the country has not created prerequisites or ensured conditions for the citizens' (administrative) disputes to be decided on within a reasonable period.

What are the possible (likely) consequences of the legal stands from the mentioned rulings?

a) Until the change of the practice of the Constitutional Court, i.e. the Supreme Court, verified by the European Court for Human Rights, citizens can file direct requests to that court without using all national ineffective legal means (the silence of the administration, constitutional charges, filing charges to the Supreme Court).
b) Considering the years-long duration of procedures in some areas (denationalization, reconstruction, and pensions), a number of such requests and verdicts against the Republic of Croatia accompanied by the corresponding financial consequences can be expected, as well as an assessment that the Republic of Croatia cannot ensure the European standards in administrative issues.
c) After certain changes in the practice of the Constitutional and Supreme Courts, a higher inflow of lawsuits can be expected, mainly before the Supreme Court, which is already under pressure, due to many charges pressed because of the long duration of procedures. The Republic of Croatia is likely to face certain financial consequences, too.

The following proposals are set forth in order to alleviate the consequences that have resulted from years-long neglecting of these issues, but also to remove future violations of citizens' rights due to unreasonably long duration of procedures:

I. Without a delay - make services and departments fit, in terms of personnel and finances, for dealing with a regular inflow of cases as well as with backlog of cases in the most critical areas.
II. Create conditions at the Administrative Court for faster resolving of the cases in which the court procedure lasts very long, but also of all cases in which decisions have not been reached even after several years. (The Ombudsman has in the last two years, by taking a stand that the overall duration of the procedure should include the duration of the procedure before the administrative bodies, warned the Administrative Court and suggested urgent settling of such cases).
III. Make an analysis of the procedure of the silence of the administration and undertake certain measures, including amendments to the Act on General Administrative Procedure and the Act on Administrative Disputes, so that the procedure could become an efficient legal means.
IV. Analyse the implementation of the provisions of Articles 235-237 and 242 and 243 of the Act on General Administrative Procedure and assess the need for undertaking certain measures, including amendments to the mentioned provisions with the purpose preventing multiple renewals of cases.
It is the Ombudsman's stand that with proper interpretation and implementation of the mentioned regulations, as well as the promptness of the Administrative Court, the procedure due to the silence of the administration could be an effective legal means. Laws should be amended only after all other possibilities have been taken into consideration.
VI. As for the preparations and enactment of new laws, we again warn of the need for consistent application the Rulebook of the Government of the Republic of Croatia (Article 27a) stipulating that the preparations for the enactment of laws should include the assessment of the impact of the law on the number of civil servants and employees, which means of the impact on the administrative decision-making. A need to amend the Rulebook of the Croatian Parliament (Article 132) should be taken into consideration in a way that the proposed bill should also contain such an assessment, so that the citizens could be sure that they will realize their legally granted rights within a reasonable period.
VII. The ministers must pay much more attention to the important administrative function of dealing with the rights and legal interests of citizens. Ministers, as heads of their departments, are the ones responsible for the legal and timely settlement of the citizens' rights granted by the law and other rules. Their obligation is to regularly monitor and analyse information on the settlement of administrative matters and realization of citizens' rights, and undertake measures or propose the undertaking of the necessary measures to the Government of the Republic of Croatia.
A minister in whose department an administration procedure lasts for several years or an-appeal based procedure at the ministry lasts for 2 to 4 years cannot be considered a successful minister.

It will be positive if the rulings and legal stands of the European Court encourage and even force the ministers, the Government and the Croatian Parliament to undertake the above-mentioned measures to the benefit of the citizens of the Republic of Croatia. But, the fact that this encouragement, or even force, must come from abroad is not good, particularly since many persons, including the Ombudsman who as a commissioner of the Croatian Parliament protects the citizens' rights and mediates between them and the state bodies warned, in time

and on numerous occasions, of the violation of rights due to a long duration of administrative procedures, and proposed measures to which the above-mentioned rulings and legal standings of the European Court now point.

In view of that, we would like to point to the fact that other issues of the reform, i.e. the necessary changes, of state administration sometimes also come down to the harmonization of our laws and other regulations with the EU regulations (very often in haste), so that these acts and regulations often fail to take citizens' needs and experience from the practice as a starting point. A decisive role in preparing laws is sometimes entrusted to foreign experts, who copy somebody else's models and solutions without making necessary adjustments to domestic needs, totality the domestic legal system and judicial culture. Unnecessary standardization is sometimes undertaken even where the correct interpretation and application of the existing standards depend only on better organization, concrete measures and proper and responsible work and conduct.

In this respect, significant problems can be expected in the implementation of new rules on state officials. Laws and regulations are often being harmonized only because the process of accessing the European Union requires it, which is evident from the simultaneous adoption of the rules on depoliticizing high administrative functions and public manifestations of their holders of belonging to a certain party, and even of their joining that party.

At the end of this chapter, the same as at the end of the last two annual reports, I would like to express my belief that in order for the administration of the Republic of Croatia to function better it is necessary to speed up the decentralization and the transfer of administrative activities (and means) to the local units and to synchronize the state administration officials' salaries with those in the local administration and increase the salaries of the most expert and necessary category of civil servants.

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