REPUBLIC OF CROATIA

OMBUDSMAN

ANNUAL REPORT FOR 2005

Zagreb, March 2006

PART ONE

1. INTRODUCTORY NOTES

The Ombudsman's annual report to the Croatian Parliament is, according to the Act on the Ombudsman, a review of his/her work and information on the degree of respecting the citizens' constitutional and legal rights in the previous year, which he/she collected while performing his/her work.

In order to create this year's report, he used the methodology applied in the previous reports. Legal sphere, which was more represented in the total number of complaints or was assessed important due to problems that were noted (e.g. legal security and equality of citizens, efficacy, gaps in the normative regulation of issues, etc.) was presented in more details than the spheres that were not equally significant in terms of number of complaints or their gravity.

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

The number of newly received written complaints in 2005 was lower compared to 2004 and it matched a multi-annual average of the number of complaints the Office used to receive before the programme of visiting the counties, particularly those affected by the war.

It also needs to be said that the total number of complaints was higher than the presented one. Single case files were opened in the cases in which a group of citizens complained about identical problems (in one case there were 170 such complaints), so the statistical data do not provide the full picture.

In this report, like in the previous ones, it was not possible to fully present the state and level of respecting the citizens' constitutional and legal rights. The report is the review of the most significant and most numerous cases of human rights violations and their causes.

PART TWO

STATISTICAL DATA FOR 2005

The citizens address the Office of the Ombudsman by means of written submittals/complaints, pay personal visits to the Office and ask questions over the telephone. The files of the cases are formed only for written complaints and in the cases when citizens personally visit the Office and set forth an issue that brings up a reasonable doubt that it is the matter of rights violation within the jurisdiction of the Office of the Ombudsman.

Altogether 746 citizens addressed the Office, of which between 20 and 30 citizens addressed the Office over the telephone, of which there are no records and case files, so the data are not included in the statistical review. This chapter of the Report contains only the data on the number of the formed case files.

During 2005, **2,433** cases were in process on the basis of complaints, of which:

a) **1,653** were new cases, received in 2005, and

b) **780** cases were filed in the previous years.

During 2005, of total 2,433 cases, **1,660** were concluded.

Of 1,660 concluded cases:

a) 1,106 cases were received in 2005, and

b) 554 cases were received during the previous years.

Figure 1 Received complaints (2004-2005)

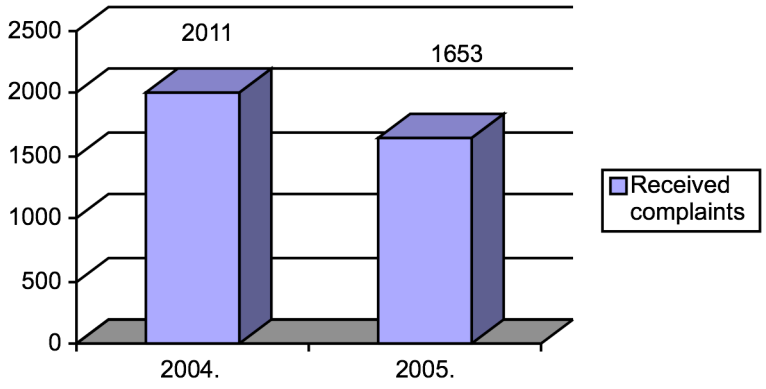


Figure 2 Total number of cases concluded in 2005 (new and old cases; 49% of the cases were concluded in 2004; Concluded 1,660, Unsettled 773):

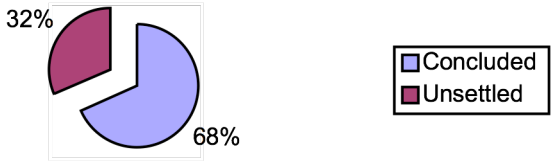


Figure 3 Concluded cases from the previous years (Concluded 554, Unsettled 226:

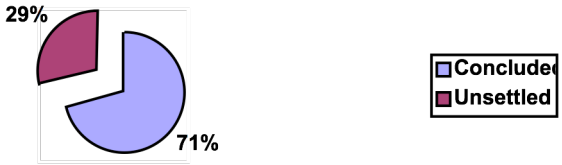
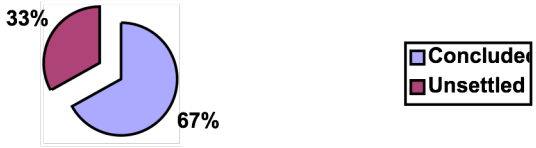


Figure 4 Settled cases – received in 2005 (Concluded 1,106, Unsettled 547):



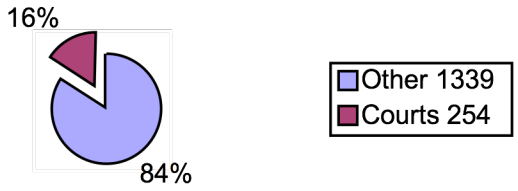
Note: A case is not concluded until an administrative decision or ruling is reached; certain cases may be considered settled upon the delivery of the competent body's statement. In some cases the parties fail to deliver the requested information/documents promptly, which slows down settling and concluding the activities related to the case.

Of total 1,653 cases, statement was requested for 1,127 of them. Of that number, a reply was sent within the deadline for 987 cases, and a reply for 140 cases was sent after the Ombudsman sent a rush note. According to the records, regional offices of the Croatian Pension Insurance Institute are those failing to respond in most cases (as opposed to the Central Office of the Croatian Pension Insurance Institute), as well as regional offices of the Administration for exiles, returnees and refugees,

county offices in charge of reconstruction works, certain local self-government units and the Ministry of Justice – civil law.

Of 1,653 cases received in 2005, the Office was not authorized for settling 334 cases, of which 254 complaints referred to the work of courts. The following figure shows the ratio of the total number of complaints, compared to the number of complaints about the work of courts:

Figure 5 The share of complaints about the court work compared to new complaints from 2005:



Of 1,106 **concluded** cases filed in 2005, 772 were in the jurisdiction of the Office, and the ratio of the well-grounded, unfounded and premature complaints is shown in next figure.

Figure 6

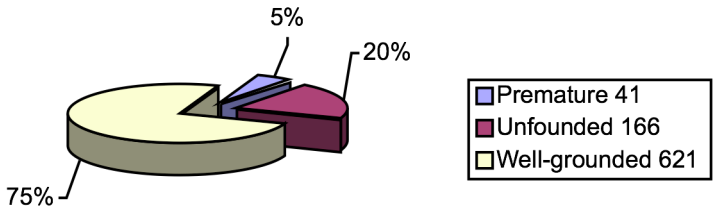
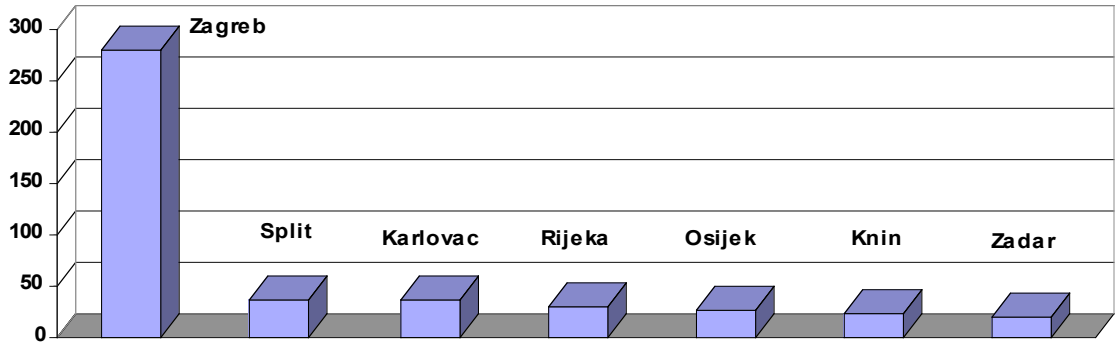


Figure 7 shows the structure of complaints by cities, by which only those with more than 20 filed complaints are included:



Note: The data on the high number of complaints from Zagreb and Zagreb County show the importance of visiting all Croatian counties.

Figure 8 Complaints by counties:

KOPRIVNIČKO-KRIŽEVAČKA	7
LIČKO-SENJSKA	22
KRAPINSKO-ZAGORSKA	25
BRODSKO-POSAVSKA	25
DUBROVAČKO-NERETVANSKA	27
MEĐIMURSKA	29
VIROVITIČKO-PODRAVSKA	30
BJELOVARSKO-BILOGORSKA	35
VARAŽDINSKA	35
ISTARSKA	37
ZADARSKA	42
ŠIBENSKO-KNINSKA	48
VUKOVARSKO-SRIJEMSKA	49
POŽEŠKO-SLAVONSKA	49
ZAGREBAČKA	52
PRIMORSKO-GORANSKA	69
KARLOVAČKA	74
SISAČKO-MOSLAVAČKA	77
SPLITSKO-DALMATINSKA	78
OSJEČKO-BARANJSKA	81
CITY OF ZAGREB	295
TOTAL	**1,186**

Figure 9 Complaints from abroad (altogether 467):

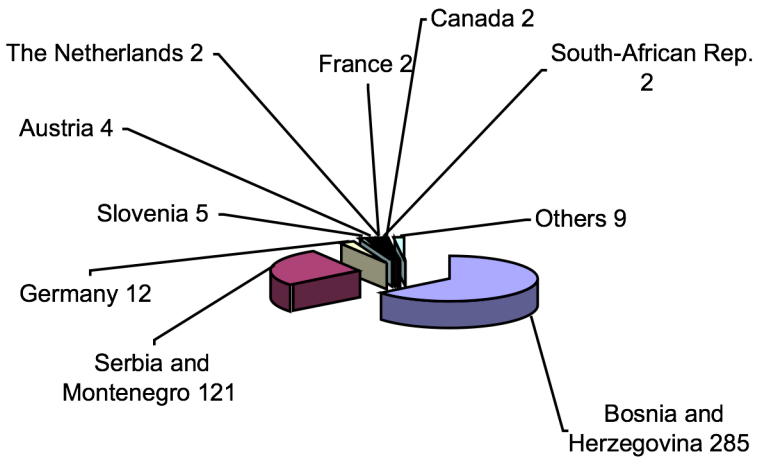


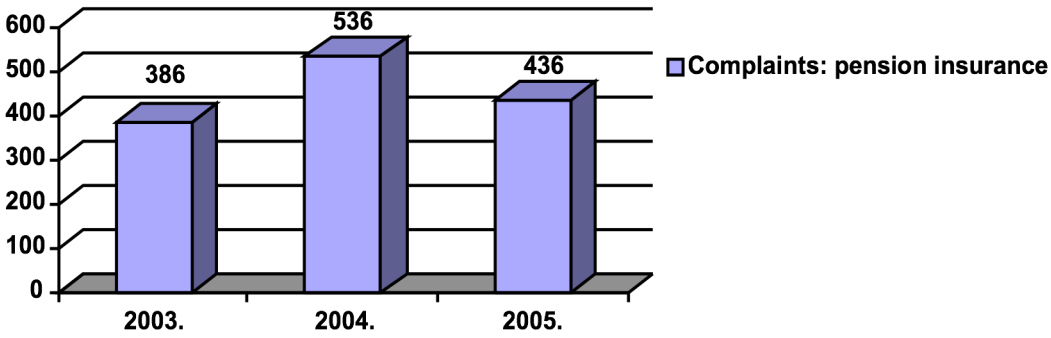
Figure 10 Comparable review of the number of complaints filed in 2005 and 2004, by different spheres:

Sphere:	**2005**	**2004**
PENSION INSURANCE	436	563
NON-JURISDICTION	326	445
RECONSTRUCTION	191	212
HOUSING	47	103
CONSTRUCTION	106	93
OWNERSHIP RIGHTS	40	76
SOCIAL WELFARE	44	63
STATUS-RELATED RIGHTS	53	58
OFFICIALS	53	46
DEFENDERS	38	40
CONFISCATED ASSETS – COMPENSATION	42	37
EXILES	17	23
PERSONS DEPRIVED OF FREEDOM	86	22
HEALTH INSURANCE	23	19
COURT DISTRAINT	8	17
ENVIRONMENTAL PROTECTION	11	15
CONDUCT OF THE POLICE OFFICERS	14	11
PROPERTY-RELATED INSECURITY	6	11
LEASE OF STATE-OWNED LAND	3	8
CHILD PROTECTION	3	3
PRIVATIZATION	3	3
OTHER	103	143
TOTAL	**1,653**	**2,011**

Note: Of altogether 326 cases that are outside the jurisdiction of the Office, 303 refer to the work of courts, which is almost identical with the number of such complaints in 2004 (294).

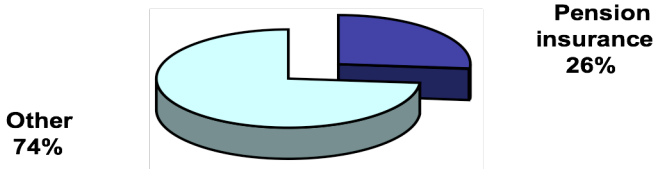
Based on analysis of the number of complaints in certain spheres compared to 2003 and 2004, certain changes were noticed. The number of complaints from the most numerous group, i.e. pension insurance, reduced, while the number of the complaints filed by the persons deprived of freedom increased.

Figure 11 Complaints from the sphere of pension insurance from 2003 to 2005:



A reduced number of complaints from the sphere of pension insurance resulted from the gradual settlement of cases, as well as from the fact that many citizens were advised (in personal contacts and over the telephone) to address the insurance holder in their country by sending a rush note, since it was concluded during the interview that the procedure was lasting for too long, but that the problem lied in the documentation that needed to be delivered to the Croatian Pension Insurance Institute. No complaints were filed in those examples.

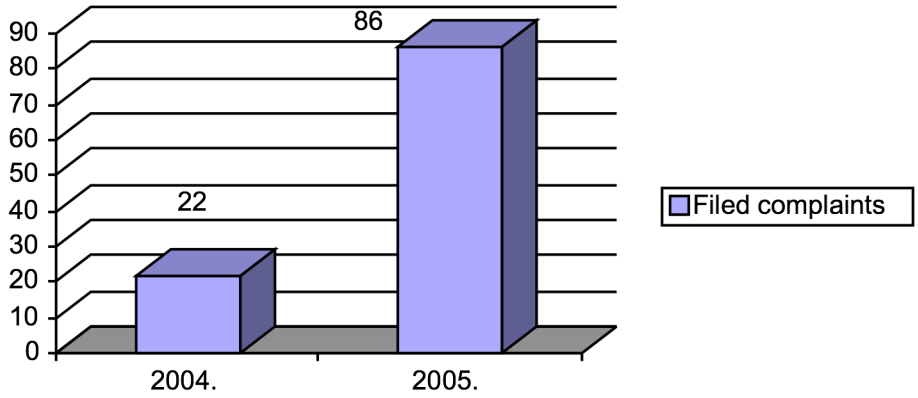
Figure 12 The number of complaints from the pension insurance sphere in **2005**, compared to the total number of the newly filed complaints:



There was a four times **increase in the number of complaints filed** in 2005 **by the persons deprived of freedom**, compared to the year before. Visiting the institutions in which prisoners, convicts and detainees are placed is definitely directly related to

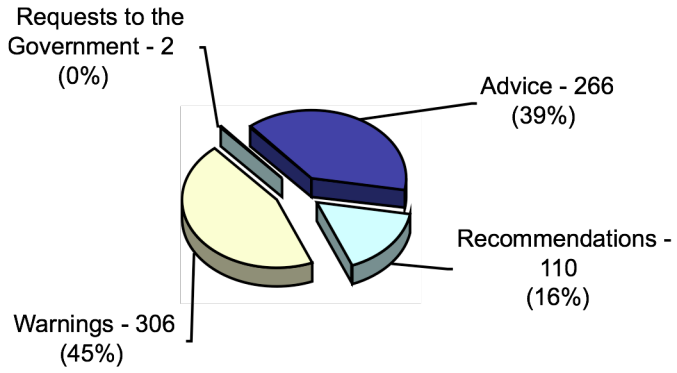
the increase in the number of complaints. The same as visiting the counties and places throughout Croatia, visiting these institutions gives citizens immediate access to the Office of the Ombudsman. A number of violations of the rights of these persons were noted by examining these institutions in the Republic of Croatia, on which a comprehensive report was written in February 2006 and delivered to the Human Rights and Minorities' Rights Committee of the Croatian Parliament.

Figure 13 The number of complaints filed by persons deprived of freedom (2004 – 2005):



The Ombudsman employed the following measures during 2005: providing legal advice to the clients, recommendations and warnings to the competent bodies and requests to the Government of the Republic of Croatia to annul the decision based on the right of supervision.

Figure 14 Undertaken measures:



Note: In certain cases, it was necessary to deliver a warning or recommendation to the body in charge for several times (on the same issue). It was most often the matter of failure of the regional offices of the CPII, Administration and offices for exiles, refugees and returnees and county offices in charge of reconstruction works

to act in order to correct the irregularities to which their attention was brought, and it was finally done only after they were addressed for the second time, and sometimes only after the competent ministry was addressed.

The problem of the "grey zone" was recently noticed, i.e. the citizens who did not address the Ombudsman Office earlier, and after they did so, there was a reasonable doubt that their cases were not dealt with as those in which the Ombudsman intervened.

The recently received complaints stated violations resulted from the conduct of the competent bodies, on the occasion of which the Ombudsman communicated with the competent bodies in the previous (identical) cases, pointed to the irregularities (most often in applying substantive regulations), after which the cases were settled in a legal manner. Those (new) complaints caused a suspicion that the parties in whose cases the Ombudsman intervened were treated differently (at the same time) from those which the Ombudsman had no knowledge of.

It is expected that all future identical cases will be settled in the same manner, regardless of the intervention on the part of the Ombudsman. An investigation procedure on the above mentioned citizens' complaints is underway.

ANALYSIS OF THE WORK ACTIVITIES BY LEGAL AREAS

Complaints about the work of courts and judicial bodies

During 2005, altogether 303 citizens' complaints from this area were in process. Of that number, 254 complaints were newly filed, and 49 cases from the previous period were in process. The number of the newly filed complaints reduced compared to 2004, in which 294 complaints were filed.

In terms of structure, complaints mostly referred to long duration of the first- and second-instance proceedings, and there were also complaints about the way court proceedings were conducted and about the outcome of the proceedings.

In the cases in which administrative procedure was conducted, the Ombudsman delivered the complaints about long duration of the procedures to the President of the Administrative Court, and the President promptly delivered the notification on the status of the case.

The complaints about the work of the courts that the Ombudsman delivered to the Ministry of Justice as a body in charge of performing activities of the judicial administration, the jurisdiction within which it performed the activities of examining the citizens' complaints about the work of the courts, and which referred to the stalling of court proceedings or performing other official activities, etc.

After receiving a complaint, the Ministry of Justice would usually inform the Ombudsman on the actions undertaken in order to investigate the complaint (by delivering a copy of the official letter to the Court President) within the activities of the judicial administration.

In relation to the work of the courts, there were complaints about the work of the court land registry departments for failing to carry out registration of land and for improper organization of the work of the land registry departments. The Ombudsman forwarded such complaints to the Ministry of Justice, in charge of supervising regular court activities and implementation of the court rulebook.

Furthermore, apart from the complaints about the work of the courts, there was a number of complaints about the work of the judicial bodies, municipal state prosecutor's office, all in relation to the outcomes of the criminal proceedings or non-acceptance of peaceful settling of dispute by concluding a settlement on behalf of the Republic of Croatia, pursuant to Article 186a of the Civil Litigation Act (Official Gazette "Narodne novine", no. 53/91, 91/92, 112/99, 88/01 and 117/03).
In 2005, several citizens filed complaints about long lasting procedures before the Constitutional Court of the Republic of Croatia, in relation to the proposals for the assessment of the coordination of the act or other regulation with the Constitution and in relation to the constitutional suits.

The Ombudsman received several complaints about the legal representation and charging fees, as well as about the actions of public notaries and the obligation to pay public notary fees.

It needs to be pointed out that the issue of access of the citizens with low income to the judiciary still remains unsettled. According to the announcements from early 2005, the issue of providing free legal advice to the citizens was supposed to be settled by a new act, whose enactment was expected by the end of 2005, but it was not realized. Regulating this institute will significantly advance the realization of the right of access to the judiciary, granted by Article 6 of the European Convention for the protection of human rights and fundamental freedoms.

Until this issue is solved, we shall remain the witnesses to the problems of the citizens who conducted their proceedings on their own, and after they lost the case and addressed the Ombudsman's Office, it was noted in certain cases that the party could have had chances for success in the lost dispute if he/she had had a defence lawyer to help him/her.

The citizens can still get free legal assistance from the Croatian Bar Council, under the following four conditions: they must have Croatian citizenship, they must possess a certificate from the competent internal revenue service confirming that they are not registered for tax, that their income is exceptionally low and that the subject matter of the case is related to the social welfare rights. One citizen

personally asked for advice in the case in which litigation was instituted against him for the purpose of compensating the damage requested by the plaintiff. The law suit showed that the citizen caused damages in the traffic, but as a pedestrian. He addressed the Croatian Bar Council for free legal assistance. He received a negative response, with the explanation that the Council was not providing free legal assistance in litigations for the compensation of damage.

Examples:

(1) Case description: (P. P. – 1292/05) Mrs. K.A. of Konjščina addressed the Ombudsman via her proxy, complaining about the decision of the Municipal Court in Zagreb, by which her law suit request for the purpose of determining that the inheritance after the deceased K.K. should not include ½ of the part of arable lot in K. of 825.6 square yards since the same presented her marital gains, was denied three times. She stated in the complaint that the first instance court acted contrary to the instructions of the County Court in Zagreb on several occasions and that it applied substantive law in a way contrary to the instructions given in the annulling decisions, for which she stated that her right to fair and legal trial before the court was violated. Believing that the judge of the first instance court acted in illegal and undisciplined manner in her case, the complainant requested from the Court President to initiate a disciplinary procedure. She was informed in an official letter from the Court President that he did not find any prerequisites for the initiation of the disciplinary procedure against the above mentioned judge since he believed that "judges cannot be held disciplinary responsible just because one party is unsatisfied with the ruling".

The complainant's proxy filed a complaint in 2004 to the President of the County Court in Zagreb, but since she received no reply, the complainant addressed the Ombudsman, seeking his help in that situation.

Undertaken measures: After receiving the complaint, the Ombudsman delivered it to the Ministry of Justice to initiate adequate procedure, pursuant to Article 38 of the Courts Act (NN 3/94, 100/96, 131/97, 129/00, 101/03, 17/04, 141/04).

He at the same time sent an official letter to the complainant's proxy, informing him on the delivery of the complaint to the competent Ministry of Justice for consideration, since the Ombudsman had no legal authority to intervene into the work of courts, so the proxy was at the same time informed of the authority of the Ombudsman.

Related to the subject matter of the complaint, the Ombudsman stated that, pursuant to Article 9 of the Courts Act, a judge could not be held accountable for any expressed opinion or for voting in passing a court ruling. However, should a judge fail to accept the instructions of a higher court, and fail to offer a valid explanation of his/her opposing attitude, which could result in multiple annulment (as in the described case), the second instance court may, on the occasion of annulling the

ruling of the first instance court and returning the case to the same court for a retrial, order that a new main hearing be held before another judge, i.e. before another panel, pursuant to Article 371 of the Civil Litigation Act.

Therefore, the complainant was informed about this legally stipulated possibility in the court proceedings as a possible way out of the described situation.

Case outcome: Unknown. At the time the complaint was filed with the Ombudsman's Office the complainant had already stated a regular legal remedy – appeal. The outcome of the appeal procedure and whether the second instance court acted in accordance with Article 371 of the Civil Litigation Act are not known. The Ministry of Justice informed the Ombudsman on the actions undertaken to check the allegations by delivering a copy of the official letter sent to the President of the Municipal Court in Zagreb of 25th October 2005.

Note: This is an example of the inefficient work of the court.

(2) Case description (P. P. - 595/05): Mr. B. S. of Varaždin addressed the Ombudsman with a request to interfere and mediate so that the Municipal Prosecutor's Office in V. would conclude a settlement on behalf of the Republic of Croatia, by which the issue of the consolidated real estate for which the complainant received neither compensation nor a substitute lot, and which became the ownership of the Republic of Croatia, would be legally solved.

The complainant enclosed with the complaint the statement of the MPO of 28th July 2004 by which he was informed, pursuant to Article 186a, Paragraph 5 of the Civil Litigation Act that his request for peaceful settlement of the dispute was denied and there was no possibility of concluding a settlement.

Unsatisfied with such a response, he requested from the Ombudsman to intervene, since he considered himself being forced into an expensive court litigation (that he could not afford) in order to acquire his assets and that the already overburdened judiciary would be unnecessarily burdened in that way.

Measures undertaken: The Ombudsman sent an official letter to the complainant, informing him of his inability to fulfil his request since he was not authorized to act in the issue in question. The complainant was informed on the Ombudsman's authority and about the fact that the MPO, pursuant to Article 2 of the Act on the State Prosecutor's Office (NN 51/01) was an independent and integral judicial body whose work could not be controlled by the Ombudsman. The complainant received an explanation that from the decision of the MPO in V. followed that his request for peaceful settlement of the dispute was denied, and that he was referred to initiate a law suit, pursuant to Article 186a, Paragraph 5 of the Civil Litigation Act.

As the State Prosecutor's Office is not obliged to make a deal if it estimates that there is no basis for it, the complainant was left with the possibility to file a law suit

with the authorized court in order to realize his rights. He was informed that he could get detailed advice and legal assistance from a lawyer.

The complainant was also told that, if he believed that the MPO in V. acted improperly, he had a right to file a complaint to the Ministry of Justice, i.e. to the MPO in V. or to the State Prosecutor's Office of the Republic of Croatia, pursuant to Article 6 of the Act on the State Prosecutor's Office, and that he was entitled to get a response within a reasonable period, but that such a complaint would not suspend the statute of limitation.

Case outcome: Unknown. It is out of the Ombudsman's jurisdiction.

(3) Case description (P. P. – 1435/05): Mr. R. G. of P. addressed the Ombudsman in a complaint related to the administrative dispute conducted before the Constitutional Court of the Republic of Croatia, no. Us-…/02, stating that he filed a lawsuit on 30th August 2002 against the Decision of the Interior Ministry of the Republic of Croatia (of 10th July 2002) by which his request for the acquisition of the Croatian citizenship was denied.

The complainant also stated that he addressed the President of the Administrative Court of the Republic of Croatia, requesting that the settling of the case be rushed, but that the case was still not dealt with.

Measures undertaken: The Ombudsman forwarded the complaint on 10th November 2005 to the President of the Administrative Court of the Republic of Croatia to act upon it in accordance with its authority to perform court administration activities, pursuant to the Courts Act.

Case outcome: The President of the Administrative Court of the Republic of Croatia delivered a notice on 12th December 2005 that the mentioned case was settled.

(4) Case description (P. P. – 487/05): The Ombudsman received a complaint from M. Z. on 30th March 2005, in which he stated that he filed a motion for the initiation of the procedure for the verification of the constitutionality of the provisions of the Pension Insurance Act (Narodne novine, no. 102/98), and that since the day he submitted the motion (in November 1999) the Constitutional Court neither reached the decision on the initiation nor on the very motion. The complainant explained in detail the motion he filed to the Constitutional Court, stating that it was a matter of issue related to war invalids, and that his income became insufficient to cover the costs of living.

The Ombudsman requested the information on the status of the case in an official letter of 15th April 2005, and the response from the Constitutional Court was received on 20th April.

The response stated the following: “The complainant is a submitter of the motion for the verification of the constitutionality of the Pension Insurance Act together with 62 other persons… The draft decision in the procedure before the Constitutional Court is in the final preparatory stage”.

Since the complainant addressed the Ombudsman again, stating that he was in a difficult situation, the Ombudsman requested the information on the case status again. The Constitutional Court replied that “The draft decision in the case in question is in the final preparation stage”.

Case outcome: Unknown.

Pension and disability insurance – rights of the Croatian war veterans (defenders) and members of their families

a) Pension and disability insurance rights

In this legal sphere, the Ombudsman received 436 complaints during 2005. Apart from the complaints filed in the Republic of Croatia, 218 complaints were received from the Republic of Bosnia and Herzegovina (17 due to silence of administration), 15 from Serbia and Montenegro, 8 from other countries, and 45 complaints which requested rushing the proceedings conducted before the Constitutional Court of the Republic of Croatia.

The complaints to the authorized bodies in the cases in this sphere referred primarily to long duration of procedures, particularly of the second instance ones.

Apart from long lasting procedures, other reasons stated in the complaints referred to: establishing the right to pension, payments of the differences of pensions for certain periods, calculation of the proportional part of pensions in accordance with the provisions of the Contract on Social Insurance and to the payment of pensions after the authorized insurance holders reached decisions on the right to pension.

In relation to the complaints from Bosnia and Herzegovina, and within the implementation of the Contract on Social Insurance, the Ombudsman established cooperation and regular contacts with the Croatian Pension Insurance Institute.

The Croatian Pension Insurance Institute mostly respected the deadlines for the delivery of information or responses to the sent inquiries and requested information, and it was delivering copies of the administrative decisions upon the conclusion of procedures. However, due to a large number of unsettled requests, the Ombudsman is still receiving complaints about long lasting settlement of the cases.

The problem the CPII is faced with lies in the fact that foreign holders of insurance fail to deliver the required or properly processed documentation, without which neither legally relevant facts can be established nor timely decisions be made. The Ombudsman therefore often advised his clients abroad to intervene by sending a rush note to the authorized (foreign) insurance holder. We believe that it would be much more efficient if local holders of insurance would directly intervene by means of rush notes, and that there is surely a large number of such cases of which the Ombudsman is not informed.

In certain cases, authorized bodies of the CPII fail to explain the reasons for the so-called "silence of the administration", despite the Ombudsman's requests.

We find the actions of the CPII improper, since it was notifying the submitter of the request on their request by means of official letter, instead of reaching an administrative decision. The CPII must be particularly warned that the protection for failure to reach decisions also extends to the cases when a decision is reached by official duty if it is in a client's interest.

Based on the consideration of numerous complaints related to the Contract on Social Insurance concluded with the countries that became independent after the break-up of the former Socialist Federative Republic of Yugoslavia, the necessity emerged for their competent bodies to express their attitudes on the exiting problems in implementation, as well as the necessity for each side to implement the necessary measures (technical and personnel-related) after the diagnosis of the situation is made, for the purpose of prompter settlement of the clients' requests.

The complainants complained about the contents of the Pension Insurance Act of 1998 (hereinafter: PIA), which has been in force since 1st January 1999. They pointed out that two groups of pensioners were created: one composed of the pensioners who realized the right to pension before 31st December 1998 and the other composed of the (new) pensioners who realized the right as of 1st January 1999.

These are the fundamental problems of the "new" pensioners: new way of pension calculation, extended calculation period for determining the salaries on the basis of which pensions are determined, etc…

In accordance with the way of calculation, a pension rate depends on the date of the realization of the right, and not on the length of service for retirement and multi-annual payment of contributions.

The complainants therefore proposed that a financial evaluation be carried out in order to create findings and opinions, taking into consideration the circumstantial influence of the date on which the PIA came into force (1st January 1999) and a new way of calculating pensions compared to the "old" act and rate of pensions. After

the evaluation is carried out, acceptable solutions should be considered and proposed, in order to bring into balance unjustified differences in the rate of pensions.

Both of the mentioned groups of pensioners were a part of the obligatory pension insurance system on the basis of the generation solidarity, and the current Act, just like the previous one, in the part that refers to the mandatory insurance (in accordance with general rules) and general principles, promoted generation solidarity and receiving in accordance with the invested, i.e. paid contributions.

It is the complainants' opinion that equal sums of the paid contributions and equal length of service for retirement could not result in a significantly different calculation of the pension rate.

b) Croatian war veterans of the Homeland War and members of their families within the pension insurance system

The complaints in this sphere primarily referred to long lasting procedure of revision, payment, i.e. execution of decisions on the assignment of the rights, pursuant to Article 140, Paragraph 3 of the former Act on the Rights of the Homeland War Veterans and Members of Their Families (Narodne novine, no.: 94/01, 122/02, 17/04 and 48/04; hereinafter: the former Act), and to issuing confirmations on the war veteran status.

The CPII has a difficult task of implementing a new Act on the Rights of the Homeland War Veterans and Members of Their Families (Narodne novine, no. 174/04, hereinafter: a new Act). The provision of Article 158 of the new Act prescribes that assignment of the recognized rights will be done within three years after the new Act comes into force.

The procedures for the assignment of disability pension in accordance with Article 140 of the former Act were initiated by official duty. Based on the CPII's decisions, new rates of disability pension were determined in a retroactive manner. However, the decision (of 2004) determined that: "The difference of the pension with the pension bonus of 7th November 2001 to 30th June 2004 will be calculated together with the calculation of the paid sums according to the period during which the pension was paid out, and the difference will be paid subsequently after the means from the Republic of Croatia budget are collected".

Therefore, the execution of the decisions in this part was undetermined and undeterminable, so the deadline for the payment of this difference remained uncertain.

In order to protect the rights and interests of the Croatian war veterans in accordance with his authority, the Ombudsman promptly sent official letters to the CPII, Ministry of Family, War Veterans and Intergeneration Solidarity and to the Finance Ministry and requested their statements and settling of the problems that emerged in these cases.

The CPII and the Family Ministry repeated their attitude as cited in the quote from the decision: that the difference for the assigned disability pension will be paid out subsequently, after the means from the budget of the Republic of Croatia are secured.

The means for the settlement of the debt for disability and family pensions for 2001 and 2002 were secured from the state budget of the Republic of Croatia (Narodne novine, no. 148/05), in the section "Care for Croatian Homeland War veterans".

The fact remains that the deadline for the payment of the debt from 2003 and a part from 2004 (until 30th June 2004) remains open.

We consider it necessary to warn of the importance of this issue and the responsibility of the legislator when creating regulations, as well as to warn the bodies that deal with reaching decisions in certain cases, so that the citizens' legal security would be protected. The regulations and individual decisions should not generate legal insecurity and uncertainty about the realization of the recognized rights established by the administrative decision.

Examples:

(1) Case description (P. P.: 9/2005) The Ombudsman received on 3rd January 2005 a complaint from Đ. J. of S. in relation to settling his request for the realization of the pension insurance right.

The complainant stated in his complaint that he submitted to the regional service of the CPII a request for assigning the pension.

The competent body did not reach the decision to the date the complainant filed his complaint, despite fulfilling the requests of the first instance body of 4th November 2002, 10th March 2003 and 13th December 2004 in relation to the delivery of the specified documents for the purpose of completing the request and reaching the decision.

Measures undertaken: In relation to the above mentioned complaint, the Ombudsman requested in the official letter of 4th January 2005 a statement from the Central Service of the CPII on the allegations from the complaint and the reasons why the procedure was being conducted for such a long time and why decision was not reached in that legal matter.

Case outcome: The Central Service of the CPII, Sector for the Implementation of International Agreements on Social Insurance, delivered to the Ombudsman a report on 7th April 2005, containing a copy of the decision reached by the CPII, Regional Service Sisak, no. 51711, of 18th March 2005. It is evident from the decision that the complainant was recognized the right to a proportional part of the old-age pension at the burden of the Croatian insurance holder, starting from 1st April 2002.

The procedure for the realization of the right to the proportional part of the old-age pension was initiated upon the insurant's request of 4th September 2002, sent to the competent pension insurance holder in Germany.

Note: The first-instance decision was reached after the Ombudsman sent the official letter.

(2) Case description (P. P.: 1897/04) S. J. of R. addressed the Ombudsman on 24th November 2004, filing a complaint in the case of settling the request for the realization of the pension insurance right (pension).

The statements from the complaint and the copies of the certificates, i.e. documentation, show that she filed a request with the competent body of the CPII in 2003.

The competent body of the CPII failed to decide on the request to the date on which the complaint was received.

Measures undertaken: The Ombudsman requested on 26th November 2004 from the Central Service of the CPII to state their attitude on the statements contained in the complaint.

The Ombudsman was informed in a statement of the CPII of 1st March 2005 that the Serbian-Montenegrin pension insurance holder from the complainant's case reached the decision on 22nd July authorizing the choice of the holder of the proportional part of insurance, and it was delivered together with the whole case to the Croatian pension insurance holder. The regional service in R. delivered the file during the procedure to the Central Service for the purpose of calculating the basic pension in the Republic of Croatia.

The case was on 18th February forwarded from the Central Service to the regional service in R., which was obliged to complete the case within the Registry Department.

The official letter stated that the decision would be reached as soon as possible after all the information for it to be reached was gathered.

Case outcome: Considering the fact that the competent body of the CPII failed to deliver the notification on the continual and conclusion of the procedure in the case

of the complainant, the Ombudsman requested in an official letter of 15th April 2005 the statement from the Central Service of the CPI. He received a reply in an official letter of 6th May 2005, which stated that urgent report on the status of the case was requested from the competent regional service and that they would respond to the complaint – rush note after the delivered statement.

The CPII's report was received on 24th May 2005: the competent regional service in R. reached a decision on 12th May 2005 on the recognition of the old-age pension in the case of the complainant. It is evident from the statement of reasons in the above mentioned decision that the procedure for the recognition of the right to old-age pension on the basis of the predominant insurance-related years of service pursuant to Article 40 of the Contract on Social Insurance concluded with the Republic of Yugoslavia (now: Serbia and Montenegro) was filed on 16th September 2003.

Note: The Ombudsman's intervention was successful.

(3) Case description (P. P.: 7/05) The complainant R. D. of P. in Bosnia and Herzegovina addressed the Ombudsman on 3rd January 2005 with a complaint about the work and acting of the first instance body of the CPII.

The statements from the complaint and the copies of the delivered documentation pointed to the fact that the complainant submitted a request with the first instance body of the CPII on 4th February 2000 for establishing the payment of the pension and of unpaid pensions.

The competent body did not reach the decision on the request by the date the complaint was received.

Measures undertaken: The Ombudsman requested in the official letter of 4th January 2005 a statement on the allegations from the complaint and the actions undertaken in relation to the request.

Procedure outcome: The CPII, Sector for the Implementation of International Agreements on Social Insurance delivered a notification (26th January 2005) from which it was evident that the complainant's file was in the regional service in Z. and that the service was requested to issue a prompt report on the status of the case, with the note that the Ombudsman would receive the statement after gaining insight into the requested response of the first instance body.

On 3rd March 2005, the Ombudsman received a notification that the competent regional service established in its decision of 11th February 2005 the payment of the disability pension to the complainant, starting from 4th June 2005.

Note: It is evident from the enclosed copy of the decision of the first instance body of the CPII that the complainant submitted a request for the establishment of the payment of the pension on 4th June 2001. The intervention was successful.

(4) Case description (P. P.: 132/05) Lj. Č. of K. addressed the Ombudsman on 17th January 2005 in a complaint related to the execution of the decision reached by the Central Service of the CPII on 3rd February 2004, in which the complainant's appeal was adopted and the decision of the CPII PS in D. of 29th August 2003 was annulled and the case was returned to the regional service to reach a new one. A new decision was not reached by the date the complaint was submitted to the CPII PS in D.

Measures undertaken: The Ombudsman requested in an official letter of 9th February 2005 from the CPII's Central Service in Zagreb statement on the complaint and the reasons for the stalled decision making. The CPII wrote in its statement of 10th March 2005 that a report was requested on the reasons for the failure to act upon the decision on the part of the appeal body and on the development of the procedure. The CPII sent a notice on 29th June 2005 that it requested again from the first instance body to state the reasons for failing to respond to the official letter of 10th March 2005 and to send information on the case status.
Procedure outcome: The Ombudsman was notified in an official letter from the CPII's Central Service in Zagreb that the CPII regional service in D. reached a decision on 29th July 2005 in the complainant's case, by which the complainant was recognized the right to old-age pension, staring from 16th September 1991.

Note: The procedure for the realization of the right to old-age pension was initiated at the request of the insurant, filed on 13th January 1999. The intervention was successful. A violation of the right to reach decisions within a reasonable period was established.

(5) Case description (P. P.: 1946/04) The Ombudsman received a complaint from A. B. of Č., Bosnia and Herzegovina, on 10th December 2004, which stated that she delivered the request to the competent body of the CPII, via authorized pension insurance holder in Bosnia and Herzegovina in August 2002, for the recognition of the right to family pension inherited from her deceased husband. Since the CPII failed to reach the decision within the prescribed deadline, the complainant filed an appeal, complaining about the "administration silence". Her appeal was not decided upon by the date she filed a complaint.

Measures undertaken: The Ombudsman requested on 14th December 2004 from the appeal body of the CPII to state the reasons for its failure to reach the decision on the appeal.

Procedure outcome: The Sector for the Implementation of International Agreements on Social Insurance delivered the Ombudsman on 8th March 2005 the requested report: the CPII recognized in its decision of 10th January 2005 the complainant's right to family pension as of 1st November 2002, in accordance with the provisions of Article 43 of the Agreement on Social Insurance between the Republic of Croatia and Bosnia and Herzegovina.

Note: The procedure for the recognition of the right to family pension was instituted on 25th October 2002 by official duty, in accordance with the provision of Article 43 of the mentioned Agreement on Social Insurance. The intervention was successful.

Health protection and insurance

The Ombudsman in 2005 received 23 complaints in the sphere of health protection and health insurance. The largest number of complaints from this sphere were received after the Act on Amendments to the Health Insurance Act came into force (Narodne novine, no. 90/05; hereinafter: AAHIA), i.e. after 1st October 2005. However, the received complaints point to the fact that AAHIA is shown to be rather limiting, and in some cases it even made it impossible for the citizens of the Republic of Croatia to exercise the right to health protection, guaranteed by Article 58 of the Constitution of the Republic of Croatia.

Article 2 of the AAHIA, by which Article 40 was amended, prescribes in Paragraph 2 that an insured person is entitled to a compensation for the transport costs if he/she uses health protection in the contracting health institution, i.e. at the clinic of the contracting doctor running private practice that is situated more than 100 km away from the place of his/her residence, if he/she is unable to realize his/her health protection in a nearer health institution for that kind of health protection.

Article 4 of the AAHIA, by which Article 42 was amended, prescribes in Paragraph 1 that the transportation costs include the costs of transport by public means at the lowest price and to the shortest distance according to the official mileage-finder of the public carrier.

The quoted Act also determines exceptions to the mentioned rules. Compensation for the transport costs is paid to insured persons, regardless of the distance of the place where the health protection is realized from the place of his/her residence, if he/she is advised to go abroad in accordance with the legislation of the Institute, as well as to the donors of organs, cell tissue and to the insured person using haemodialysis as a chronic kidney patient.

Furthermore, insured persons realizing the right to a compensation of the transport costs may be approved the right to use a more expensive means of public transport if their health status demands so, in accordance with the legislation of the Institute.

In correspondence with the authorized ministry, the Ombudsman represented the attitude that the prescribed exceptions did not ensure the protection of the insured persons with low income, as social criterion was not taken into consideration when determining the right to compensation of the transport costs regardless of the distance of the place where medical protection is used from the residence of the insured person. By failing to recognize the social criterion, some of insured persons, to which our complainants belong, will not be able to realize the right to medical protection, guaranteed by Article 58 of the Constitution of the Republic of Croatia.

The compensation to insured persons realizing the right to compensation of the transport costs, pursuant to Article 13, Paragraph 1 of the Rulebook on amendments to the Rulebook on the rights, conditions and way of realizing fundamental health insurance rights (Narodne novine, no. 112/05), is paid by the Institute on the basis of the travel order form, after using health protection. The Rulebook does not stipulate the possibility of paying advancement for the transport costs, to enable persons with low income to travel to the medical institute more than 100 km away from the place of their residence, for the purpose of realizing medical protection.

The Ombudsman informed the Minister of health and social welfare on the noticed difficulties in the realization of the health protection rights, emerged as a consequence of the implementation of the Act on Amendments to the Health Insurance Act, and he requested that measures be undertaken for their settlement. According to the available information, the Government of the Republic of Croatia created a new Bill on Health Insurance, proposing that the insurant be recognized the right to compensation of the transport costs if he/she used medical protection in a health institution more than 40 kilometres away from his/her place of residence.

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The citizens' complaints pointed to the problem of determining and regulating the status of the highly educated personnel employed in the sphere of medicine who did not obtain their diploma in faculties of medical orientation, but they finished post-graduate studies on such faculties and acquired a scientific MA or D.Sc. level.

The Act on Health Protection (Narodne novine, no. 121/03) divides employees within the medical sector into medical workers and medical co-operators. Article 120, Paragraph 2 of the same Act stipulates that medical workers should be educated in university of medicine, dentistry and faculty of pharmacy and biochemistry or other institutes for higher education with medical orientation, as well as in high schools of medical orientation. According to Article 124, Paragraph 1 of the same Act, medical co-operators are the persons who did not obtain education in the medical sphere but work in medical institutions and participate in a part of the medical protection area (diagnostics and therapy procedures).

The Ministry of Health and Social Welfare interprets the provision of Article 120, Paragraph 2 of the Act on Medical Protection in a way that only those persons who acquired a diploma in a faculty of medicine, dentistry or pharmacy and biochemistry, or other institute of higher education with medical orientation are to be considered medical workers.

However, the mentioned Article prescribes that medical workers should take education in faculties of medicine, dentistry, pharmacy and biochemistry, and other institutes of higher education with medical orientation, but not that they should have a diploma from those faculties.

Article 70, Paragraph 1 of the Act on Scientific Activities and High Education (Narodne novine, no. 123/03, 198/03, 105/04 and 174/04) prescribes that university education comprises three levels: pre-graduate studies, graduate studies and post-graduate studies. After finishing post-graduate studies at a faculty of medical orientation, employees are considered to have been educated at faculties determined by Article 120, Paragraph 2 of the Act on Medical Protection.

The Act on Medical Protection, in Part XI "Medical Workers", determines the obligation for medical workers to complete internship and take professional certification exam, regulates the way of obtaining, renewing and taking away the approval for independent work, determines the right and obligation of professional training, specialization, etc., while in the case of medical co-operators it prescribes in Article 124, Paragraph 2, that the contents and way of their professional training, after having obtained opinion of the competent chambers, will be determined in a rulebook introduced by the health minister.

Article 202 of the Act on Medical Protection binds the minister to introduce regulations for whose enactment he/she authorized, within 6 months from the day the Act comes into force. The Act on Medical Protection came into force on 6th August 2003, and the rulebook on professional training of medical workers has not been enacted yet. This means that there is no regulation which regulates the contents and way medical workers should do the internship, take certification exam, obtain approval for independent work, or other issues related to their professional training.

Furthermore, a Decree on the names of workplaces and coefficients of the complexity of work in public services (Narodne novine, no.: 38/01, 112/01, 62/02, 156/02 and 162/03) determined a higher coefficient of work complexity for medical workers than for medical co-operators in the same work posts.

Examples:

(1) Case description (P. P. – 1411/05): Mrs. H. V. of B. submitted a complaint to the Ombudsman. She stated that her father, who lives in B., is suffering from lung cancer. He was prescribed a ten-day radiotherapy, which he will undergo in Zagreb. The distance between B. and Zagreb is less than 100 kilometres, so the complainant's father must cover the transportation costs by himself. She pointed out in her complaint that he would be forced to spend his entire pension to pay the transportation costs to be able to undergo therapy.

(2) Case description (P. P. – 1431/05): Mrs. B. S. of K. addressed the Ombudsman and stated that her 6-year old daughter P. suffered from encephalopathy. Until October 2005 they used to take her every day to the Education Centre "Goljak" in Zagreb. There she attended working and physical therapy in a daily clinic, as well as the therapy at special-education teacher and speech pathologist from 10 a.m. to 1 p.m. Since 1st October 2005, Croatian Health Insurance Institute (hereinafter: the

Institute) ceased to cover her transport costs, since, according to train mileage measurer (the cheapest means of transport), the distance between K. and Zagreb is less than 100 kilometres. The complainant pointed out that she was the only working member of the family, while her husband was on leave until P. reached seven years of age.

Measures undertaken: Considering that both of the complaints refer to the violation of the constitutionally granted right to medical protection due to enforcement of Articles 2 and 4 of the Act on Amendments to the Health Insurance Act (Narodne novine no. 90/05), the Ombudsman sent an official letter to the Health and Social Welfare Minister. He pointed out that the complaints at issue showed that the Act did not grant health insurance to the persons with low income. The Constitution of the Republic of Croatia in Article 1, Paragraph 1 stipulates that the Republic of Croatia is a uniform and indivisible democratic and social state. By failing to recognize social criteria, some of the insured persons, among them the above mentioned complainants, would not be able to realize the right to medical protection, granted by Article 58 of the Constitution of the Republic of Croatia.

The Ombudsman requested from the Minister to inform him of the measures he would undertake to enable the insured persons to exercise their right to medical protection.

Case outcome: The minister informed the Ombudsman that a new Bill on Health Insurance was being created. After collecting relevant data and analysing them, the problem of covering transport costs for certain categories of insured persons would be considered, too.

Rights of the Croatian Homeland War veterans and their family members

Croatian Homeland War veterans and members of their families addressed the Ombudsman in relation to the realization of the rights to be allocated bonus shares, established by Article 48 of the Act on the Rights of Croatian Homeland War Veterans and Their Family Members (Narodne novine, no. 94/01).

The Ministry of Family, War Veterans and Intergeneration Solidarity sent a note to the Ombudsman in relation to the complaints, stating that the complainants were not determined the right to bonus shares since the Government of the Republic of Croatia neither reached a decision on individual share per member of the Croatian War Veterans Fund (hereinafter: the Fund) nor the preceding document, i.e. Uniform Register of Croatian War Veterans and Their Family Members.

The Act on the Fund of Croatian War Veterans and Their Family Members (Narodne novine, no. 163/03) came into force on 24th October 2003. Its Article 35, Paragraph 2, regulates the obligation of the Government of the Republic of Croatia to reach the decision within 90 days after the Act's coming into force on share per Fund member.

Article 35a of the Act on Amendments to the Act on the Fund of Croatian War Veterans and Their Family Members (Narodne novine no. 82/04 of 4th June 2004) obliged the Government of the Republic of Croatia to determine the final number of the Fund members no later than 6 months after the establishment of the Fund and deliver it to the Association for the Fund Management. The members of the Fund should get the document on the number of the shares in the Fund within further 6-month deadline.

The quoted provision does not clearly specify the deadline for the Government of the Republic of Croatia to determine the final number of the Fund members. Considering that the Fund was established on the basis of the Act on the Fund of Croatian War Veterans and Their Family Members (Article 1), which became effective on 24th October 2003, it is evident that the deadline for determining the final number of the Fund members already expired before the time the amendments to the Act were made.

The Minister of Family, War Veterans and Intergeneration Solidarity informed the Ombudsman that the Ministry publicly announced the accurately established number of the veterans on the basis of the Uniform Register of Croatian War Veterans, kept by the Ministry. Apart from the number of the Croatian Homeland War Veterans, it is necessary to establish which of them were members of the combatant units, and who were members of non-combatant units, as the number of their shares in the Fund depends on it. Considering the fact that the Ministry of Family, War Veterans and Intergeneration Solidarity do not keep such records, it requested the data from the Defence Ministry and Interior Ministry. After it receives the requested data, it will begin issuing documents on the number of the Fund shares.

According to our knowledge, the Ministry of Family, War Veterans and Intergeneration Solidarity in the meantime obtained the data from the Interior Ministry and Defence Ministry on the defenders belonging to fighting and non-fighting units, respectively, and it began calculating the Fund share for each of them. It is expected that the decision on the number of the belonging shares in the Fund will soon be delivered to the address of each of 500,000 war veterans realizing the right to shares without compensation.

Example:

Case description (P. P. – 174/05): The members of the family of the deceased M. V., Croatian defender killed during the war, addressed the Ombudsman on the second occasion. In their submittal they stated that they filed a request via their lawyer on 24th November 2001 to the Ministry of Croatian War Veterans to be determined the right to shares without compensation, in accordance with Article 48 of the Act on the Rights of Croatian War Veterans and Their Family Members (Narodne novine,

no. 94/01). As their request remained unsettled, the lawyer filed a new one on 15th July 2002, based on the instruction of the Croatian War Veterans Ministry.

Since the new request was not dealt with either, the lawyer filed a complaint with the Ombudsman about the work of the Ministry of Family, War Veterans and Intergeneration Solidarity.

Measures undertaken: In relation to the complaint, the Ombudsman implemented an investigation procedure. He stated in his official letter to the Ministry of Family, War Veterans and Intergeneration Solidarity that four years passed since the Act on the Rights of Croatian Independence War Veterans and Their Family Members was enacted, by which the Croatian war veterans and members of their families were granted the right to acquisition of stocks, i.e. shares in companies without compensation, and that regulations for the realization of that legally granted right were not enacted. He therefore requested, on the basis of Article 11 of the Act on Ombudsman (Narodne novine, no. 60/92), the information on whether the Government of the Republic of Croatia enacted regulations, i.e. information on the stage of the procedure of enacting those regulations for the realization of the right to acquire company shares or bonus shares.

Case outcome: According to the information from the Ministry of Family, War Veterans and Intergeneration Solidarity, the complainants will be delivered a document on the number of the shares in the Croatian Independence War Veterans Fund.

Social Welfare

The Ombudsman in 2005 received 44 complaints related to the social welfare sphere. Most of the complaints from this sphere referred to the realization of the rights from the social welfare system, complaints about deciding with which parent a juvenile child would live with and deciding on the way and time of their seeing their other parent, and complaints about the work of the social welfare centres. Among the cases related to the realization of the rights from the social welfare system, there was a decrease in the number of complaints about the scope of the realized rights or the deadline for deciding on the request, i.e. a complainant's appeal. A number of cases were opened in relation to the submittals in which the citizens with difficult medical or social situation asked the Ombudsman to help them. In such cases the Ombudsman reacted by sending recommendations to the competent social welfare centres to establish social status of the complainants and, in accordance with it, advise them to file a request for the realization of the belonging rights within the social welfare system.

The number of complaints referring to making decisions on which parent a juvenile child should live with and on parental care reduced compared to the year before. It

is important to mention that the Ombudsman will from 1st January 2006 not be authorized to consider such complaints. Pursuant to the Family Law (Narodne novine, no. 116/03, 17/04 and 136/04), reaching decisions on the cases will be transferred into the court jurisdiction.

The rest of the cases from this area referred to the protection of the persons unable to look after their rights and interests and to the complaints about the work of certain employees or social welfare centres.

Examples:

(1) Case description (P. P. – 1474/05): Mrs. Lj. D. of R. addressed the Ombudsman. In her submittal she stated that her mother D. D. was as a war participant recognized the right to living costs allowance in the amount of 597.58 kuna a month, starting from 1st January to 31st December 2005, based on the decision of the State Administration Office in Sisačko-Moslavačka County, Social Activities Service, branch in Novska, of 28th September 2005. According to the statement of reasons from the above mentioned decision, there had been some changes in the income in the beneficiary's household. According to the data from the Economy Service in Sisačko-Moslavačka County, Novska branch, daughter Lj. with whom the user lived realized in 2004 income support in the amount of 12,000 kuna.

The Ministry of Health and Social Welfare denied the appeal.

The complainant claimed that the decision on the living costs allowance was reached on the basis of inaccurately established factual state. She stated that she was paid income support in 2004 in the amount of 9,600 kuna, and not 12,000 kuna as stated in the decision of the Ministry of Health and Social Welfare, so the amount of living costs allowance her mother used to receive was unjustifiably reduced.

Measures undertaken: The Ombudsman examined Mrs. D's complaint. Pursuant to the Rulebook on the ways and conditions of implementing the model of stimulating production, the model of income support and the programme for conserving Croatia's authentic and protected breeds (Narodne novine no. 11/03 to 150/04), the State Administration Office within the County, Economy Service, establishes the right to income support, whereas the Ministry of Agriculture, Forestry and Water Management allocates means on the giro account of the submitter of the request in accordance with the Act on Execution of the State Budget of the Republic of Croatia. At the Ombudsman's request, the Ministry of Agriculture, Forestry and Water Management delivered the document from which it was evident that LJ. D. was in 2004 paid 9,600 kuna of income support.

The Ombudsman sent the confirmation on the amount of income support, obtained from the Ministry of Agriculture, Forestry and Water Management, to the Ministry

of Health and Social Welfare and, based on Article 7, Paragraph 1 of the Act on Ombudsman, he recommended the Ministry to renew the procedure by official duty.

Case outcome: The Ministry of Health and Social Welfare informed the Ombudsman that it accepted his recommendation and renewed the procedure, after obtaining a statement from the party, and that it reached the decision beneficial for the party. A copy of the decision was enclosed with the official letter. Had the data been collected in the previous procedure, a different decision would have been made about the amount of the living costs allowance for D. D.

(2) Case description (P. P. 771/05): Mr. A. V. of P. addressed the Ombudsman on behalf of his daughter E., for the violation of the right to child's allowance.

Measures undertaken: After considering the complaint and the delivered documentation, the Ombudsman intervened and provided legal advice. It was evident from the delivered documentation that E. was 47 years old and that she was suffering from severe illness since her birth (mental retardation and cerebral paralysis) and was incapable of working and living on her own.

Article 12 of the effective Act on Child's Allowance (Narodne novine, no. 94/01) stipulates that a child with severe health impairment, occurred before his/her eighteen, has the right to child's allowance until the end of the calendar year in which he/she turns 27. Since E. is 47 years of age, she is no longer entitled to child's allowance, according to the valid regulations.

However, E. has rights in accordance with the social welfare regulations. She meets the conditions for the realization of the right to allowance for help and care or for personal disability allowance, in accordance with the Social Welfare Act (Narodne novine, no. 73/97, 27/01, 59/01, 82/01 and 103/03). The Ombudsman therefore advised the complainant to address the Social Welfare Centre B. for the realization of the belonging rights. In case of any hindrances or inconveniences, like the ones he said he had, he was advised to address the Ombudsman.

Case outcome: Unknown.

Citizens' statuses

Only three new complaints were filed by 27th December 2005 from the sphere of citizens' statuses. The OSCE forwarded seven complaints to the Ombudsman, relating to the State Administration Office in Osječko-Baranjska County, General Administration Service, Beli Manastir branch office, which referred the persons submitting requests for issuing marriage certificate to file a request for the convalidation of registering the fact of marriage contraction. It was the matter of

marriages contracted on the territory of the Republic of Croatia that was under the management or protection of the United Nations.

The State Administration Office in Osječko-Baranjska County, General Administration Service, branch Beli Manastir, reached decisions in which it established that registration of the fact of contracting the marriage could not be convalidated, and by which it annulled all legal consequences resulting from the marriage. The explanation stated that the reason for denying the request for convalidation was that the marriages were contracted without the presence of the councillor of the municipal council, which means that the prerequisites for the existence of marriage, stated in Article 28 of the Act on Marriage and Family Relations (Narodne novine no. 11/78, 45/89 and 59/90) which was in force at that time, were not met. The persons submitting the requests were referred to file an appeal with the authorized municipal court for the purpose of determining the existence of marriage.

The submitters of the requests filed appeals against the mentioned decisions to the Central State Administration Office, which settled none of them to the time they filed complaints.

Article 1 of the Act on Convalidation (Narodne novine no. 104/97), on the basis of which the General Administration Service, branch Beli Manastir, reaches decisions prescribes the following: "All individual deeds and decisions reached or issued by various bodies or legal persons with public authority, reached or issued in the cases of court and administrative nature on the territory of the Republic of Croatia which was or still is under the protection or management of the United Nations, are convalidated by this Act, in accordance with the Constitution of the Republic of Croatia, Constitutional Law on Human Rights and Freedoms and on the Rights of Ethnic or National Groups or Minorities in the Republic of Croatia and with the Croatian laws."

Pursuant to the quoted Article, all individual deeds and decisions reached or issued in the cases of court and administrative nature are the subject of convalidation. This is why the following three decrees for the implementation of the convalidation. Act were enacted and published in Narodne novine, no. 51/98:

- Decree for the implementation of the Act on Convalidation of Deeds issued in the cases of administrative nature,
- Decree for the implementation of the Act on Convalidation in the cases of judicial nature, and
- Decree for the implementation of the Act on Convalidation for the administrative sphere of work, employment, pension and disability insurance, child's allowance, social welfare and protection of military and civilian invalids of war.

Based on the above mentioned, registration of the fact of contracting a marriage into adequate records on citizens' personal statuses, i.e. into the marriage register, cannot be the subject of convalidation.

The facts of contracting marriages in these cases were registered in the marriage register. Pursuant to Article 2 of the Act on State Registers (Narodne novine no. 96/93), facts registered in the state registers and facts proved by them are considered true until proved otherwise, in a legally prescribed way. Article 17 of the same Act stipulates that it is possible to prove it only by means of a ruling confirming the existence of the marriage or its annulment or divorce.

The Ombudsman requested from the Central State Administration Office a statement about the complaint. The Central State Administration Office stated that there were no legal grounds for such acting on the part of the State Administration Office in Osječko-Baranjska County in certain administrative and non-administrative cases and that there was no excuse for such actions.

The issue of recognizing the citizens' personal statuses established in that area were settled by a separate Agreement between the Government of the Republic of Croatia and UNTAES on the recognition of registrations in registers and on the hand over of the registers that were kept on the territory which was under the management of the UNTAES. The Agreement was signed in September 1997, before the Act on Convalidation was passed.

By settling appeals in the cases in which administrative procedures were conducted in relation to the issues for which no administrative deed existed, the Central State Administration Office reached second instance decisions by which it declared the first instance decisions on the convalidation procedure void. The Central State Administration Office announced in January 2006 the introduction of the procedure for convalidating the entries in the state registers, to remove the possibility of potential future irregularities in the implementation of the regulations of the Republic of Croatia.

The above mentioned issue illustrates an example of good cooperation between the Ombudsman and the competent body, aimed at finding solutions to problems for all future cases.

Apart from the above mentioned case, the Ombudsman also engaged in other cases from this sphere, based on the citizens' complaints.

Example:

Case description (P. P. – 979/05): Mrs. Lj. B. of P. addressed the Ombudsman, stating in her complaint that she was an extramarital child of K. N. and that she was adopted by the married couple A. T. and D. T. when she was a year old.

She was registered in the birth register as Lj. N. After she was adopted, she officially assumed the surname of the family T. who adopted her.

Before contracting marriage in 2000, the complainant filed a request with the Birth Registry in Virovitica, for the purpose of issuing a birth certificate. Her birth certificate was delivered to her on 22nd December 1999 in the name of Lj. T. The data on her parents stated that her father was D. T. and her mother A. T.

The complainant filed a request again in 2005 with the State Administration Office in Virovitičko-Podravska County, Registry in Virovitica, for issuing a birth certificate needed for obtaining a personal identification card. A birth certificate was delivered to her on 24th April 2005, but this time in the name of Lj. N. The information about the parents stated K. N. as her mother, and the section on notes and subsequent entries stated, among the rest, that the complainant was adopted by D. and A. T. and that she assumed the surname T. The Registry Office refused to issue a new birth certificate in which the data on her biological parents would not be contained, so the complainant addressed the Ombudsman.

Measures undertaken: Based on Article 11 of the Act on Ombudsman, the Ombudsman requested from the Central State Administration Office to deliver him a statement on the allegations from the complaint in question within 30 days, so that he could assess whether the Registry office Virovitica violated the rights of Mrs. B.

Case outcome: The Central State Administration Office informed the Ombudsman that the Registry Office Virovitica inaccurately filled in the data on Mrs. B's adoption and surname in its extract from the birth register from 2005. It requested from the Registry Office Virovitica to issue an accurate abstract from the birth register to the complainant.

Citizenship

During 2005, 43 complaints were filed about the actions of the Interior Ministry in the cases opened on the basis of the requests for obtaining Croatian citizenship. Most of the complaints were related to long duration of the procedures.

Since some of the complainants objected to a multi-annual duration of the procedures for acquiring Croatian citizenship, the Interior Ministry was asked to state the number of the cases that were being dealt with and of their duration. Like

in the rest of the cases, the reply from the Assistant Interior Minister was delivered within a legal deadline, i.e. on 4th January 2006.

The following data on the submitted requests for acquiring Croatian citizenship were delivered in the statement:

- 13,752 requests were filed during 2004, of which 3,994 are unsettled,

- 905,006 requests were filed in the period from 1992 to 2003,

- there are 1,504 unsettled requests from 2003 and earlier years,

- 1,905 negative decisions were reached during 2004,

- Administrative Court passed 60 rulings during 2004 adopting the requests.

The number of appeals and the number of the rulings adopting the appeals reduced during 2005 (although the number of the denied requests remained constant).

The Assistant Interior Minister further stated:

"As you have already stated in your official letter, non-responsiveness of the parties to summons for the completion of the requests by delivering various documents or making statements for the record present a big problem for the Ministry dealing with the requests for the acquisition of the Croatian citizenship. When the parties decide to leave the Republic of Croatia or when they move within the country in which they submitted a request for the acquisition of the Croatian citizenship, they fail to inform the competent bodies on their new address. The parties hire lawyers in the procedures related to the appeals before the Administrative Court, but they also fail to respond to the summons or they send a notification that they are no longer in contact with their clients, so they are unable to provide supplementary documentation. Decisions in the cases in which the parties regularly respond are reached within a legal deadline".

Example:

(1) Case description (P. P. – 1575/05): Mr. R. G. of Germany addressed the Ombudsman on 13th December 2005, filing a complaint about the long duration of the procedure related to his request for acquiring Croatian citizenship.

He stated in the complaint that he tried to file a request on 26th January 2001 via PP in Z., but the mentioned PP failed to take in the request. After filing a complaint to the Croatian Parliament, his request in the mentioned PP was received, on 26th February 2001, and he was also interviewed and made a statement for the record.

The complainant stated that he had German citizenship, that he worked and lived there for over 30 years, but that he wished to return to the Republic of Croatia together with his family, as well as to transfer his assets. He stated that his brothers and sisters lived in Croatia and were Croatian citizens, the same as the complainant's mother, whereas his father moved to Croatia from Travnik during the Second World War.

However, the complainant's request for citizenship was denied by the first instance decision, after which he instituted administrative procedure, and his lawsuit was recognized in a ruling reached by the Administrative Court on 30th May 2004, on the basis of which the decision of the Interior Ministry of the Republic of Croatia of 18th October 2001 was annulled.

After the first instance decision was annulled, the complainant did not receive a new decision of the Interior Ministry and he therefore requested from the Ombudsman to react.

Measures undertaken: The Ombudsman requested in his official letter of 19th December 2005 from the Interior Ministry of the Republic of Croatia a report on the case status and potential hindrances and reasons for which the decision was not reached and delivered to the applicant within the deadline prescribed by Article 62 of the Act on Administrative Disputes.

Case outcome: The Ombudsman received on 13th January 2006 a report from the Interior Ministry, dating from 10th January 2006, in which he was informed that the procedure was underway and that the complainant was summoned via the General Consular Office of the Republic of Croatia in Munich to make a statement on all facts and circumstances of importance for reaching the decision, i.e. to complete his request by making a statement, and by providing a certified copy of a valid identification document, original, or a properly certified copy of the extract from the birth register, and the evidence on his current citizenship status.

The report stated that the complainant was summoned to deliver adequate evidence in accordance with the statements that his parents were legally declared as members of the Croatian nation.

According to the report, completing the complainant's request in accordance with the requests of the Interior Ministry and in accordance with the instructions from the ruling of the Administrative Court of the Republic of Croatia was a prerequisite for reaching a new decision.

The Ombudsman informed the complainant on the contents of the Interior Ministry's report and he referred him to deliver the requested documentation via General Consular Office of the Republic of Croatia and complete his request, and

notify the Ombudsman if the procedure related to his request were not to be completed within a reasonable period.

Note: The Interior Ministry acted upon the Ombudsman's request within the given period and it delivered a detailed report from which it was evident that the complainant did not submit a complete request to enable the Ministry to decide on his right in a legal manner and within the prescribed period.

Officials and labour relations

1. Kinds of rights violations in the state and local service

During 2005, 53 complaints were filed from this sphere.

The complaints, submitted to the Ombudsman by officials, employees and other persons, in accordance with a separate law (military persons in armed forces and security services), by employees in the state administration bodies and other sate bodies, administrative bodies of local and regional self-government units and legal persons with public authority, referred to:

- irregularities and violations of the rights in employment procedures, transfers for service needs, realization of the Croatian Homeland War veterans' right to employment priority, and in the procedure of availability and termination of the service after abolishing a body or a post;

- denial of service-related rights, particularly due to failure to realize the right to belonging salary, compensation for the success in the service and other material rights;

- irregularities in procedures due to violation of official duty, assessment, unequal workload and various forms of discrimination within certain bodies;

- failure of the state administration bodies, administrative bodies in local and regional self-government and legal persons with public authority to act within a reasonable deadline, upon a complaint or other submittals filed to report violation of those rights, or irregularities in acting upon those submittals;

- failure to execute the rulings of the Administrative Court on annulment of decisions in the sphere of officials' relations, or improper execution of those rulings;

- long duration of the procedures conducted in the sphere of employees' relations before the Administrative Court and other courts.

2. Particularities of the contents and scope of violations of the rights of state and local officials and employees

The state of the legislation related to employees and frequent and inconsistent changes in the structure of certain bodies affected the violations of the rights. The contents of the complaints from the sphere of employees' relations point to the violations of the rights of state and local servants in procedures of getting a job, during the service or upon termination of the service. The report points to the contents and scope of the most frequent violations of the service-related rights in the procedure before the bodies of the state administration and other state bodies, as well as administrative and other bodies of local and regional self-government units, and in administrative court procedures.

2.1. Violations of the Croatian war veterans' right to employment priority

The cases of violation of the rights in the procedure of employing persons into the state or local service or in employment relation in other public services particularly referred to the violation of the right of the Croatian war veterans and members of their families to employment priority, in accordance with the Act on the Croatian Homeland War Veterans and Their Family Members (hereinafter: Act on War Veterans).

Irregularities in those procedures referred to the improper establishment or non-establishment of the facts on fulfilling general and special conditions for getting a job in the service, prescribed by the Act on Civil Servants and Employees, which were important for the establishment of the war veterans' employment priority rights under equal conditions in accordance with the Act on War Veterans. The consequences of such actions were non-realization of the right to employment priority.

However, some of the competitions were annulled although the facts were accurately established, and the veterans met the prescribed conditions for the job competition with the right to priority under the same conditions in the bodies of the state and local administration and other public services, and a reasonable doubt arose that it was the matter of avoiding to employ such candidates.

Before renewing the announcement for the same jobs, conditions were changed for those posts for the purpose of further avoidance to employ such candidates. That is why the lists of veterans hopelessly applying for jobs are long and the procedures conducted on the basis of the existing legislation are inefficient and last for too long, especially if administrative disputes are instituted before the Administrative Court of the Republic of Croatia.

2.2. Violations of the rights of non-reassigned servants in the state and local bodies

The cases of violation of the service-related rights, including the termination of the service, were particularly frequent in the procedure of dealing with the issue of non-assigned servants, after dissolving jobs or bodies of the state administration or some

other body, or administrative bodies and posts in administrative bodies of the local or regional self-government bodies.

Those violations primarily referred to the failure to pass a declaratory (determining) decision on the status of a non-assigned employee for three months after the annulment of their posts or certain bodies.

The non-assigned servants therefore did not have the knowledge about who of the non-assigned servants were reassigned, and even if they did have the knowledge of it, particularly in the case when servants who did not meet the prescribed conditions were reassigned to vacant posts as ignorant parties, did not have the possibility to use a regular legal remedy (complaint) and to file administrative lawsuits, without adequate decisions.

The non-assigned servants were denied their rights in a way that the authorized heads of the bodies, after the posts were abolished and a part of the servants reassigned, put the servants who were not reassigned on call, on the basis of the decision and with the period of notice, upon the expiry of which they service terminated. Those non-reassigned employees were thereby denied the right to salary and possibility to be reassigned to the same or other body without having to compete for it (if the possibilities for it existed), during the legally determined three month deadlines for the status of non-reassigned employees and the notice period at the time of their being on call in accordance with the general rules on employment, upon the expiry of which their service terminated. In the cases of such violations, the non-reassigned employees were denied their belonging rights of the total duration prescribed by the Act.

2.3. Violations of the rights in the procedure of transfer due to service requirements

Examples of violations of employees' rights are frequent in the procedures conducted in the cases of employees' transfer for the service needs (Article 99 of the Act on Civil Servants and Employees).

The rights in those cases were violated by failure to respect the conditions in regard to the level of education and kind of qualifications, complexity of work in the post from which a servant was being transferred and the post to which he/she was transferred, as well as to the failure to establish the facts related to the service's need for transferring and their obligatory statement of reasons for which a person was being transferred.

Since the legislator prescribed the conditions and procedure for establishing the facts about the service needs, for the purpose of preventing the misuse of the notion of transfer to the detriment of the employees, it presents the reason for disputing the decisions in the procedures related to the complaints and in administrative suits, also confirmed by the administrative court practice in numerous administrative disputes.

2.4. Violations of the rights of professional military officials employed in the armed forces and security services

Apart from the separate Act (Act on Serving in the Armed Forces), the Act on Civil Servants and Employees, together with the related provisions of the Act on General Administrative Procedure also apply to the legal employment status and rights of professional military officials or persons employed in the armed forces and security services.

Complaints about the violation of the service rights within those state bodies mostly referred to the irregularities and inconsistency of implementing the procedure of delivery of decisions to the complainants, after structural changes or in the case of transfer or other changes of the employees' status, as well as to the violations of other rights of professional military persons and employees.

Furthermore, the complaints pointed to the assigning of the military officials and employees to non-existent posts, after structural changes or transfers, without adequate legal decisions in accordance with the rules of a separate act and administrative procedure.

Without going into the particulars of the procedures and level of secrecy of the decisions enacted on the occasion of such changes of the employees' status, the Ombudsman pointed to the duty to create and pass adequate deeds, in accordance with the fundamental principles and rules of procedure established by the Act on General Administrative Procedure, to which the Act on Serving in the Armed Forces and the Act on Civil Servants and Employees points, with the respect for the procedure of secrecy of those deeds.

Since administrative suits were mostly instituted in those cases, as well as disciplinary suits in some cases, there is no room for the Ombudsman to act further upon them until their conclusion.

However, by implementing investigation procedure in these cases, the Ombudsman pointed out that, in accordance with the law and Constitution, persons employed in the bodies of the armed forces and security services have the right to file complaints to the bodies of the Croatian Parliament, without any consequences for the realization of their service-related rights for filing complaints.

2.5. Violations of the rights of the persons employed in the services of legal persons with public authority

Due to violations of the rights from the sphere of employees relations of the persons working in the services of legal persons with public authorities, particularly in the case of the Croatian Health Insurance Institute and regional units on the territory of the Republic of Croatia, for the vagueness of the amended legal provisions on the

employees' salaries and wages, as well as of individual deeds in its implementation, a number of labour disputes were initiated before locally competent courts with general jurisdiction, and many employees filed complaints to the Ombudsman in relation to that.

The criteria for the salaries and wages of the persons employed in public services are established by the Act on Salaries and Wages in Public Services, and provisions of the Labour Act, on the basis of which employees conclude labour contracts, apply to the procedure of establishing employment relations. These contracts determine the amount of the employees' salaries. However, amendments to the Act on Salaries and Wages in Public Services, compared to the previously concluded employment contracts in accordance with the Labour Act, put employees in a dilemma whether their salaries prescribed by those amendments can be reduced.
The Ombudsman used this example to bring attention to the approach in creating laws, which can lead to the employees' dissatisfaction and affect the quality of the realization of the citizens' rights before that legal person with public authority. Many labour disputes are also conducted for the same reason, burdening the already overburdened courts. Dubiousness in regulating laws can have other detrimental consequences, damaging public interests as a whole, like recent cases in other spheres within the public system (e.g. education).

Examples:

(1) Case description (P. P. – 1347/05): M. V. of O. filed a complaint about the violation of his right, caused by his transfer and reassignment to other place of work in the state service. The complainant was transferred from his post of the head of the customs branch office in O. to the position of administrative counsellor at the same Customs Office, although the reasons for such service needs were not identified during the procedure, in accordance with the Act on Civil Servants and Employees.

The complainant's objection to the transfer decision was denied as unfounded, so he addressed the Ombudsman for the protection of his rights. The complainant also intended to initiate an administrative dispute before the Administrative Court of the Republic of Croatia within the legal deadline.

Acting upon the complaint, the Ombudsman established on the basis of the decision of the Finance Ministry of 16th June 2005 that the complainant was transferred for the service needs without an explanation what those service needs were. The decision was not made on it even after he objected to the decision on his transfer. Along with other conditions prescribed by the Act, service needs must be specified in order to prevent harassment of employees, which is confirmed by the administrative court practice by annulling the decisions if the reasons for the service needs are not explained in the decision.

Since the Finance Ministry, according to the report of 22nd November 2005, stood by the decisions it reached, even though it refused to identify the reasons of the

transfer in a way prescribed by the Act, the Ombudsman proposed to the Central State Administration Office to carry out administrative or inspection supervision over the reached decisions, in accordance with Article 123 of the Act on Civil Servants and Employees, as well as to inform the Ombudsman on the undertaken actions.

Case outcome: The Ombudsman does not have the knowledge of the implemented surveillance in this case or of the initiation and development of the administrative dispute.

(2) Case description (P. P. 267/05): A complaint filed by Ž. J. of Z. refers to the priority of employing the unemployed Croatian war veteran in the administrative department of the city government of the City of Zagreb.

In the procedure of offering a job for an indefinite period of time, after the expiry of the training period the complainant was not recognized his right to priority employment under the same conditions. He filed an objection against the decision on assigning other trainees and he subsequently filed a lawsuit with the then locally authorized Municipal Court in Z. against the decision on the denial of his objection.

However, at the time the Court reached a decision according to which the complainant was entitled to the employment priority, along with the court order for his return to his job, the Court ceased to have the authority over such matters and the County Court in Z. officially annulled its decision.

Due to the fact that the Administrative Court of the Republic of Croatia assumed authority for the procedures in the sphere of employees' relations of the persons employed in the local self-government during 2001, instead of the court with general jurisdiction, the complainant filed a complaint to that Court, after the decision of the Municipal Court was annulled. However, the Administrative Court dismissed the lawsuit as untimely, although it was the County Court's duty to transfer the case to the competent court after the annulment of the first instance ruling, and the Administrative Court should have taken those circumstances into consideration when assessing the timeliness of the lawsuit. That has been proved by the administrative judicial practice in many other cases.

By failing to transfer the case to the Administrative Court as the court legally competent for such matters, the complainant was denied the right to get his employment priority right decided upon, whereas the Administrative Court of the Republic of Croatia, when assessing the timeliness of the lawsuit, omitted to take into consideration the changes in the jurisdiction.

Since a constitutional lawsuit against the decision of the Administrative Court of the Republic of Croatia on dismissing the lawsuit as untimely was omitted, too, the complainant was left without the possibility to get the decision on the major issue, i.e. on the violation of the right to employment priority as a veteran of the Croatian

Homeland War. The consequence of this right violation occurred exclusively due to the conduct of the courts in the described way in the conditions of the legally changed court jurisdiction.

(3) Case description (P. P. 644/05): In the case of Đ. M. G. of R., the Ombudsman carried out investigation procedure due to the violation of the complainant's right, since the Ministry of Health and Social Welfare failed to decide on the complainant's request for issuing a confirmation that she fulfilled the conditions for independent work on dialysis, in accordance with the Rulebook on conditions concerning premises, employees and medical-technical equipment for performing chronic dialysis (NN 152/03), which was in force at the time she filed the request.

The Ministry informed the complainant in an official letter that, according to the official records, she did not meet the required conditions. But they only informed her after legal deadlines for reaching the decision on her request expired and after changes were made to the Rulebook in question (NN 90/04 of 2nd July 2004), i.e. changes of the conditions for performing that activity, which became unfavourable for the complainant.

The Ombudsman reminded the Ministry of its obligation prescribed by Article 171 of the Act on General Administrative Procedure, according to which the state administration bodies and other bodies are obliged to issue certificates and reach decisions on the fact on which they keep official records. If a state administration body or some other body fails to keep official records or if a party is not satisfied with the issued certificate, state administration bodies and other bodies keeping official records are obliged to pass a decision on the client's request, with obligatory instruction on legal remedy, i.e. legal protection of the client.

During the procedure it was established that the Ministry violated the right in a way that it notified the complainant that a new Rulebook came in the force in the meantime, according to which she no longer fulfilled conditions for performing dialysis without additional education, instead of basing its decision on the fulfilment of the conditions at the time her request was submitted, i.e. when the previous Rulebook was still effective. At the same time, when notifying the complainant that she did not meet the conditions, the Ministry delivered an official letter and not a decision, by which the complainant was denied the right to the prescribed legal protection.

Pointing to the obligation to act upon the request within the prescribed deadlines and in a prescribed form, along with respecting the party's rights and interests related to the application of the rules at the moment the request is filed, the Ombudsman rushed the Ministry's acting upon the case.

Case outcome: The Ministry issued a certificate stating the complainant did meet the conditions prescribed by the Rulebook at the time she filed the request, by which she realized her right.

(4) Case description (P. P. 444/05): In the case of T. G: of P., the Ombudsman proposed to the Ministry of Economy, Labour and Entrepreneurship to annul the decision of the Central Service of the Croatian Pension Insurance Institute of 7th March 2005, by which the decision of the Regional Service in Z. of 13th January 2000 based on which the complainant was exercising his right to disability pension due to professional incapability to work (starting from 1st January 1999) was annulled. Upon the annulment of the decision, the complainant was denied the right to disability pension, and was demanded to return the pensions he was receiving from 1999.

The Central Service annulled the decision on disability pension on the basis of the fact that the complainant failed to notify them on his intention to start business, by which he misled the Croatian Pension Insurance Institute and committed a legally forbidden deed, presenting the reason for the annulment of the decision.

However, it was omitted to establish that the decision of the Office for Economy in Zagrebačka County, authorized branch office J., on the intention to start the business, was officially delivered to the Institute, so there was no room for the annulment of the decision.

Pursuant to Article 263, Paragraph 1, Item 5 of the Act on General Administrative Procedure, a decision that is final in the administrative procedure can be annulled by the authorized body if the decision is passed as a result of coercion, extortion, blackmail, pressure or some other illegal action.

Since the complainant did not commit any illegal actions, the Ombudsman proceeded to request the decision to be made on the request for annulment in accordance with the supervision right.

The Ministry informed the Ombudsman in an official letter of 13th September 2005 of its opinion that, based on the Institute's report and received decisions, the procedure in the case in question was properly and legally conducted, and that there were no reasons for the annulment of the mentioned decision of the Central Service Zagreb of 7th March 2005 on the basis of the right of supervision.

The Ombudsman then requested from the Ministry of Economy, Labour and Entrepreneurship to reach the decision on the submitted request and explain the reasons of potential denial of the request. The Ministry annulled the decision of the Central Service of the CPII based on the supervision right, by which it protected the complainant's violated right.

(5) Case description (P. P. 2321/03): In the case of P. S. of Z., violation of the right referred to the failure of the Administrative Court of the Republic of Croatia to

execute the decision of 31st March 2004, by which the decision of the Finance Ministry on the complainant's objection about the decision on putting employees on call and termination of the service after abolishing the Financial Police was annulled. Dilemmas in relation to the execution of the mentioned decision existed because the earlier decision of the Administrative Court of the Republic of Croatia of 17th July 2003 rejected the complainant's lawsuit against the decision on objection reached against the decision of the Finance Ministry of 26th January 2002, by which state service in the Finance Ministry terminated after the period of disposal expired, i.e. on 26th January 2002.

The Administrative Court founded the annulment of the lawsuit in this legal matter on the fact that the plaintiff was in a decision of 23rd October 2001 put at the disposal of the Government of the Republic of Croatia for a three-year period, starting from 25th October 2001, due to abolishing the Financial Police on 24th July 2001.

The Administrative Court also established the undisputable fact that during the period of disposal the complainant was reassigned neither temporary nor permanently to a place of work in his profession pursuant to the provisions of Article 107 of the Act on Civil Servants and Employees (Narodne novine no. 27/01), as it is the autonomous right of the defendant body, i.e. the body heads, to decide which of the employees among those meeting the conditions would be reassigned or put to disposal within that period, i.e. which of the employees would terminate service employment upon the expiry of that period due to impossibility of reassignment.

Based on the implemented procedure, the Administrative Court established on the basis of the then status of the file that the complainant failed to file an objection against the decision on his disposal of 23rd October 2003, and that the mentioned decision became final and valid. For these reasons, the Court did not take upon the assessment of the legality of the decision on disposal and termination of the service, and it dismissed the appeal as unfounded.

Since the complainant, by using legal remedies due to administrative silence, proved that he did not omit to use legal remedies, he initiated administrative procedure by lawsuits of 23rd December 2003 and 26th January 2004.

The Administrative Court merged the lawsuits in order to reach a single decision on both of them and passed the ruling 31st March 2004 by which it annulled the decision of the Finance Ministry of 17th December 2003 and acknowledged the objection and annulled the decision of the Finance Ministry of 23rd October 2003.

By examining the legality of the administrative deeds which were not the object of the court control and the refusing decision, the Administrative Court subsequently established the facts that were unknown at the time the decision was reached. Therefore, by deciding upon the suits of 23rd December 2003 and 26th January 2004,

and by putting those two together, the Administrative Court annulled in its ruling of 31st March 2004 the decision on disposal and the decision on the rejection of the objection to the decision on disposal.

For the same reasons the Ombudsman warned the Finance Ministry that, based on the legal consequences of annulment of the disputed decisions, by executing the ruling of the Court of 31st March 2004, it was obliged to pass new deeds instead of the disputed ones, whereas in the procedure of executing the ruling of the Administrative Court of 31st March 2004 and passing new deeds instead the nullified ones, the decision maker was obliged to follow the instructions of the Court.

Case outcome: After the Ombudsman warned the Finance Ministry of the obligation to reach decisions upon the ruling of the Administrative Court, he has not received any information on the execution on the Court's ruling.

Local self-government

In relation to the realization of the right to local and regional self-government via representative, executive and administrative bodies of the local and regional self-government units, granted by the Constitution, a number of the citizens filed complaints to the Ombudsman against irregular or untimely realization of their rights in administrative and other matters, before the bodies of the municipalities, cities and counties.

Apart from complaining about improper and untimely dealing with certain administrative and other issues in the jurisdiction of the local and regional self-government units, of which a more detailed description within individual administrative areas is contained in the report, the citizens also pointed to the irregularities in the activities undertaken by the representative and executive bodies of the municipalities, cities and counties on the issues of interest to all citizens on the territory of those units, whose rights and interests were directly violated.

Those complaints referred to the enactment of general and other deeds in the sphere of utility services, managing with and disposing of the real estate owned by the units, financial budgetary means and other assets, procedure of public procurement, passed by the representative or executive bodies and which have direct influence on the citizens' rights and interests.

The citizens also warned in their complaints of the violations of their rights by the deeds of the legal persons with public authority, passed by those legal persons with the consent of the representative or executive unit bodies, in accordance with a separate law. One of such examples is a decision on the prices of water consumption and other similar deeds, by which different prices of water and other utility services

were set, putting certain groups of citizens as users of those services into an unequal position.

The procedure of supervising the legality of those decisions by the state administration bodies, authorized to supervise the implementation of special laws from individual administrative spheres, is not regular and the citizens are forced to initiate the procedure of assessing the constitutionality and legality before the Constitutional Court of the Republic of Croatia. In the case of violation of market competition, like in the case with water consumption costs, the citizens were protecting their interests by initiating procedures with the Agency for the protection of the market competitiveness, although it is the state's duty to ensure the supervision of the legality of those decisions via the state administration bodies.

By acting upon the complaints related to the realization of other rights to local and regional self-government, the Ombudsman stated that the reasons for the complex situation primarily lied in the implementation of the notion of electoral legislation and legislation of the local and regional self-government.

In relation to that, the Ombudsman pointed out the need for consistent implementation of the administrative supervision, in accordance with the procedure and authority for the implementation of the administrative supervision, prescribed by the Act on the State Administration System, to the application of which the Act on Local and Regional Self-Government points.

A better protection of the rights of the citizens represented by the directly elected members of the representative bodies of those units and the protection of the constitutionally granted right to local and regional self-government cannot be ensured without a detailed prescription of specifics and features of individual decisions passed by the representative bodies, as well as without elaborating the specifics of the procedure of supervising work and decisions of the local and regional self-government units and without adequate legal protection, including the prescribing of prompt court protection of those decisions (like in the case of dismissing representative bodies).

Refugees, exiles, returnees and property restitution

Complaints in the procedures based on the requests for the reconstruction, restitution of the temporarily taken over assets, and in the cases of realizing the right to the refugee, returnee or displaced person status refer to the work done by the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia. During 2005, 208 complaints were filed, which is an insignificantly lower number than in the year before. It needs to be mentioned that the number was significantly higher in 2003, when the Ombudsman visited the counties and areas of special state concern and when the parties had a chance to directly put out their complaints for the purpose of realizing their rights.

By considering legal areas described in the introduction, serious violations of the human rights were noticed in certain procedures, particularly in the conduct of the Administration for exiles, returnees and refugees, and in the procedures concerning the restitution of the (previously) temporarily occupied assets and in the procedures related to the requests for the compensation of the damage for the inability to use a belonging real estate.

The provisions of the Act on General Administrative Procedure on legal assistance to an ignorant party (Articles 5, 14 and 140 of the Act on Administrative Procedure) have in practice not been applied in a consistent way. This has a particular gravity since it is the issue which has been regulated by a large number of regulations (which have often been amended), and fundamental existential issues of these complainants have been decided upon in the cases.

A great problem with these cases is that the authorized regional offices for exiles, returnees and refugees, and county offices in charge of reconstruction works often fail to respond to the requests and rush notes of the clients and to the official letters from the Ombudsman. As opposed to those bodies, the Ministry of the Sea, Tourism, Transport and Development of the Republic of Croatia, Administration for exiles, returnees and refugees and Administration for the reconstruction of family houses have been regularly delivering the requested replies.

The provision of Article 296 of the Act on General Administrative Procedure, determining the duty of the official person conducting a procedure to notify the party within eight days after the expiry of the decision-making deadline on the reasons for failing to reach the decision and on the actions that will be undertaken in order to reach it, is very often ignored. It should be pointed out that the same problem exists in all other administrative spheres. Most of the complainants stated that their requests remain unsettled for many years and that the competent bodies fail to respond to their requests and rush notes.

1. Reconstruction

During 2005, the Office of the Ombudsman received 191 complaints in the sphere of reconstruction, which is somewhat less than in 2004 (212). Those are mostly complex cases and a special gravity of the problems from this sphere lies in the fact that it is the matter of existential issues in the citizens' cases that have not been settled yet, although 10 years have passed since the end of the war.

This issue definitely needs to be looked upon through the prism of financial obligations that should be covered from the budget. According to the data from the Ministry of the Sea, Tourism, Transport and Development of the RC from December 2005, altogether 137,500 devastated or damaged houses and apartments have been so far reconstructed in Croatia and the amount that has been invested in their reconstruction amounts to 14.9 billion kuna. Another 4,900 requests for

reconstruction are in process, of which 3,900 refer to the requests filed in the last extended deadline, and 1,000 are earlier filed requests in relation to which other property-related procedures are underway or the case files are incomplete and cannot be dealt with without their owners' cooperation.

The citizens' complaints mostly refer to long lasting procedures (particularly in the second stage), irregularities in the procedure of determining the level of the damage for the family houses, violations of the Act on General Administrative Procedure (hereinafter: AAP) and to the quality of the performed reconstruction works.

The causes of this situation are numerous. The rights in the reconstruction sphere are regulated by various regulations, which have been amended for a number of times. The Act on Reconstruction has been amended three times and the Act on the Areas of Special State Concern has been amended altogether eight times, in that a certain number of Articles of this Act was incorrectly numerated in the amended text of 2003.

The consequences of all this are long duration of the procedures (see below mentioned example I), and ignorance of the persons entitled to reconstruction.

Apart from a large number of procedures from the sphere of reconstruction, another problem lies in insufficient expertise of the official persons conducting first instance procedures and insufficient number of employees dealing with the appeals in the second instance stage.

The data delivered by the Administration for the reconstruction of family houses shows the gravity of the situation in this sphere. The Administration recorded 14,787 unsettled second-instance cases, 800 of which are renewed appeals. The Administration has no data on the number of the first-instance procedures and the number of official persons working on those cases.

The following officials work on the second-instance procedure:

- 4 senior administrative advisers, 1 of which is the head of the department and 1 is the leader of the section,
- 2 independent administrative desk officers,
- 1 trainee (employed on 1st September 2005).

Around 100 second-instance cases are settled monthly on average, and four officials work overtime on those cases.

Furthermore, apart from settling the appeals, the Administration is overburdened by many other activities: replying to users' written inquiries, settling the cases of restitution of unfoundedly gained means in the reconstruction, receiving clients, etc.

The quality level of the first-instance procedures is evident from the analysis of the second-instance decisions, where omissions in the establishment of the facts have been detected in a number of cases. Therefore the provision of Article 242, Paragraph 1 of the AAP (supplemented procedure) is often applied during second-instance cases, resulting in multi-annual duration of the second-instance procedures.

The violations of the AAP related to the statement of reasons contained in the decisions, violations of the clients' rights to participate in the procedure, rules on witness hearing, on the delivery of statements, violations of legal provisions on the deadlines for the execution of actions, etc., take up the second place in terms of frequency.

By noticing the above mentioned irregularities, which the Ombudsman pointed out on a number of occasions, the assistant minister for the reconstruction of family houses had a meeting with the representatives of the state administration offices of all counties and he subsequently handed them in the conclusions from the meeting together with detailed instructions on settling the mentioned issues.

The current situation is expected to improve through further cooperation of the Office of the Ombudsman and this Administration, i.e. deadlines for reaching decisions are expected to become shorter, and numerous cases in this sphere are expected to be dealt with more efficiently.

The following problem exists with the second-instance procedure: some of the appeals remain unsettled for several years (since the cases are not solved by order in which they are filed, and there are a large number of cases). A lack of important facts is detected only after the case starts being dealt with. In one of the cases, the first-instance body was asked to establish certain facts as late as five years after the appeal was filed. A possible solution would be to, after having received the appeals, make a selection of the cases ready for the decision to be made on them, and as for the other cases – to send a request to the first-instance body for supplementing the procedure.

Examples:

(1) Case description (P. P. – 100/02): A complainant filed a complaint in January 2001, stating that the request she filed in 1998 for identifying her right to support and equipping of her house damaged during the war was not yet solved in the first instance.

Measures undertaken: At the Ombudsman's request, the Administration for the reconstruction of family houses, within the Ministry of the Sea, Tourism, Transport and Development, delivered on 1st March 2002 a statement from which it was evident that the problem was the result of the amendments to the Act on Reconstruction (of June 2000). The complainant may as a returnee establish her potential rights on the basis of the Act on Areas of Special State Concern. The

procedure, which started in 1998 before the office authorized for reconstruction works in Ličko-Senjska County, was therefore transferred to the Regional office for exiles, returnees and refugees in Gospić.

Since the decision on the complainant's request forwarded to the Regional office for the exiles and refugees in Gospić was not decided upon, the complainant readdressed the Ombudsman in May 2003. The Ombudsman requested on 21st May 2003 from the Regional Office in Gospić a report on the reasons for which the decision was not made. As the report was not delivered within the legal deadline, the first rush note was sent on 5th February 2004 and the second one was sent on 23rd July 2004, but the reply was still not received.

After the Ombudsman sent the last rush note on 15th November 2005 to the Ministry of the Sea, Tourism, Transport and Development, they sent a statement saying that the Regional office for the exiles, returnees and refugees in Gospić was requested to promptly settle the case.

Case outcome: The decision has not been reached yet. The case has not been settled yet.

(2) Case description (P. P. – 595/03): The complainant, owning a house in V. on the territory under special state care stated the following in his complaint:

- that the house was damaged during the war (he enclosed the photographs of the remains of the burnt house),
- that his request for the reconstruction of the house was denied in a decision of 3rd May 2000, with the explanation that it was not the matter of war damage,
- that he submitted appeal against the decision on time, and
- that the appeal remained unsettled although three years passed since he filed it.

A statement was requested on 23rd October 2003 and the Administration for the reconstruction of family houses sent the reply on 10th November 2003, from which it was evident that the procedure of deciding upon the appeal was underway.

Two new rush notes were sent to the Administration in April and June 2005, respectively, and the Administration responded that the appeal was being dealt with.

The official letter of 29th June 2005 pointed to the long duration of the procedure and to the omissions in its implementation.

Case outcome: The decision on the appeal was finally reached on 11th July 2005. The complainant's appeal was denied, but for the reasons other than those stated in the first-instance decision. During the procedure it was found that the complainant

owned another house he could move into, so that there were no grounds for him to realize the right to the reconstruction of the house in question.

Conclusion: The omission of the first-instance body, which omitted to establish that the complainant owned another, usable house, led to the appeal procedure that lasted for five years and to the violation of the complainant's right due to long lasting procedure.

(3) Case description (P. P. – 1893/03): The complainant filed in 1997 a request for the reconstruction and allowance for equipping his family house. The request was denied in a decision of April 2003, after which the complainant filed an appeal which remained unsettled until today.

Undertaken measures: At the Ombudsman's request, sent on 13th October 2003, the Administration for reconstruction responded after ten days, stating that settling of the case was underway. However, they did not respond to the following two rush notes that the Ombudsman sent on 30th September 2004 and on 19th October 2005. After the last Ombudsman's rush note, sent on 25th November 2005, the following statement was delivered on 13th December 2005:

"Based on your rush note received by this body on 1st December 2005, in which you requested a report on the appeal submitted by Mr…., against the decision of the State Administration Office in Šibensko-Kninska County of 29th April 2003, reached within the procedure of identifying the right to the reconstruction and equipping of the family house in…, we inform you that the data on the level of the damage incurred to the complainant's house were requested on 12th August 2004 from the County Commission for listing and assessing the war damage and since the data were not received, a rush note was sent to the Commission on 16th June 2005, of which the complainant was informed.

Based on the above stated, another rush note was sent to the County Commission for listing and assessing the war damage, asking for the above mentioned data to be delivered.

Further development of the procedure will be determined, i.e. decision will be reached, after receiving the Commission's statement."

Case outcome: The decision on the appeal has not been reached to the very day (1st March 2006), and we have no information on whether the State Administration Office in Šibensko-Kninska County delivered the requested data.

2. Settling housing issues

Five complaints from the sphere of settling housing problems were received last year, but the number is expected to be larger in the report for the next year, since the process of settling housing issues has just begun.

Based on the so-called Sarajevo Declaration, signed by the governments of the Republic of Croatia, Bosnia and Herzegovina and Serbia and Montenegro, the signatories committed to complete the process of the return of the refugees by 2006 in a way that each of them would provide the refugees remaining on their territory a permanent solution, either by their return to the country they came from or through local integration. The above mentioned period (end of 2006) needs to be taken as instructive and desirable one, but it is reasonable to expect that it will be over in three to four years.

According to some examples presented by non-governmental organizations dealing with the problems of the exiles, refugees and returnees, a major problem lies in the lack of detailed records on such persons (mostly from Bosnia and Herzegovina) who submitted a request for the solution of their housing problem in the Republic of Croatia, and to whom the real estate in Bosnia have been returned, so they could not be able to realize that right. It is therefore necessary to create adequate data base, as well as to exchange data between the authorized bodies of the Republic of Croatia and Bosnia and Herzegovina. That would reduce the unjustified use of budgetary means and speed up the procedure of settling housing problems of those entitled to help.

Based on the data from the Ministry of the Sea, Tourism, Transport and Development of 12th December 2005, the Ministry started intensively implementing the programme of settling housing issues for the former holders of the tenancy right, as the last remaining group of refugees in need of accommodation after their return to Croatia. Particular efforts have been made to settle the housing problem in urban centres (outside areas under special state care) where purchase of a large number of apartments for the former holders of tenancy right is underway (Zagreb, Osijek, Karlovac), and it will be realized by the end of this year. A comprehensive plan for settling housing problems of the former holders of the tenancy right is in preparation, and it will comprise purchase of apartments on the market and the construction of a number of apartments within a three-year period (2006 – 2008).

Of the requests filed so far for settling housing issues of the returnees - former holders of the tenancy right, 9,700 requests are yet to be solved. Up to 7,900 dwelling units need to be provided for them.

The procedure of settling housing problems of the former holders of the tenancy right and of the temporary users is running slow, and that is the main objection of the citizens filing complaints to the Ombudsman. The procedures last for so long mainly because there are no available apartments and because there is a prescribed order of priority when settling the applicants' housing problems.

The Government of the Republic of Croatia in its Conclusion ensured settling housing problems of the former holders of the tenancy right to the apartments owned by the state outside the areas under special state care, but under certain

conditions (if they do not own any real estate, etc.). Their housing problems will be solved in the form of apartment lease or purchase in accordance with the conditions of the Act on socially incentive apartment building, and the deadline for submitting requests expired on 30th September 2005.

Temporary users and/or leaseholders in the areas under special state care, who have been using state-owned apartments for ten consecutive years, are entitled to purchase the apartment they have been using.

The Ombudsman's acting upon the citizens' complaints in this sphere has been restricted to giving advice and information on the conditions needed for those rights (apartment lease, purchase) to be recognized.

The Ombudsman warned the Ministry of the noted irregularities and duration of the procedures on several occasions.

Examples:

(1) Case description (P. P. – 435/05): Mrs. J. Đ. has a valid ruling of the Municipal Court in K. of 13th March 2003, by which she was pronounced a protected leaseholder in an apartment in K., of 55.23 square metres. Based on this ruling, she filed a request with the Administration for exiles, returnees and refugees to conclude a contract on lease of the apartment with protected lease. However, the contract that was requested three years ago has not been drawn yet. The complainant does not freely dispose of her apartment.

Undertaken measures: Considering that this is the matter of settling housing issue of the holder of the tenancy right on the territory under special state care, the Administration for exiles, returnees and refugees was requested to deliver a statement on the reasons for which the acquired and recognized right in this case was not realized yet. The Administration responded that the reason for which the complainant's housing issue remained unsettled was that there were no adequate available apartments on the territory of K., and that the request, according to the Rulebook on priority order, was not to be dealt with yet.

The Ombudsman sent an official letter, warning of the complainant's right (quotation):

"… the status of the protected leaseholder in the apartment in question has been established, which means that the complainant must be given a contract on lease with the protected lease for that apartment and enter her in the possession of the apartment. The inquiry, delivered in the official letter of 25th August 2005 was therefore formed in the sense of a ruling effective among the parties (Republic of Croatia and the complainant), and it is an authoritative regulator of the legal relations between the parties it refers to."

It was also mentioned that the delivered statement lacked the data on the basis of which the case of violation of the right could be comprehensively discussed, e.g. if the apartment is available; if it is necessary to settle the housing problem of the person who in the meantime moved into the apartment on some other basis, so the objective possibility (another available apartment) refers to solving a housing problem of a third person (deadline from the Rulebook on the priority order), and not of the complainant; there are no information on the deadline within which a validly identified legal position of the party will be actualized (the realized right recognized by the ruling of the Municipal Court in K.).

Note: The outcome of the case is unknown. The investigation procedure has not been completed yet. The subsequently requested information was not delivered to the Office of the Ombudsman within a 30-day period.

(2) Case description (P. P. – 280/05): The complainant lived in K. with his family in an apartment to which he had the tenancy right, and they were registered as refugees in 1991 at the Office for Refugees in Zadar.

He submitted a request in December 2003 with the Zadar Refugee Office (on the territory of the City of Zadar) for settling his housing issue. He did not get the response to the petition to the day he filed a complaint (1st March 2005).

Among the rest, he stated that his family did not own any real estate on the territory of the Republic of Croatia, that all of the acquired assets disappeared from the apartment to which he had the tenancy right, that he was receiving disability pension as of 1992, and that his wife worked as a cleaning lady, receiving a minimum salary.

Undertaken measures: The Ombudsman requested from the Administration for exiles, returnees and refugees within the Ministry of the Sea, Tourism, Transport and development a report on the reasons the complainant's petition for settling his housing issue was not decided upon.

Case outcome: The Administration for exiles, returnees and refugees delivered the Ombudsman a statement, saying that the request for settling a housing issue was submitted on 8th June 2005. The requests are processed by the order of the receipt, and after processing relevant facts and if the applicants fulfil the conditions, they are notified in a written form whether their housing issue would be settled. The planned deadline for settling housing issues is the end of 2006, but the deadline will primarily depend on the number of the requests and available means.

3. Rights of the owners requesting the restitution of their temporarily occupied property

Nineteen complaints referring to the restitution of property were filed in 2005. According to the data from the Administration for Exiled Persons, Returnees and Refugees within

the Ministry of the Sea, Tourism, Transport and Development of 1st January 2006, the property restitution process is close to and end and only 36 cases of occupied property are left over in Kistanj, Biskupija and Vojnić, respectively. The court procedures that are conducted to evict the current users who refuse to leave other people's property also need to be added to the above mentioned number, but we currently have no information on it.

The requests of the owners who are not able to freely dispose of their property actually consist of two requests: a) request for the restitution of their property, and b) request for the compensation of the damage it was incurred on them for not being able to dispose of their property.

Restitution of property

Although the cases related to the restitution of property are being dealt with and the number of the complaints has reduced, it needs to be pointed out that these are the most difficult cases, since the war ended more than ten years ago and these citizens are still unable to dispose of their real estate.

After receiving the complaints, the Ombudsman intervened with the Ministry of the Sea, Tourism, Transport and Development – Administration for Exiled Persons, Returnees and Refugees, stating that the property owners' rights were violated because the mentioned Administration failed to fulfil its obligations determined by the Act on Areas Under Special State Care. The Act stipulates that a temporary user must abandon the real estate owned by another person within 90 after the last delivery of the construction material for the construction/reconstruction of their house has been made. If he/she fails to leave the real estate upon the expiry of the deadline, the Ministry of the Sea, Tourism, Transport and Development must file a motion with the State Prosecution for the initiation of the court proceedings to evict the current users. As the Administration failed to do so within the prescribed deadline, the Ombudsman warned them on several occasions of their legal duty.

Property relations between real estate owners and former temporary users present another problem in this sphere.

Some of the court proceedings were initiated by the owners of the real estate against the former temporary users who refused to leave their real estate, demanding from the owner to pay them compensation for the means they invested in it, before consenting to move out. This issue would not be disputable if it were the matter of the most essential investments only, but there are examples where the stated value of the investment multiply exceeded the value of the whole real estate, so the owner found himself/herself in a situation (based on the valid ruling) that, even after selling the house, he was unable to cover the rest of the claims from the former temporary user. The earlier mentioned problem of inaccessibility of free legal assistance to the parties in the procedure is present in these cases, too.

Compensation of damage for the inability to dispose of real estate

Article 27, Paragraph 4 of the Act on Areas of Special State Concern stipulates the following:

"The state shall be obliged to compensate the damage to the owner who filed a request for the restitution of property, and to whom the property is not returned **within the period** set by Paragraphs 2 and 3 of this Article."

The deadlines from Paragraphs 2 and 3 are: 30th October 2002, i.e. by 31st December 2002.

There have been a large number of complaints by the citizens whose requests for the compensation of the damage were denied by the Ministry of the Sea, Tourism, Transport and Development of the RC, Administration for Exiled Persons, Returnees and Refugees, despite the quoted provision.

The Administration for Exiled Persons, Returnees and Refugees delivered a statement in some of the cases, saying the following (example from the case no. P. P. – 882/05):

"By gaining insight into the case during the procedure, it has been established that Mr. N. N. signed on …2005 the Rulebook on coming into possession of one's property.

Based on the above mentioned, a deal on the compensation of the damage cannot be made, i.e. compensation of the damage will not be paid out."

The Ombudsman believes that such acting on the part of the Administration is contrary to the above mentioned provision of the Act, since by giving the real estate into possession not cause preclusion of the right to the compensation of the damage, and the Ombudsman tried to warn of the violation of the stated provision of the Act in a number of cases and he demanded for the compensation of the damage to be paid to the owners to whom their real estate was handed over after the expiry of legal deadlines.

The reply of the Administration for Exiled Persons, Returnees and Refugees to the Ombudsman was identical with the previous one, rejecting the possibility of compensating the damage.

A meeting was therefore requested with the state secretary in the Administration for Exiled Persons, Returnees and Refugees, in order to discuss the issue of legal basis for the stated attitude. Several issues, among them some concerning the implementation of the rules and some concerning concrete cases, were discussed in the meeting held on 24th November 2005 at the Administration for Exiled Persons, Returnees and Refugees, in absence of the state secretary.

The final decision of the meeting was that these persons should be recognized the right to the compensation of the damage. It was also concluded that a justified reason for not paying out the compensation for the damage exists only in the cases where there is a lack

of the requested documentation. This refers to the cases in which the necessary data on the complainant are not available (personal data, number of the bank account, etc.).

The representatives of the Administration stated their attitude during the meeting that there were no grounds for compensating the damage to these citizens upon the expiry of the budgetary year (for the year before), as there was no possibility for a retroactive payment, i.e. payment for a year before.

This objection has support neither in the rules nor for some other reasons. First, the owner filing a legally justified request does not need to be familiar with the rules on the budgetary account-keeping and he/she can be bound by them. The second, payment of this compensation should have been planned in the annual financial plan, since the same Administration keeps the data on the real estate that are temporarily occupied.

During the meeting, the representatives of the Administration were warned of the consequences of their attitude in acting upon the complainants' requests.

If denied the payout, the complainants would have to address the state prosecutor with a request for the damage compensation, and potentially file a lawsuit for the damage compensation with a regular court.

It is the Ombudsman's opinion that such a relation towards the citizens is inadequate. The predictable consequences are: a) dissatisfaction of the citizens, b) unnecessary burdening of the courts and c) unnecessary spending of the means from the state budget for the payouts based on the rulings. The Ombudsman recommended that the issue be considered and acted upon in accordance with the mentioned provision of the Act on Areas under Special State Care.

The outcome of the Ombudsman's intervention was positive for the complainants who were on the list of the cases considered at the meeting. The Ombudsman was notified in an official letter from the Office for Exiled Persons, Returnees and Refugees, of 23rd January 2006, that official letters had been sent to the complainants, with the text of the settlement they were supposed to sign. We still have no knowledge of the cases of the citizens who filed identical requests but did not address the Ombudsman.

Example:

Case description (P. P. – 478/04): The complainant and his family live in Bosnia and Herzegovina as refugees, although he owns a house in K., in Lika, currently occupied by a temporary user and his family. The complainant filed a request for the restitution of his property in 2000. He addressed the Ombudsman in March 2004, seeking help to get his property back, stating that the temporary user refused to leave the house although he realized the right to reconstruction.

The complainant also enclosed a copy of the decision reached on 30th October 2002 by the Ministry of the Sea, Tourism, Transport and Development of the RC, Administration for Exiled persons, Returnees and Refugees, on the basis of which:

- the decision of the Commission of 4th January 1996 on the temporary takeover, by which the complainant's real estate was allocated for temporary use was annulled,

- the temporary user lost his status,

- the real estate was returned to the owner, and

- the temporary user had no right to be provided with accommodation in accordance with the Act on Areas under Special State Care and was obliged to immediately move out of the facility he lived in together with his family.

The explanation of the same decision stated that the temporary users realized the right to reconstruction and that their family house in I. was reconstructed and a technical check-up of the house was done on 30th July 1997.

Undertaken measures: The Administration for Exiled Persons, Returnees and Refugees delivered, at the Ombudsman's request, several statements with the enclosed documentation, and a meeting of the representatives of the Office of the Ombudsman and the Administration was held, too (on 15th March 2005).

Due to the complexity of the case, it is necessary to state the facts in the procedure in a chronological order.

a) This follows from the additionally collected documentation:

- the temporary user and his family were in 1991 registered at the address of the house in I., owned by M. Č., the wife of his late brother,

- the same house was reconstructed and underwent technical examination on 30th July 1997,

- a year later, on 13th August 1998, the authorized office of the Karlovačka County reached the decision on the right of the owner M. Č. to the reconstruction of the same house (?), against which appeal was filed,

- the appeal was adopted in the second-instance decision of 21st September 2001; the disputed decision was partially annulled since it was falsely established that only one family lived in M. Č.'s house, when in actuality two families lived there because the family of the temporary user had the status of subtenants.

b) After the above mentioned second instance decision from 2001, the Administration for Exiled Persons, Returnees and Refugees reached the decision on

30th October 2002 in which it stated, among the rest, that the temporary user realized his right to the reconstruction of his house (at the address of the owner M. Č.)!?

c) At the temporary user's request, the Administration for Exiled Persons, Returnees and Refugees reached on 29th March 2003 a "Consensus on solving a housing issue by donating basic material for the construction of a family house" in G., on the land belonging to the temporary user.

d) The Administration issued on 7th September 2004 an order to the temporary user to move out of the complainant's house, since 90 days passed from the last delivery of the construction material. The complainant failed to do so.

f) After a number of telephone calls, asking about the case status, the Administration delivered on 28th January 2005 an official letter, informing the Ombudsman that a proposal to the state prosecutor to initiate court proceedings for the purpose of evicting the temporary user was not put out yet, since they needed information on the quantity and price of the construction material delivered to the temporary user, requested in January 2005 from the Administration for the reconstruction of family houses, after which the damage would be claimed from the temporary user.

The Ombudsman pointed out that the deadlines for submitting motions with the competent state prosecutor were determined by the law, that those were urgent procedures and that there were no grounds for stalling them, since the procedure concerning the compensation for the damage was completely separated from the case related to moving out, and that the lawsuit for the damage compensation could be filed within three years.

g) A series of irregularities in acting upon this case, as well as the fact that a legal deadline for filing a motion to the state prosecutor expired in early September 2004 were pointed to at the meeting at the Administration for Exiled Persons, Returnees and Refugees, held on 15th March 2005 (the state secretary was unable to attend the meeting). It was also pointed out that the lawsuit for the damage compensation against the temporary user was a separate case and that months spent on waiting for the data on the price of the construction material to be delivered was prolonging the violation of the complainant's rights, contrary to the Act on Areas under Special State Care, so it was requested that Article 18 of the same Act be followed.

h) The Ombudsman was in an official letter of 11th May 2005 notified that the competent state prosecutor's office received a request for the initiation of the court proceedings for the eviction of the temporary user.

Case outcome: The Administration for Exiled Persons, Returnees and Refugees informed the Ombudsman in December 2005 that the temporary user moved out and that the owner was entered upon the possession of his property.

Conclusion: The violation of the owner's right caused by long lasting procedure and violation of the provisions of the Act on Areas under Special State Care was indisputably identified during the procedure. The Administration for Exiled Persons, Returnees and Refugees evidently acted in this case to the benefit of the temporary user and to the detriment of the real estate owner, disrespecting the valid rules of the Republic of Croatia.

Property confiscated during the Yugoslav communist rule

In 2005, altogether 62 complaints from this sphere were in process (40 of which were filed during 2005). The complaints referred to the procedures conducted on the basis of the requests submitted in accordance with the Act on Compensation for the property confiscated during the Yugoslav communist rule (hereinafter: Act on Compensation).

Compared to 2004, when 37 complaints from this sphere were filed, there has been a slight increase in the number of complaints.

The complaints were most frequently filed for the following reasons:

1. Stalling of procedures before the first-instance and second-instance bodies,

2. Obstructing the implementation of procedure of restitution of the confiscated property,

3. Complaints which refer to legal regulation of the restitution of the confiscated property.

1) By implementing investigation procedures based on the complaints from this sphere, it has been established that procedure last unjustifiably long, regardless of the subjective and objective difficulties the services are faced with when dealing with them. The first-instance procedures last for 6 years on average, and second-instance ones last for two years. It has been noted that there is no difference in the duration of the procedures conducted in the City of Zagreb compared to those conducted in smaller cities and towns (which are not burdened by such a large number of cases).

It is evident from the competent bodies' statements delivered to the Ombudsman that too little was undertaken concerning the procedures initiated in 1997. It was mostly the matter of collecting the documentation, while hearings used to be set at the intervention of the complainants. Many cases still await the first-instance decision to be reached. Partial decisions are reached in most of the cases. Partial decisions are reached on a part of a request, i.e. on the property whose status is completely clear and indisputable, whereas the rest and more complicated parts of requests still need to be dealt with. In certain cases, more than a year elapses from

the conclusion of the hearing to the reaching of the decision. First-instance procedures that end by adopting complainants' requests (even partially), are regularly followed by filing appeals on the part of the Municipal State Prosecution, Civil-Administrative Department and other interested persons (mostly legal persons using the business premises that are the subject of the restitution process).

The reasons that lead to the stalling of the procedures lie mainly in submitting incomplete requests for the restitution of property. First-instance bodies are therefore unable to act upon such cases, so they call upon the applicants to complete their requests.

Difficulties with which the complainants are faced when having to deliver the documentation, as prescribed by Article 67 of the Act on Compensation, refer to the impossibility of obtaining decisions on the confiscation of property and excerpts with all entries related to the property, due to various circumstances in which expropriation was carried out, and the documentation often got destroyed or lost, and due to the fact that a long period of time passed since the confiscation took place, in which social changes occurred, leading to the change in titles of ownership and markings of land lots and areas in the procedures of regulating agricultural land (consolidation of holdings, consolidation of land, etc.).

Furthermore, some cases were stalled due to a need for expert evaluation and due to the experts' failure to respect the deadlines for drawing up and delivering the findings, stalling their drawing up for an unreasonable period (more than 2 years).

A problem of high costs of determining the value of the real estate that should be returned to their owners has been noted, too. In one case, costs of estimating the value of a wood, carried out by an expert in forestry, amounted to 7,558.96 kuna (in spite of the existing assessment of the value done by the Croatian State Forests, with which the applicant agreed).

So the applicants are faced with high procedure costs which they must personally cover, since it is the second-instance body's explanation that "the procedure is being conducted at the client's request, so the client must cover the expenses since he/she is the one incurring them." There is sometimes a disproportion between the costs of procedure and the value of real estate.

Long lasting procedures lead to the fallout and devastation of the real estate intended for the restitution, which only brings additional financial burden for the owners.

Objective reasons stated in most reports as causing long duration of the procedures are these: difficulties in solving the cases due to inability to collect the necessary evidence, complexity of procedures and their number, and insufficient number of civil servants for performing activities related to the restitution of property.

However, it needs to be pointed out that, while examining citizens' complaints about the Justice Ministry stalling the decisions, the Ombudsman noted that the Ministry was not acting promptly and that there was a case when a person waited for the delivery of the decisions for more than 20 months.

2) Complaints also referred to various forms of obstructing the restitution of property, as well as to different criteria in making decisions, which surely raises doubts.

The Office received a general complaint about the actions of the legal-property services in the City of Zagreb, dealing with the restitution of property in the first instance, and about the promptness of dealing with certain cases compared to the other, and non-transparent conclusion of deals (settlements) between the city government and applicants in the cases of real estate located in the city centre, in which the city government is interested, and about the lack of supervision over the activities of the city services.

Also, restitution of property has been made more difficult for the applicants due to the fact that the state prosecution participating in a procedure request increment to the benefit of the Republic of Croatia, i.e. local community, instead of the coinheritor who did not file the request, although, according to the adopted interpretation and court practice of the Administrative Court of the RC, the Republic of Croatia acquires the right of ownership over the property only if a request was not filed or if it was denied, whereas in all other cases the property is given to the legal successors of the first hereditary order who file a request for the restitution of the property.

The complaints also point to the resistance of the land registry departments of the municipal courts in recording interim measures for banning the disposal of the property, i.e. even if the records exist, illegal disposal of real estate and illegal registering into land books occur. A complaint was also filed against the actions of the Commercial Court, for announcing public sale of a hotel in Dubrovnik within the bankruptcy procedure, before the civil procedure initiated by the former owners from whom the real estates had been confiscated was validly concluded. The former owners requested from the court to withdraw the public announcement of the advertisement, so they would not suffer irreparable damage and they stated that if the real estate were put up for public sale they would be denied the right to natural restitution to which they had a legal right.

Apart from immediately interested physical and legal persons, it is evident from the complaints that the very state sometimes refuses to take proper care for the restitution of the property confiscated from its owners, by allocating for lease the land whose restitution is requested by its former owners.

One of the complaints objected to the way the local self-government units, through municipal councils, implement the programme of disposing of agricultural land

owned by the Republic of Croatia. Private interests of some members of the municipal council, who as lease holders of larger area of the state agricultural land tried to protect their interests in creating the programme of disposing with state land, were favoured during the procedure. They allocated the land they had on lease for sale, so that they would become the owners of the land. Former owners were offered land, inadequate for farming, in other locations, i.e. in the neighbouring village, and were threatened they would be allocated state bonds unless they accepted the offer.

The implemented privatization makes the restitution of the confiscated property more difficult, due to introducing the confiscated real estate into the companies' stock capital. Therefore, an obstruction is evident with highly valuable real estate which have become parts of companies during the privatization process in the cities.

One of the complaints referred to the obstruction of the restitution process by the Croatian Privatization Fund, in a way that they fail to reserve the stocks for the former owner and failed to deliver the assessment of the value of the company's real estate to the state administration office, without which the former owner could not state his option during the procedure: whether he would accept the stocks from the portfolio of the Croatian Privatization Fund or the bonds of the Republic of Croatia, thus making it impossible for the state administration office to reach the decision on the restitution of the property, which is the complainant's right, pursuant to Article 45 of the Act on Compensation. A number of complaints referred to subsequent registration of the state-owned land which was not in the assets of the company so it did not undergo the assessment of the capital, but it became the company capita through subsequent privatization without being charged, after which it became the private ownership.

In relation to the above mentioned issue, the Ombudsman received a complaint about the implemented procedure of privatization of a company by the Agency for the reconstruction and development of the Republic of Croatia, after the reports for denationalization were gathered in 1991 from the former owners. The complainant stated that the Agency, despite of having knowledge of the former owners, failed to deliver them decisions stating consent for privatization, by which it made it impossible for them to participate in those procedures, as well as to initiate administrative proceedings, i.e. to seek court protection of their rights.

3) The Ombudsman is still receiving complaints about the legal regulation of the property restitution. The following objections to the Act on Compensation have been most frequent:

- the rules on inheritance are not being implemented consistently and the Act is violating the equality of legal inheritors and inheritors by testament, in a way that it substantially limits the fundamental rights of the latter, and the legislator's explanation of such legal regulation, that he/she has been led by economic situation

and possibilities in the RC when determining the inheritors of compensation, is not sufficiently explained,

- those related to narrowing the circle of those entitled to compensation to the first hereditary order.

There were also complaints from the persons who submitted requests in 1991 and received no reply, i.e. their requests were not dealt with, and they subsequently did not file requests within the deadlines prescribed by the Act on Compensation, i.e. Act on the Amendments to the Act on Compensation.

Finally, there were delays in passing certain implementation-related rules, so the Rulebook on criteria for determining compensation for the confiscated construction land and business premises (NN no. 204/03) was published only on 30th December 2003 (and it has been in force since 1st April 2004), so failure of the highest bodies of the executive authority to act contributed significantly to delays in settling these cases.

Based on the analysis of the filed complaints, it is evident that the process of realizing the right to the restitution of property is running slow and with difficulties.

Examples:

(1) Case description (P. P. – 298/05) Mr. K. D. of K. addressed the Ombudsman in an e-mail, complaining about the work of the branch office O. of the State Administration Office in K. County, from which it was evident that no actions were undertaken in relation to the request for the restitution of the expropriated real estate in the case concerning the compensation for the property confiscated during the Yugoslav communist rule, and the applicants did not receive any information on the status of the case.

Undertaken measures: The Ombudsman requested in an official letter of 10th May 2005 from the above mentioned branch office to deliver a report on the case status and reasons for their failure to act upon it.

Case outcome: The Ombudsman received a report from the branch office on 18th May 2005, stating that the applicant filed a request for the compensation for the expropriated real estate on 6th February 1997 and that he was warned of his duty to complete the request in accordance with the provisions of Articles 66 and 67 of the Act on Compensation (NN 92/96). The applicant delivered on 17th October 2002 the decision on the inheritance from his late father. However, in order for the administration organ to act upon the request, the applicant had to deliver a death certificate for his late father, certificate of citizenship and birth certificates of the inheritors in accordance with the decision on inheritance, as well as the decision on the expropriation of the real estate in question. The first-instance body delivered a copy of the report it sent to the Ombudsman to the complainant. Upon receiving the

report, the complainant readdressed the Ombudsman via e-mail, expressing dissatisfaction about the written statements of reasons of the delay in acting upon his case. He wrote the Ombudsman that he would deliver the requested documentation to the first- instance body, with a note that the statement from the report saying he was warned of the need to complete his request was not true.

Note: After receiving the report, the Ombudsman did not check further on the authenticity of the stated reasons for which the procedure was not initiated yet. It is evident that the complainant filed an incomplete request and that the first-instance body did not request, i.e. gather the needed documentation by its official duty, or undertook any actions in the procedure. The Ombudsman‘s opinion is that the reasons stated in the report are not an acceptable justification for the complete passivity of the bodies for eight years.

A serious violation of the complainants' rights to administrative procedure based on their timely filed request, as well as of the right to get the decision on their requests within a reasonable period.

(2) Case description (P. P. – 1394/05) Mrs. B. V. from Germany addressed the Ombudsman with a complaint about the work of the Justice Ministry, for long duration of the procedure based on the complaint filed on 29th September 2003 by Mrs. Š. I. J. as an interested person for the restitution of the nationalized real estate, against the partial decision of the City Office for Legal-Property Relations of 6th June 2003.

Undertaken measures: The Ombudsman requested from the Justice Ministry a report on the reasons why it failed to reach the decision on the appeal within the deadline stipulated by Article 247 of the Act on General Administrative Procedure.

Since the Justice Ministry did not reply the Ombudsman within 30 days, the Ombudsman sent them a rush note.

Case outcome: Unknown. The Justice Ministry failed to send a report after the Ombudsman sent a rush note. There is an evident violation of the complainant's right to get the decision o her request within a reasonable deadline.

Note: In the above mentioned case the first-instance body reached a partial decision after six years, i.e. only on a part of the request for the restitution. Due to significant violation of the deadline for deciding on the appeal (after more than two years after the statement by the interested person it was still not decided upon), it is evident that a even a part of the complainant's request has not been decided upon yet, after more than eight years of administrative procedure.

(3) Case description (P. P. – 1589/05) Mr. F. S. of Trogir addressed the Ombudsman in a letter, asking if the provisions of the Act on Compensation for the property confiscated during the Yugoslav communist rule (92/96, 92/99, 80/02, 81/02) on the

basis of which the inheritors of the second hereditary order did not belong to those authorized to compensation would be amended after Croatia's joining the European Union.

Undertaken measures: The Ombudsman notified the complainant via official letter of 28th December 2005 on the legal interpretation of the Constitutional Court of the RC no. U-I-673/1996 and of 21st April 1999 (NN 39/99 and 42/99) according to which the question depended on the estimate and will of the legislator to prescribe certain rules and on the extent of compensation or restitution of property, since the rules did not undergo the verification of constitutionality. Since, according to the Constitutional Court of the RC, Article 9 of the Act on compensation does not specify the issue of inheritance, but it determines the circle of those entitled to compensation, extending that circle is politically and economically conditioned, so the outcome for that reason cannot be predicted.

Case outcome: The Ombudsman cannot provide the answer to the complainant's question on the possible extension of the number of persons entitled to compensation to the second hereditary order after Croatia's joining the EU, since the legislator's will is determined by political and economic reasons.

Tenancy

During 2005, the Office of the Ombudsman received 47 complaints from the sphere of tenancy, which is by half less than in the year before (103). The key reason for it lies mostly in the change of the rules by which deciding upon the procedures concerning tenancy rights was transferred from the jurisdiction of the administrative bodies to the courts, so most of the procedures, started in accordance with the earlier rules, were concluded.

Tenancy right used to be determined in administrative procedures, in decisions reached by the competent body of the state administration. The authority of the administrative bodies to decide upon the relations in the sphere of tenancy terminated after the Act on Apartments Lease came into force in 1996, when the notion of tenancy right ceased to exist, except for certain procedures that were started before the Act on apartments lease became effective. In the period from the enactment of the Constitution of the RC in 1990 to the enactment of the Act on Apartments Lease in 1996, a notion of tenancy right became particularly important after the enactment of the Act on sale of apartments to which tenancy rights of 1991 existed (hereinafter: Act on sale of apartments). This Act enabled the persons who had the tenancy right to state-owned apartments to purchase them, but a large number of the tenants did not regulate their status. Those tenants were encouraged by the Act on sale of apartments to initiate proceedings for the recognition of their right before the authorized administrative body. Although the general preclusive deadline for filing requests expired on 31st December 1995 (the ultimate deadline in the freed areas was 31st December 1996, and in Hrvatsko Podunavlje the deadline was extended by 31st December 1997), certain procedures for the purchase of

apartment are still due. That particularly refers to the purchase of the state-owned apartments for which the right of disposal was transferred to the central state bodies (Interior Ministry, Defence Ministry, and Justice Ministry).

The most common reasons for the delayed purchase of state apartments are long duration of court proceedings (for the reason of: moving, establishing the nature of dwelling space, establishing legal basis for the use of apartment, etc.).

When concluding a sale contract, legal prerequisites must be met. In some cases there was a dubious practice that the person selling an apartment was requesting a valid court decision on the establishment of the fact which was not in an immediate relation to the prerequisites for concluding a sale contract (e.g. whether the appeal of the former holder of the tenancy right, for trespassing, was a hindrance for the conclusion of the contract).

In some cases, a body disposing of an apartment determines on the basis of the subjective estimate whether the conditions for concluding the contract on the purchase of apartment are met, which results in bringing the citizens into the position of legal insecurity. That delays deciding on the purchase request above the reasonable period within the issue needs to be decided upon.

There is another unsolved issue in the sphere of tenancy, and that is complaints of the protected tenants in apartments in private ownership on one hand, and the owners of those apartments on the other. The former are requesting to be approved to purchase the apartment, stating that they are discriminated compared to the rest of the citizens who managed to purchase the apartment. The owners believe that damage has been incurred to them since they are unable to possess their own property and freely dispose of it. The Government of the Republic if Croatia started creating a law to deal with this disputable issue. There are no bases for acting upon these complaints before a new law is enacted.

Examples:

(1) Case description (P. P. – 28/05): Mr. A. S. of Z. filed a complaint about the work of the Service for Tenancy Issues of the Defence Ministry of RC, for non-realization of his right to purchase an apartment owned by the Republic of Croatia.

The apartment he has been living in was allocated to him for use by the decision of the Housing Commission of the Defence Ministry of the RC of 10th July 1996. In accordance with the conditions of the Act on the sale of apartments with the tenancy right, he filed on 22nd October 1996 with the Defence Ministry a request for the purchase of the apartment. The Ministry did not actualize the sale within 60 days from receiving the request from Mr. A. S., because the court procedure for cancelling the tenancy right of the former tenant was still due. The former tenant was cancelled her tenancy right in a valid decision of 23rd May 2002. However,

since she instituted a civil litigation for the obstruction of disposal of apartment, the sale was not actualized to the day on which the Ombudsman received the complaint.

Undertaken measures: Since the dispute for the obstruction of disposal does not affect making a decision on the right to apartment purchase, i.e. since the conditions for the decision on the sale of the apartment were met when the ruling on the cancellation of the tenancy right to the former tenant, the Defence Ministry was proposed to conclude a sale contract with Mr. A. S.

At the Ombudsman's proposal in relation to concluding a purchase contract, the Defence Ministry of the RC stated that the decision on the sale could not be reached before the suit for the obstruction of possession is validly concluded. Standing by its previous assessment of the way of deciding upon this individual case, the Defence Ministry of the RC was warned again that such an attitude cannot be considered valid and that the complainant was constantly being kept in the state of legal insecurity because of it. The Municipal Prosecutor's Office in Zagreb, as the proxy of the Republic of Croatia, expressed a similar attitude to that of the Ombudsman in relation to this case (MPO's official letter, no. Ps-DO-507/99 of 4th June 2004).

For the purpose of concluding the procedure, the case was brought to the attention of the State Prosecution of the Republic of Croatia, quote: "Within the procedure conducted by the Ombudsman it has been established that, contrary to the attitude and instruction of the Municipal State Prosecution in Zagreb and of the Ombudsman, the Service for Housing Issues of the Defence Ministry of the RC refused to conclude a contract with Mr. A. S. on the sale of apartment, before the litigation on the obstruction of possession is validly concluded. Failure to act in accordance with the given instructions is explained by the past practice of the Service for Housing Issues. Furthermore, is has been established that the State Prosecutor's Office of the Republic of Croatia was notified that the procedure for the purchase of the apartment upon Mr. A. S's request was frozen. The Service asked for the opinion of the State Prosecutor's Office of the RC concerning its further actions."

At the request of the Office of the Ombudsman, the State Prosecutor's Office of the RC, Civil-Legal Department, delivered the official letter no…., of 25th May 2005, in which the Defence Ministry of the RC was warned that the lawsuit for the obstruction of possession was not a hindrance for the conclusion of the contract on the apartment sale.

Completion of the case: The Service for Housing Affairs of the Defence Ministry of the RC notified the Ombudsman that they acted upon the Ombudsman's proposal (of 31st January, 11th May and 19th December 2005), and that a contract on the purchase of the apartment in Z. was concluded with Mr. A. S.

(2) Case description (P. P. – 1293/02): Mrs. A. V. of K. addressed the Office of the Ombudsman for the first time in 2002. However, since she has still not solved the

problem she addressed the Ombudsman about, she deemed it necessary to file a complaint again for the violation of her rights. The concrete case referred to the right to other apartment, pursuant to Article 8 of the Act on Sale of Apartments to which there is a tenancy right.

It was the matter of an apartment in a dwelling and business facility protected as a cultural good, statically endangered and inappropriate for dwelling. The apartment was (nonetheless) sold to the tenant on the basis of the contract concluded on 22nd July 1997. Legality of the sale, i.e. validity of the contract concluded on the basis of the Act on sale of apartments, came into question. It is a state-owned apartment (transferred in its ownership through nationalization, and the former owner did not file a request for compensation), it is located in a protected cultural good, and pursuant to Article 3 of the Act on apartments sale, it could not be the object of sale. A unit which allocated the apartment for use, i.e. a local self-government unit, had the duty to, instead of selling this apartment, secure another, vacant apartment to the tenant (by 30th June 2003), which the holder of the tenancy right could purchase in accordance with the conditions of the mentioned Act.

In the meantime, it was established that the whole building became the ownership of the Republic of Croatia.

The city of K., as the trader of the apartment, denied responsibility for the concluded contract, as well as for securing another apartment in accordance with the Act on apartment sale. It explained it with the fact that it was the matter of the real estate owned by the Republic of Croatia, and not by self-government units.

Undertaken measures: Based on the information on the ownership of the building in which the complainant's apartment is located, the Central State Office for managing the state property was warned of the irregularities noticed in the process of deciding upon the complainant's motion for the renewal of the procedure of apartment sale. The Government's commission for managing the property of the Republic of Croatia denied the request, explaining that the building was not pronounced dilapidated at the time the complainant filed the request and it did not have the status of a protected cultural monument.

The attention was brought to this case again, and it was pointed out that the issue was later dealt with in a very different manner, and the conditions for reconsidering the complainant's request were met, based on the Ombudsman's proposal, (quote): "The Ministry of Environmental Protection, Physical Planning and Construction, Administration for Inspection Activities, proclaimed the building as dilapidated in its decision class UP/I-362-02/05-02/1625, ref. no. 531-07/11/VBT-05-2, and it ordered the removal of the damage. The same decision stated that the building was located in the historical urban part of the City of K. and that it was registered in the register of cultural real estate, no…, on 17th November 1987."

A delivery of the statement about the mentioned objections was requested in a warning of 23rd May 2005, as well as a comprehensive report on the way the complainant's right would be protected in the execution of the construction inspector's order.

Note: The requested report was not delivered to the Office of the Ombudsman within the deadline. The investigation procedure remained unfinished.

(3) Case description (P. P. – 435/05): Mrs. J. Đ. disposes of a valid ruling of the Municipal Court in K. of 13th March 2003, by which she was identified as the protected leaseholder in an apartment in K, of 55.23 m2. Based on this ruling, she submitted a request with the Administration for Exiled Persons, Returnees and Refugees for the conclusion of the contract on the apartment lease, with protected lease. However, the contract, requested three (3) years ago, has still not been concluded. The complainant does not dispose of the apartment.

Undertaken measures: Since this is the matter of settling a housing issue of the holder of the tenancy right to the apartment on the territory under special state care, the Administration for Exiled Persons, Returnees and Refugees was requested to deliver a statement of the reasons for which the right to the apartment, that was in this case acquired and recognized, was not realized yet. The reply stated that the reason for which the complainant's housing issue was not solved yet was that there was no adequate apartment in the K. area and that the request for the apartment was not to be dealt wit yet, according to the order determined by the Rulebook on Priority Order.

It was therefore assessed as necessary to bring attention to the complainant's right (quote): "The status of the protected leaseholder has been identified for the apartment, which means that the complainant should be provided with a contract on lease, with protected lease for that apartment, and she should dispose of the apartment. Therefore the inquiry from the official letter of 25th August 2005 has been formed in the sense of a ruling being effective among the parties (RC and the complainant), and it is an authoritative regulator of the legal relations between the parties it refers to."

It was also pointed out the delivered statement of reasons did not contain the data on the basis of which the case of violation of the rights could be discussed – whether the apartment is vacant, whether it is necessary to take care of the housing problem of the person who in the meantime moved into the apartment on some other basis (legally or illegally), so the objective possibility (another available apartment) refers to settling a third person's housing problem (deadline from the Rulebook on the Priority Order), and not the complainant's; there are no data on the deadline within which the validly identified legal position of the tenant (the realized right confirmed by the ruling of the Municipal Court in K.) will be actualized, in accordance with the factual state (the apartment is vacant/occupied).

Note: The outcome of the case is unknown. The investigation procedure remained unfinished. The subsequently requested data were not delivered to the Office of the Ombudsman within 30 days.

Construction

Complaints filed with the Office of the Ombudsman during 2005 in relation to the construction and spatial changes, referred to the procedures for issuing location and construction licence and to the activities of the construction inspection. Based on the number of the complaints received in 2005 (altogether 106 complaints), it can be established that the citizens asked for the Ombudsman's protection in the same number of cases as in the previous reporting period (93 complaints in 2004).

The key reasons for which the citizens address the Ombudsman are realization and protection of the rights and legal interests related to real estate – facilities under construction, already constructed facilities and construction lots. The citizens file complaints after their right to construction licence, to building a facility, to ownership acquired through construction, to peaceful enjoyment of the ownership, and to other rights and authority coming from those rights are brought into question. Therefore, it is the matter of the real estate-related citizens' rights in administrative and actual legal sense.

Complaints related to obtaining construction licences

Investors file complaints about the work of the second-instance body, and interested persons file complaints for the violation of their rights as parties in a procedure before the first-instance body. The complaints filed by the interested persons mostly contain objections to the violations of the rights they acquired: peaceful enjoyment of ownership and the past way of disposing of their real estate. All of the complaints are usually dealt with in a regular legal way (by legal means: appeals and administrative lawsuits).

Since construction works can start only on the basis of the final construction licence, complaints are mostly filed by the investors who cannot obtain the final licence within a reasonable period. Due to the file of the person having the status of the party in the administrative procedure of issuing a construction licence, they found themselves in the situation in which the construction licence is cancelled by the second-instance decision and the procedure renewed. However, after issuing the construction licence in a renewed procedure, the rules of regular procedure allow filing appeals against the "new" decision, which means the second-instance procedure will be implemented again. In such cases, the possibility of obtaining final licence becomes uncertain in a number of cases.

The main objections from these complaints are related to the work of the second-instance body, since it takes on a different legal attitude to the same case, i.e. the same facility, when decided upon it again, and it fails to prevent violations of the

law during the implementation of the procedure. A first-instance decision is examined only within the limits of the statements from the complaint, and the consequence is that a construction licence can be disputed again for some other reason, although that same reason existed at the time of the previous second-instance procedure. Investors also complain that the second-instance body fails to apply the rule according to which it has the authority to settle administrative issue on its own.

One of the reasons investors address the Ombudsman is the issue of cancelling construction licences in extraordinary procedures based on the right of supervision. These complaints object to the option given to the state body to proclaim the whole construction licence invalid. For the reason of evident violation of substantive provisions, a construction licence may be cancelled within a year to the ultimate day. A violation of the provisions on designing a project or changing a physical plan is also a violation of the provisions of the Act on Construction. These and other similar reasons, for which a construction licence may be proclaimed invalid, after it became final or valid, lead to legal insecurity. Immediate consequence of a nullified construction licence is a damage incurred to the investor.

The Act on Construction does not grade the violation of the substantive provisions (minor and serious violations of the Act), so it does not prescribe that a conclusion with the order to remove the identified drawbacks within the set deadline is issued for all minor violations and irregularities, i.e. for the removable ones. In that case, the first-instance body, i.e. the investor, would be given the opportunity to correct the main project. Should the investor fail to do so within the set deadline, construction licence would be nullified in its entirety based on the right of supervision.

Based on the number of the complaints about the annulment of construction licences on the basis of the right of supervision, it cannot be categorically said that the issue of extraordinary annulment of construction licences due to minor violation of the substantive provisions is a great problem, and to what extent construction licences are actually proclaimed invalid for those reasons, to demand urgent amendments to the Act on Construction. However, with possible amendments to the Act on Construction, the issue of providing possibilities for correcting the subsequently identified minor irregularity should definitely be discussed.

The complaints of the citizens who in the procedure of obtaining a construction licence have the status of a party in administrative procedure, refer to the violation of the rights which are limited to the protection of the rights ad legal interests of the neighbours. It needs to be said that this right is sometimes misused. The past way of disposing of one's own real estate does not presuppose the right to banning a neighbour from constructing, as an investor, in accordance with the physical plan and rules of construction. However, it must be said that the right of the neighbour to participate in the procedure to certain extent presents a guarantee that the existing situation and/or construction principles in certain location will be respected when

issuing a construction licence. Neighbours' participation in the procedure is particularly important in the cases in which there is a possibility of broader interpretation of certain lot (e.g. when establishing conditions for the construction that the provisions of the plan see as an exception). A neighbour and a third person with a legal interest in certain construction are at the same time guarantors for preventing new works, by which the space could be brought into an irreparable state. Creating physical plans is expected to improve the state of legal security.

Complaints about the conduct and work of the construction inspectorate

Identification of the right violated in the construction inspection procedure has become a regular issue that cannot be determined within the limits of the Ombudsman's jurisdiction. The primary question is the extent to which the Ombudsman may get involved in ownership issues and in the protection of the right to preserve a facility, if a real estate is built without a construction licence or if it is annulled during the construction. Therefore, the crucial thing is to consider and check on the enforcement of the procedural rules and rights of the interested person.

Complaints about the work of the construction inspection mostly refer to violation of the rights protected by the court. It is the matter of the neighbours' complaints about crossing the boundaries, damages on the neighbouring land/facility resulted from performing construction works, trespassing and obstructing peaceful enjoyment of property. As to the number and contents of the complaints, most of them refer to the cases of family housing construction. Complaints about taking over and obstructing public areas, i.e. complaints about obstructing regular use of public good are not frequent.

The key objections of the complaints about the work of the construction inspection refer to the failure to implement the execution procedure and recognize the status of a party in the procedure. According to the Act on Construction, neighbours are not recognized the status of a party in the inspection procedure. If a neighbour reported performing construction works, he/she is entitled (only) to receive information on the state identified in the procedure of inspection supervision of the construction.

The citizens do not accept ruling out neighbours from the inspection procedure as a logical legal solution, since, in the cases of illegal construction, neighbours are persons with conflicted interests and their immediate interest for the establishment of the legal situation and removal of all detrimental consequences cannot be disputed.

When taking into consideration the number of the complaints referring to non-execution of construction inspectors' orders, a conclusion can be made that this issue must immediately be dealt with, as a systemic issue. It has been established that non-suspension of an appeal is usually not used. Based on the received complaints, conclusion can be drawn that this identification primarily refers to executing the order on removal, rather than to the orders for the suspension of

construction and removal of damage. Orders for removal and for establishment f the previous state are executed within the legal deadline of ten (10) years, and on the basis of the inspection decision which has become final in the administrative procedure.

Stalling of the execution is a result of the omissions made by the construction inspections. Inspection procedure most often ends after the conclusion on the execution permission. If the executor fails to follow the order from the inspection decision, the execution is often stalled for an unreasonable period. This has been confirmed by many complaints filed in 2005. The complaints about non-execution of the inspection orders refer to the decisions passed four years ago and before, so outside reasonable deadline. In addition, there has been a case (described in example no. 7 of this chapter) in which the delivery of the decision in a case of removing illegally constructed facility lasted for five years due to an omission of the authorized body.

The provision prescribing that a complaint does not postpone the execution of a construction inspector's decision, is in the procedure of investigating a complaint taken as a warning to the investors that they will bear the consequences of illegal construction.

The practice of postponing the execution of the order for the removal of a facility, until the end of the appeal procedure, is in accordance with the constitutional right to file appeals. Since other legal protection is not ensured before the state administration body, the right to the second-instance procedure would be rendered impossible if the right to appeal against individual administrative decision on removal were excluded. Other legal protection is ensured in outside the state administration body, in the court procedure for the damage compensation.

Orders of the construction inspectorate on suspending further construction and removing illegal facilities were in 2005 executed in a significantly higher number of cases than in the period before. Categorical attitude of the central state body about changing the custom of starting construction without having a construction licence has proved to be decisive for the establishment of equal treatment of the citizens (respecting the law). New cases of illegal constructions are prevented regardless of whether family facility, multi-storey dwelling and business facility or simple auxiliary facility is in question.

Based on individual complaints filed by the citizens who addressed the Ombudsman, conclusion can be drawn that the construction inspectorate is swamped with registrations of the construction of auxiliary, smaller farming facilities and simple facilities. Those are the applications filed for auxiliary facilities in the areas outside urban settlements (cities, towns), i.e. for such facilities which are, considering their intended use, constructed on the land on which family dwelling units are located. Such construction is in the jurisdiction of the construction inspectorate, only because their construction requires the approval of the county

office. Approval is issued as a location licence, i.e. as a confirmation of the coordination with location-related conditions for the preliminary project. However, the basic motives for filing requests the intervention of the construction inspectorate are disputes between neighbours or those related to joint ownership.

The issue of the simplest support facilities outside large settlements should be regulated in other way, by amending the rules on the facilities that do not require issuing construction licences (by prescribing special prerequisites for locations, various forms of use, size, etc.). A self-government unit (a construction supervisor) may have the authority to get direct insight in order to identify the state related to the facilities (control or initial supervision). If a major irregularity is identified during the examination (e.g. construction of a facility larger or taller than permitted, for some other purpose, etc.), record on the identified state would be delivered to the construction inspectorate, as a request for the implementation of the procedure. This would relieve the engineers at the Administration for inspection activities (Article 151 of the Act on Construction) of having to act upon minor cases in which there have not been any violations of the rules or serious violations of the rules, but only a minor irregularity which has been removed immediately upon the warning of the self-government unit.

In this reporting period, the construction inspectorate delivered the Ombudsman all necessary data, by delivering comprehensive reports, and much prompter than in the previous reporting period. It also needs to be mentioned that investigation was carried out again in all the cases for which the data delivery was requested.

Examples:

(1) Case description (P. P. – 453/05): N. K. complained about negligent conduct on the part of the county Construction Service in D., because of which a legal status of his family house in S. was not settled. Before addressing the Ombudsman, Mr. K. asked the Ministry of Environmental Protection, Physical Planning and Construction for help in issuing the construction licence. However, not a single action was undertaken in the procedure to the date he filed the complaint.

Based on the documentation and information enclosed in the complaint, it was concluded that there was a founded doubt that the complainant's rights were violated in the circumstances resulted from the conduct of the state administration body and employees, as well as of the employees at the service for issuing the requested licence. The case file, created in 1991 at Mr. K.'s request, which he marked as a "report for the construction and legalization," was allegedly lost.

The construction began (and ended) on the basis of the physical planning conditions; since the construction was done in accordance with the physical planning conditions, at that time it could not be considered as a construction without a licence. A request for the construction licence was not submitted within the period in which the conditions for physical planning were valid (two years), and since Mr.

K. disrespected the deadline for requesting construction licences based on the conditions for physical planning, he marked the request he filed on 28th March 1991 as a "Report for the construction and legalization". Not a single action was undertaken in relation to the request of 28th March 1991. The procedure on the basis of the Act on Acting Upon Facilities Constructed Contrary to the Physical Plans and Without Construction Approval (1992 – 1995) was not implemented either, due to untimely (too early) request. For the purpose of legalizing his family house, the complainant initiated administrative proceedings again, with a new request for the location permit, of 31st August 2000. The request was after five years denied in a decision of the Service for Physical Planning, Environmental Protection, Construction and Legal-Property Relations in D. (28th April 2005).

The reason for denying the request for obtaining a location licence lies in the provision of Article 36 of the Physical Plan of the municipality of Dubrovnik ("Official Gazette of the municipality of Dubrovnik", no. 13/10797, 3/89, 9/91), since a detailed physical plan was not created for the territory on which the family house was built.

Undertaken measures: The Ministry of Environmental Protection, Physical Planning and Construction was proposed to establish whether the annulment of the physical plan was the real reason for which the construction licence, i.e. the decision on the approval of construction, based on the conditions for physical planning of 6th July 1988, could not be obtained.

It was also proposed that reasons for which the request marked in the complaint as the "Report for the construction and legalization" was not reconstructed after establishing that it was lost should be identified.

Taking into consideration the reason for denying the request for location permit (lack of DPU), the conclusion was reached that neither location permits are issued for such cases from 1991 (and before), nor is approved any form of construction. However, the complainant disposes of different data and evidence (copies of construction licences, photographs). Furthermore, by taking into consideration the provision of Article 88, Paragraph 2, Item 1 of the Act on Construction, a question arose as to the extent to which the lack of the plan is the real reason for which N. K.'s family house has not been legalized yet, so the Ministry has been asked the following question: Could the construction licence be issues in the period between 1991, i.e. between 2000 and 2005?

Considering the fact that omissions were made by both the state bodies and the investors due to certain circumstances, the Ministry was proposed to interfere in settling the case of Mr. N. K. (quote): "and that it should undertake everything to complete and settle the issue of legalization of this family house (based on the complaint, supervision procedure, renewal of the procedure or in some other way). The obligation to follow the principles of protection of the citizens' rights and the principles of providing help to the parties refers to this as well," and if a positive

solution is likely, that the Ministry should freeze the "case" until it the enactment of the implementation plan.

Note: Mr. K. initiated administrative proceedings against the second-instance decision in the case of denying the request for a location licence.

(2) Case description (P. P. – 1509/05): Mrs. A. M. of Z. built a dwelling facility in Germany on the basis of the decision of the then Municipal Committee for Urbanism, Construction, Dwelling and Utility Activities of the Municipality of K., of 8th February 1984. She withdrew from the construction approval during the construction. The complainant registered the dwelling facility in the land register on the basis of the construction approval.

The construction inspectors implemented the supervision twenty one years after the construction, and they did so only because of the construction on the neighbouring lot. Although there are no works on the facility, the order for the suspension of the construction was issued based on the decision of the construction inspectorate of 13th February 2005, as well as the order for removing the parts of the facility, based on the decision of 4th August 2005. Mrs. M. filed an appeal against the decision of the constructor inspector.

Undertaken measures: It was not necessary to obtain a licence for the use of the facility built on the basis of the decision of Article 28 of the Act on the Construction of Facilities (Narodne novine, no. 52/81), and it could not be torn down as it was built in accordance with the conditions of physical planning. The documentation delivered with the complaint brought up the question if there was even room for the implementation of the inspection procedure for this facility. It has been estimated that validity and legality of the issued orders need to be established in order to establish the situation concerning the implemented inspection procedures. Despite the fact that the appeal does not delay the execution, the question of the validity of the decision on the suspension of construction must be discussed before starting the process of removal. The decision on the appeal against the decision on the suspension of the works is particularly relevant for the assessment if there is room for the implementation of the procedure.

The Administration for Inspection Activities of the Ministry of Environmental Protection, Physical Planning and Construction was therefore proposed to identify the reasons for which the order for removal was issued in this case, and for which the procedure of execution started (conclusion on the execution permission of 31st October 2005), before the second-instance procedure, initiated by the appeal against the decision on the suspension of the construction and on the coordination of the state with the provisions of the Act on Construction (order for the coordination from Item 3 of the disposition of the decision), was completed. Whether that facility could be the object of the supervision, regardless of the potential withdrawal of approval, was pointed out as particularly questionable.

Since the inspection decisions refer to the same factual and legal state, it was proposed that the investigation procedure should be brought together into one procedure, at the Ombudsman's request.

Note: The procedure is underway.

(3) Case description (P. P. – 364/05): Mr. L.D. of Z. complained about the work of the Ministry of Environmental Protection, Physical Planning and Construction as a second-instance body, i.e. about the decision reached in the second-instance procedure for issuing a construction licence for the construction of a dwelling and business facility in K., and about the actions of the same body undertaken in relation to the initiated administrative procedure.

The construction began on the basis of the construction licence of 7th August 1990, issued to the previous investor. The previous investor withdrew from the valid construction licence of 1990. Therefore, L. D. as a new investor filed in 2002 a request for issuing a location licence (which became valid on 12th June 2002) and in 2003 a request for issuing a construction licence. However, the construction licence from 2003 was nullified in the second-instance procedure. The construction licence was issued on 1st December 2004 in the renewed procedure and it was nullified again, during the second-instance procedure, in the decision of 12th April 2005. Since the reasons for nullifying the construction licence again were the same, the investor initiated an administrative procedure in a complaint on 11th May 2005.

Although the administrative procedure was initiated, the Ministry, in its official letter of 6th October 2005, gave the Service for Physical Planning, Environmental Protection and Legal-Property Relations within the State Administration Office in Ličko-Senjska County objections and instructions for the implementation of a new (second) procedure. However, these objections go beyond the limits within which the nullified construction licence was discussed, and thereby clash with the second-instance decision which is the subject of the execution (it goes beyond the limits of the statements from the appeal accepted by the second-instance decision of 12th April 2005).

Undertaken measures: Based on the factual state, and pursuant to the instruction from the provision of Article 90, Paragraph 2 of the Act on Construction (Narodne novine, no. 100/04) for issuing the construction licence for the already existing facility, the Ministry was proposed to gain insight into all the cases related to the marked construction licence and to establish if it was even discussed in the procedure preceding the second-instance decisions (of 12th April 2005 and 25 August 2004) to what extent the reasons for the appeal are actually the basis fro nullifying the construction licence, and if they are really so important that a different decision should have been reached at the investor's request – if the case was such that the construction licence could not be issued as requested, for urban ad construction reasons.

Since the administrative procedure was initiated, it was proposed that the procedure be implemented pursuant to Article 261 of the Act on Administrative Procedure, within the limits of the subject of the procedure in which the second-instance procedure was implemented.

The second-instance procedure was conducted twice, so attention was particularly brought to identifying if the second-instance procedure was implemented in a way that it caused a violation of the investor's/complainant's right by favouring the parties in the procedure related to this construction licence by adopting the appeal reasons, and to the detriment of the investor.

Note: The procedure is underway.

(4) Case description (P. P. – 166/05): Mr. I. Č. owns an old house in the village of B. near P. Mr. Č.'s complaint refers to the work of the Ministry of Environmental Protection, Physical Planning and Construction, since two different attitudes were assumed on the same legal matter when reaching the second-instance decisions. He disposes of two second-instance decisions, class UP/II-350-05/97-05/1226, ref. no. 531-05/2-97-2 and class UP/II-350-05/03-02/1361 ref. no. 531-04/1-04-03. However, although the issue of the distance of the facility from the neighbouring boundary was discussed during the first procedure, the same issue was again discussed before the Ministry in the last decision (of 18th November 2004), after which a different decision was reached. It was the matter of the objection to the minimum distance of the facility from the neighbouring demarcation line. The Ministry denied the objection in the second-instance decision of 28th October 1997, since it was the facility in a row (150 years old). In the second procedure, the objection to the distance of the existing facility from the demarcation line was the reason for which the first-instance decision was annulled and the file returned for the renewal of the procedure.

Undertaken measures: The Ministry of Environmental Protection, Physical Planning and Construction was delivered a request to check the objection and establish if the principle of legality was violated during the procedure before the Ministry, and if the rules of administrative procedure, pursuant to the provision of Article 263, Paragraph 1, Item 2 of the Act on General Administrative Procedure, were violated (a valid decision by which the administrative issue was settled in a different way was already reached before). If it established that the objection was founded, a procedure should be implemented on the basis of the right of supervision.

Note: The extraordinary procedure based on the right of supervision is underway.

(5) Case description (P. P. – 604/05): Mrs. V. M. believes that the Service for Physical Planning in S. violated her right to construction by committing irregularities in its work. The immediate reason for filing the complaint is the refusal of her request for obtaining a location licence for forming a construction lot and constructing a dwelling facility. An inspector from the Central State

Administration Office implemented supervision of the administrative file and procedure (report of 27th May 2005). The decision on the denial of the request for the location licence is based exclusively on the previous opinion, although it does not have the binding legal effect. On the other hand, At the time of reaching the decision (April 2004), physical planning documents did not contain the exclusive ban for the requested intervention in the space, but they only contained the condition of coordinating the construction with the surrounding facilities.

The second-instance procedure in relation to the same location was implemented two times (decision of 5th April 2004 and of 17th January 2005).

Undertaken measures: The Ministry of Environmental Protection, Physical Planning and Construction was proposed to implement the procedure of official supervision. It was estimated necessary to conduct an extraordinary procedure to establish if a need for requesting special conditions for the protection of the cultural good existed, since it was not the matter of the immovable cultural good or a protected historical unit, and if there were bases in the repeated second-instance procedure for reaching the final decision for the reason of non-existence of the urban plan, since the request was filed on 19th January 2004.

Note: The report was requested in June 2005. The outcome of the case is unknown.

(6) Case description (P. P. – 2385/03): G.G. d.o.o. Delnice was denied the request for obtaining a location licence for a dwelling and business facility in R. The investor found himself in an unreasonable and almost hopeless situation. The valid construction licence was nullified and the request for obtaining a new one was denied. The construction licence cannot be issued in 2005, since a new Physical Plan for the city of R. has come into force and a new urban plan has not been created yet. It is not possible to issue a location licence for the construction of new facilities before the plan of lower order is introduced. However, the dwelling and business facility was built based on the valid construction licence (subsequently annulled on the basis of the right of supervision), and use permit and it was registered in the land register.

Administrative procedure was initiated against the decision of the Ministry of Environmental Protection, Physical Planning and Construction on the annulment of the construction licence on the basis of the right of supervision.

Note: A regular procedure before the Administrative Court, in which needs to be established if the substantial law was falsely applied in the procedure based on the right of supervision, stops the implementation of the investigation procedure.

(7) Case description (P. P. – 1082/05): The complainant L. O. of Z. stated in her complaint the violations of the ownership rights, resulted from the inefficiency of the construction inspectorate. It is the matter of illegal construction and performing construction works despite the order of the construction inspector for the suspension

of the works. Mrs. L. O. asked for the protection of her rights in the administrative procedure for several times. However, administrative decisions were not executed. The illegal investor continued to act contrary to the orders of the construction inspector. The complainant requested for the state of the facility to be identified, based on the construction licence no… of 27th April 1979.

Furthermore, based on the statements from the complaint, it can be concluded that the consent for connecting the facility to the power was issued after the legal ban of connecting illegal facilities to utility infrastructure was identified (Article 10 of the Act Amendments to the Act on Communal Economy, Narodne novine", no. 82/04).

Undertaken measures: Based on the complaint, investigation procedure was initiated with the Administration for Inspection Activities, within the Ministry of Environmental Protection, Physical Planning and Construction.

The subject matter of the procedure of the construction inspector is the construction contrary to the construction licence. The investor is A. Lj. of Z. In the procedure of the construction inspector's official supervision of the construction, by gaining on-site insight, it was established on 14th and 17th December 1998 that there was a withdrawal from the construction licence during the construction. Based on the established factual state, the inspector ordered in the decision of 4th January 1999 the suspension of the construction works performed on the parts of the facility, and the coordination of the state. A period of 90 days from the receipt of the decision was set for the execution of the order, with the threat of removing the facility. In order to execute the order for the coordination of the state with the approved project, the investor was given the possibility to request the amendments to the construction licence.

Since the order for the coordination of the state with the construction licence was not executed, the construction inspector ordered the removal of the illegally built parts of the facility. The enforceability of the decision on removal was established in a conclusion of 18th January 2001. It is considered that the procedure of execution began by reaching that conclusion. However, the execution procedure has not been implemented and completed yet.

The construction inspectorate finds the reasons for failing to execute the decision in the fact that it was not possible to deliver the administrative decisions of the construction inspector to the executor, and that the complainant did not prove that she was the owner of the entire facility.

The inability to deliver the inspectorate's decisions to the executor (in the period between January 2001 and December 2005) could not be considered a valid reason for which the inspection procedure was not completed. The non-acceptance of the given explanation is based on the provision of Article 169 of the Act on Construction (administrative decision is put on the notice board of the Ministry, and notices are left at construction sites), taking into consideration that the procedure

was initiated in accordance with the past Act, i.e. with the provision of Articles 86, 95 and 96 of the Act on General Administrative Procedure.

In addition, the ownership of the facility and (un)resolved relations between the owners of the facility under supervision do not halt the implementation of the procedure, since they are not the condition for the construction inspector to officially conduct the procedure. So the explanation could not be considered as founded, not even in the part in which it was stated that the reason for the failure to execute the decision was that Mrs. L. O. failed to prove the ownership of the real estate.

It was estimated that there was a reasonable doubt that the complainant's right to the establishment of a legal status of the facility was violated by the omissions made during the inspection procedure.

It was therefore requested that a report on the measures undertaken in order to remove the consequences of the omission be delivered, together with the statement about the Ombudsman's objections.

In addition, the investigation procedure was implemented with the "Elektra" Zagreb, in relation to the consent given to A. Lj. for the power connector for the illegal dwelling facility. All the circumstances lead to the conclusion that the consent for connecting the facility to power was issued after the legal ban on connecting of illegal facility to the communal infrastructure was identified /Article 10 of the Act on Amendments to the Act on Communal Economy, Narodne novine no. 82/04). It was requested that the information on the consent (and whether it was given at all) be delivered, as well as the information on whether the facility was connected to the power network.

Since "Elektra" failed to deliver the requested data, the same request was repeated.

Note: The procedure is underway. The relations between the owners were in the meantime settled in a procedure before the regular court, and, based on the file status, the investor met the conditions for requesting the amendments to the construction licence.

(8) Case description (P. P. – 1258/05): J. G. of Z. complained about the work of the construction inspectorate for their failure to execute a decision on removal. The removal order was given to the investor I. K. in the decision of 27th May 1997. The decision of the construction inspector became final on 24th June 1998, whereas it became valid on 25th January 2001, based on the ruling of the Administrative Court. However, the order was not executed to the day on which the complaint was filed. The object of the execution is a wooden warehouse, of 9 x 30 m in size.

Undertaken measures: The Administration for Inspection Activities of the Ministry of Environmental Protection, Physical Planning and Construction was requested to

deliver the data on the reason for which the procedure of administrative execution was not executed via some other person.

Within the deadline for the delivery of the requested information, the Office of the Ombudsman received a notice that the execution procedure, which started in October 1998, was suspended because the executor began executing the order (he began removing the wooden warehouse). As the executor failed to remove the illegal facility in its entirety, forced removal was continued in December 1998. Even then the warehouse was not entirely removed, due to unfavourable weather conditions. The repeated supervision of the execution of the inspectorate's decision was done on 9th July. It was established that the facility was still not completely removed and the execution of the decision was continued on 21st December 2005, via other person, and the rest of the components of the wooden structure were finally removed.

Case outcome: The complainant notified the Office of the Ombudsman that the facility was partially removed on 21st December 2005 and I. K. put up a fence in the same place, after the inspectors left. Construction of the fence was not stopped even by the police intervention. The construction inspectorate was informed of it, and they announced they would go to the site and remove the rest of the structure.

Note: Based on the subsequent notice provided by Mr. J. G., the procedure of verifying the truthfulness and accuracy of the data delivered to the Office of the Ombudsman is underway.

(9) Case description (P. P. – 735/05): Mrs. S. B. filed a complaint about the work of the construction inspectorate. The basic reason for filing the complaint is the failure to execute the decision on removal of 25th November 2002. It is the matter of the illegally built garage, made of concrete blocks, 5.50 m x 4.00 m in size + concrete stairs 0.60 m x 2.40 m. The garage was built by the existing dwelling facility, in P., village of S., municipality D., on the joint land of the complainant and investor.

The complainant's interest in the removal of the garage lies in the location on which the garage was built – on the path to the well, and it is therefore obstructing "the access to the water for the cattle". As the complainant's family breed sheep and goats, this is the matter of their existence.

The construction supervisor carried out on-site examination and implemented administrative procedure (order for the removal and conclusion on the permission for the execution were issued). However, the execution procedure via other person was not implemented.

Undertaken measures: It is the matter of violating the ownership rights, as a consequence of the disturbed relations between the neighbours. The cause is the arbitrary conduct of one of the owners, i.e. of the neighbour who built the facility in question. Although it is the matter of private relations between the citizens, on the

territory outside the municipality, the city, i.e. outside the settlement area, it is the matter of illegal construction which requires intervention of the competent bodies. Complaints of the same nature are common. They can be considered the cases of illegal construction and the cases of disturbed neighbour relations.

The garage is a simple facility and it is expected that the removal will be easy. Therefore, there are no legal or actual reasons that would prevent performing the works on the basis of the conclusion on the execution approval of 8th September 2003.

The Administration for Inspection Activities was therefore proposed to implement the procedure for the execution of the decision on the removal as soon as possible.

The Administration for Inspection Activities notified the Ombudsman within 30 days that the procedure of administrative execution of the decision on the removal via other person was initiated, on the basis of the conclusion on the execution approval of 20th May 2005, but forced execution was not done since the decision on the removal did not become valid yet. The executor J. B. initiated administrative procedure.

In addition, after issuing the decision on the removal, the executor J. B. filed a request for a location licence for the garage in question. The licence was not issued (only) because of unsettled legal-property relations between the two families B. on the land in question.

All on-site examinations of the construction inspector were carried out without the presence of the two parties, since neither of the parties are registered as residents of the village of S.

The Administration for Inspection Activities warned J. B. again in its official letter of 19th October 2005 to execute the decision and execute the order to remove the facility.

Note: The procedure of the Ombudsman is completed. The construction inspectorate acted in accordance with their legal authority. Administrative procedure is underway.

(10) Case description (P. P. – 222/05): Mr. F. D. of L. reported construction works to a construction inspector in R. He filed a complaint due to “silence” in relation to his reports on illegal construction in M. L., at the address of Sv. M. and at C., since he did not receive a notice on the supervision.

Undertaken measure: The Administration for Inspection Activities was requested to make a statement concerning the objection to the “silence” from Article 154 of the Act on Construction (construction inspectors notify the person filing a report on the established factual state and inspection supervision no later than 30 days after the

supervision is done). It was also proposed in the official letter that it (the letter) should be taken as a proposal for the implementation of the procedure without a delay, should it be established that there was no supervision of the construction and the performed works.

Case outcome: The Office of the Ombudsman received (with a four-month delay) a report on the supervision done on the basis of the reports filed by F. D. The inspection procedure was implemented and inspection order was issued on the basis of the established factual state. The person filing the report was notified on it, too. The Ombudsman's procedure was therewith completed.

(11) Case description (P. P. – 861/05): Mr. K. E. of V. G. filed a complaint about the work of the construction inspectorate, in which he reported illegal (additional) construction on the facility belonging to his neighbour M. R. The removal of the additionally built part of the facility was ordered by the decision of the construction inspector of 9th September 2002. The complainant received a notice on 10th September 2004, by which the Department for Execution Procedure and Advancement of the Work of Regional Units informed him that the procedure for removing the additionally built parts of the facility was underway. However, the execution procedure has not been implemented to this date.

Undertaken measures: During the investigation procedure, the Administration for Inspection Activities was requested, based on the data from the notice of 10th September 2004, to deliver the data on the case status and a statement of the reasons for the failure to execute the order for the removal of the additionally built parts.

The requested data were not delivered within the legal period and the request was rushed. After the request and a rush note were sent again, the reported request was delivered. It is evident from the report that the order for removal was not executed because the administrative decisions were not delivered to the executor in a legally prescribed way. The Office of the Ombudsman was notified that the implementation of the inspection procedure in relation to performing construction works on the above mentioned land was underway (not only for the mentioned illegal construction).

Case outcome: It has been assessed that further implementation of the Ombudsman's procedure would be too premature, since the Ombudsman usually does not act upon the matters where the procedure is underway. The complainant has been informed f the taken attitude, with an explanation in accordance with the provision of Article 6 of the Act on Ombudsman. It has been explained that the state body needs to be provided the opportunity to pass a legal and valid decision in a regular procedure and conclude the procedure in a prescribed way.

(12) Case description (P. P. – 706): The procedure of the construction inspector was concluded in 2000 by the decision on removal, class UP/I-362-02/00-02/ no. 531-07/2-21/6-00-5. However, although the complainant Đ. J. filed a request for the

execution in 2003, the removal was not done to the day she filed the complaint. The Administration for Inspection Activities, Department for Legal Affairs and Monitoring of the State notified her in an official letter of 3rd June 2003 that the execution of the administrative decision via other person was not implemented because the means from the 2003 state budget were not approved for it and the case was not included into the execution plan.

Undertaken measures: Based on the information from the complaint, it has been established that it is the matter of simple, auxiliary facilities: shelter and workshop of the investors Z. and K. B.

The Administration for Inspection Activities was requested to inform the Office of the Ombudsman on the reason for which those simple facilities were not removed in the subsequent budgetary period via other person.

A report was delivered within the prescribed period: The Ministry of Environmental Protection, Physical Planning and Construction established that there were no conditions for removing the auxiliary facilities of K. B. In the procedure of dealing with K. B.'s appeal, it was established that it was the matter of the facilities which were registered in the cadastral register before 15th February 1968. Since the facilities built before that date are considered as having been built on the basis of the construction licence, inspection procedure was suspended. The decision on removal was annulled in the second-instance procedure, as well as the conclusion on the execution permission, and these decisions no longer produce legal effect.

Case outcome: The complainant was notified on the established facts. She was also informed that the investigation procedure was completed.

(13) Case description (P. P. – 11437049): Mr. Z. P. of L. filed a complaint about the work of the Service for Construction in D. The complainant disrespected the deadline in which he could file a complaint against the construction permission. Since he did not as a party participate in the procedure of issuing this permission, his appeal could be considered only as a motion for the renewal of the procedure. The reason for complaining is the failure to execute the procedure for the renewal of the procedure related to the construction licence issued to D. P. for additional construction works on the facility – workshop. It is the matter of the construction licence of the former Municipal Committee for Urbanism, Construction, Communal and Dwelling Activities of the municipality of D., of 9th August 1982. The first-instance decision reached on the basis of the motion for the renewal of the procedure was annulled by the second-instance decision of the Ministry of Physical Planning, Construction and Housing of 19th September 1995, and the case was returned for a new procedure. However, according to the complainant, the procedure was not renewed, which means that the illegal permission for the construction of 1982 remained effective.

Undertaken measures: The investigation procedure was initiated with the county Service for Construction, Branch Office in D. The Office of the Ombudsman received a notice as an explanation of the failure to execute any further procedure for the construction works in question, approved on 9th August 1982. Due to the applicant's withdrawal, the Office for Physical Planning, Housing and Utility Issues, Construction and Environmental Protection, Department D., reached a decision on 24th March 1999 to suspend the procedure for issuing the licence for the additional construction works on the facility, i.e. the workshop.

However, the received notice did not contain the information on the basis of which the case could be thoroughly discussed and concluded. It was therefore estimated as necessary to explain the request again (quote): "…a warning was issued that the procedure pursuant to Article 242, Paragraph 2 of the Act on Administrative Procedure was not implemented for the reasons from Article 249, Paragraph 1, Item 9 of the Act on Administrative Procedure, i.e. the procedure related to the construction approval of the Municipal Committee for Construction, Utility and Housing of the municipality of D., of 9th August 1982, based on the decision of the Ministry of Physical Planning, Construction and Housing of 19th September 1995 was not implemented. It is the matter of the approval issued at the request of D. P. of L. The first-instance decisions related to the renewal of the procedure, which were issued in the meantime as a ruling of the Administrative Court of 20th May 1987, were annulled. By annulling the decisions, all legal consequences that resulted from the decision were annulled, which means they are considered as non-existent, so the approval from 1982 is effective. …If the applicant in the renewal of the procedure, during 1991, withdrew the request, decision should have been reached in relation to the earlier issued decision , since it was the matter if one administrative procedure … The applicant withdrew the request for the construction of the garage. However, the procedure was in actuality suspended in relation to the additional construction works on the workshop. So, it remained unclear if the conclusion on the suspension of the administrative procedure refers to the construction of the workshop, from which the investor later withdrew, or to the procedure for obtaining a construction licence for the garage, which the investor initiated in the meantime (another procedure)…".

The Administrative Court established in this case, on the basis of the entire case file, (quote): "In the renewed procedure, however, not a single administrative was reached on the annulment of the first-instance decision…". It remained unclear whether the renewal procedure was completed and whether the construction approval was legal. It is also unclear if the legalization or removal procedure should be implemented. It has therefore been suggested that all administrative cases for which the procedure was further implemented from 1982 be re-examined, in relation to the right of the Z. P. to participate in the procedure of issuing approval for the construction of the workshop on the location of the access path.

Note: The procedure of the first-instance body for establishing the validity of the reached decision and for the final conclusion of the procedure in accordance with

the provisions of the Act on General Administrative Procedure is finally underway, 24 years after issuing the construction approval without the immediate neighbour's participating in the procedure.

Conduct of the police officers

Fourteen complaints were filed in 2005 about the conduct of the police officers, which is a 27-percent increase compared to 2004. Although it is a matter of a large number of complaints, they clearly point to the problem related to more frequent and worrying incidents involving police officially, at the time or outside their duty.

The citizens' complaints mostly refer to unprofessional, even illegal conduct, contrary to Article 19 of the Act on the Police (NN 120/00), which prescribes that it the duty of a police officer when applying his/her authority to act humanely and respect the dignity and reputation of every person, as well as other fundamental human rights and freedoms. Such a treatment is also contrary to the Police Code, which expresses the need and will to respect fundamental human rights when serving the citizens, as well as to act in a legal, professional, loyal, confidential, tolerant and righteous way.

It is beyond doubt that the greatest concern has been expressed about the complaints related to violent behaviour of the police officers, particularly when employing coercive means, whether it is the matter of disrespecting legal use of coercive means or illegal use of coercive means, or improper behaviour outside the service, which, in accordance with Articles 110, 111 and 112 of the Act on the Police, presents the violation of the official duty.

Special attention needs to be drawn to the complaints referring to unprofessional and unkind relation to the parties, and insults and discrimination on the basis of ethnic affiliation (particularly to the Romany). Equal protection of freedoms and rights of every individual presents the basis for every democratic society in which the rule of law is one of the fundamental values of its constitutional order. Such acting is contrary to the provisions of the General Declaration on Human Rights (Articles 1, 2, 3 and 7).

The Ombudsman sent on 31st August 2005 an official letter to the Police Administration and the Interior Ministry, in which he stated his concern about more frequent incident, and he requested a report on the number of the citizens' complaints about the behaviour of the police officers in the past five years (total number, and the number of founded and unfounded complaints), reasons for filing complaints and undertaken disciplinary sanctions, as well as a special review of the measures and potential programmes undertaken for the purpose of professionally training and educating police officers for the purpose of protecting fundamental constitutional rights and freedoms and protection of other citizens' values protected by the Constitution, in accordance with the law and other rules. Based on the above mentioned official letter, a meeting was held on 30th September 2005 with the

officials at the Interior Ministry, and the police heads delivered a detailed, comprehensive report.

The report shows that the number of the citizens' and complaints submitted with the Department for Internal Control almost doubled in 2004, compared to 2000 (2000 – 613 complaints, 2004 – 1,177; however, according to the data from the Department for Internal Control, 97.72% of the complaints were settled in 2000, whereas only 52.68% were settled in 2004). In the period between 2000 and 2004, most of the complaints referred to non-execution, or unjustified or negligent execution of official duties.

Such a large number of unsettled complaints, submitted to the Department for Internal Control which is competent to act upon the reports and complaints from the citizens and legal persons on illegal actions and unprofessional behaviour of the employees of the Interior Ministry surely does not contribute to creating citizens' trust in the police.

Prompt and transparent acting upon complaints and reports is the only possible way of suppressing and preventing all forms of illegality within the Interior Ministry. Decisive condemnation and introducing sanctions for each form of unacceptable behaviour on the part of police officers are a guarantee for achieving high professional standards.

In order to remove all kinds of illegal, unprofessional and unethical behaviour on the part of the employees of the Interior Ministry, particularly of the police officers, it is necessary to pay attention to continual education and professional training through specialized courses and seminars.

The report stated that great importance has been given to the police training. If taken into consideration that there is no comprehensive review of all filed and processed reports and complaints on the level of the Interior Ministry, clear detection of the problems comes into question, as well as creating adequate training programmes adjusted to the real needs. Since the Interior Ministry initiated a creation of a programme for keeping uniform record of reports and complaints, it can be expected that this drawback will be removed.

The Ombudsman has assessed the cooperation with the Interior Ministry in 2005 on the cases in which investigation procedure has been initiated as successful.

Persons deprived of freedom

During 2005, 85 complaints were filed in relation to the violation of the rights of prisoners, convicts and detainees, which is a 280-percent increase compared to 2004.

High increase in the number of such complaints is not unexpected, since the Ombudsman examined all penitentiaries (Glina, Lepoglava, Lipovica – Popovača, Požega, Turopolje, Valtura), prisons (Bjelovar, Dubrovnik, Gospić, Karlovac, Osijek, Požega, Pula, Rijeka, Sisak, Split, Šibenik, Varaždin, Zadar, Zagreb), correctional institutions (Požega, Turopolje), and a prison hospital between October and December 2005, in accordance with Article 15 of the Act on Ombudsman and Article 23 of the Rulebook on the Activities of the Ombudsman.

Based on the examination, during which the Ombudsman talked to the prisoners, convicts, detainees and the personnel, and gained direct insight into the living conditions in penal institutions, the first report on the state of human rights in penitentiaries, prisons and other correctional institutions in the Republic of Croatia was created.

Overcapacity of all penitentiaries of closed type, as well as of all prisons is definitely the greatest problem. According to the data on the day the Ombudsman carried out examination, occupancy exceeded 170% of the total capacity (Osijek, Varaždin, Split). Such a situation presents not only a serious safety issue, but it results in violations or jeopardizing of the rights of the prisoners, convicts and detainees, such as the right to stay in fresh air for at least two hours a day (e.g. Prison in Rijeka), accommodation in line with human dignity and medical standards (e.g. in Prison in Sisak 10 prisoners sleep in one dormitory, the toilette is fenced by a nylon curtain only), ensuring 4m2 and 10m3 for each prisoner (e.g. in Prison in Osijek – 20 convicts are placed in a room 38m2 in size), inability to work, shortening visit hours, (e.g. Osijek Prison), etc. Overcapacity makes it difficult to organize daily activities of the prisoners, convicts and detainees. Pursuant to the standards of the European Committee for the Prevention of Torture and inhuman or humiliating treatment or punishing (CPT), an excessive level of occupancy in a prison or a part of a prison creates inhuman or humiliating conditions.

A large share of the prison population, over 50%, is composed of the detainees, who complain about the long duration of the procedures. The pronounced sentence is sometimes only somewhat longer than the time spent in detention. Recommendation no R (99) 22 of the Ministers' Committee on the overcapacity of the prisons and the increase of the prison population, states that the increasing financial means for the prison system does not present a solution to the overcapacity, but that it is necessary to re-examine the existing law and its application in relation to detention.

Inadequate, old facilities in which penitentiaries and prisons are situated, and in which accommodation conditions are not in line with human dignity and health standards (e.g. Penitentiary in Glina – a so-called boarding-house, Prison in Sisak, Prison in Osijek) are another detected cause of violating the rights of the prisoners, convicts and detainees. The dormitories in some of the prisons are dark, moist, suffocating, the bedding and mattresses are dirty and the possibility of maintaining personal hygiene and physiological needs (Sisak, Osijek, Karlovac) is limited. Some of the windows have shades disabling the day light and inflow of fresh air (e.g.

Prison in Split, Prison in Osijek, department of stricter supervision in the Penitentiary in Lepoglava).Inadequate hygienic and health conditions present a potential danger of spreading diseases, particularly in the prisons with a large number of those suffering from hepatitis C (Prison in Zadar, Prison in Split).

Violations of the rights of the juvenile convicts has been detected in the Correctional Institution in Turopolje, in which there is no separate section for care and supervision, in which, pursuant to Articles 59 and 60 of the Rulebook on implementing educational measure of sending to the educational institution 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 reasons of personal safety. Considering the lack of space at the Correctional Institution, that institutional measure is, contrary to the law, carried out in the prison in Sisak in completely inadequate conditions.

There are numerous complaints by the prisoners about the work of the treatment sections, and they mostly refer to insufficient work, which is logical considering the overcapacity and lack of treatment personnel. The state in the penitentiary in Lepoglava is particularly serious, as there are 15 prisoners there under the psychiatric treatment, as a safety measure, which, pursuant to Article 20 of the Act on Serving Prison Sentences, should be implemented in the prison hospital, since there are no permanently employed psychiatrists and the work of the psychiatrists who go there twice a week is insufficient.

A small number of posts is a major problem in organizing the prisoners and detainees' daily life, with the exception of the penitentiary in Valtura, penitentiary in Lipovica – Popovača, penitentiary in Požega and penitentiary in Turopolje (e.g. there were 178 persons in Osijek prison during the visit, of which only five were working). A problem related to work is caused by the lack of working space and space for professional education, as well as the lack of work.

It is beyond doubt that cumulative effects of overcapacity and poor spatial, hygienic and health conditions, as well as a small possibility of engaging into works disable or significantly render legal serving of prison sentence difficult.

Based on the examined penal institutions, a conclusion can be drawn that it is necessary to take better care of realizing the purpose of serving prison sentences – making individuals fit for life in the freedom in accordance with the law and society rules, by consistent implementation of individual programmes of serving prison sentences, with humane treatment and respecting human dignity.

Examples:

(1) Case description (P. P. – 1284/05): The Ombudsman received a complaint about the conduct of the security staff in the Dubrovnik prison. The complainant stated

that he wanted to file a complaint to the prison warden via a security officer, but the officer refused to take it and he crumpled it before the prisoner.

Undertaken measures: Pursuant to the provision of Article 15 of the Act on Serving Prison Sentences (NN 190/03), a prisoner has the right to complain about the conduct of the penitentiary, i.e. prison staff. Complaints are submitted to the penitentiary, i.e. prison warden, orally or in a written form.

During the investigation procedure, the Ombudsman requested from the warden of the prison in Dubrovnik a report on the conduct of the security staff. It is evident from the report that a procedure was implemented based on the incident, but the report does not state the legal provision on the basis of which the procedure was implemented, but only that the employee was pronounced a reprimand. Since Article 49, Paragraph 1, Item 1 of the Act on Civil Servants and Employees prescribes a public reprimand as a punishment for a minor violation of the official duty, and obstructing the realization of the guaranteed rights of the prisoners is stipulated as a major violation of the official duty, pursuant to Article 37, Paragraph 1, Item 3 of the Act on Serving Prison Sentence, the Ombudsman notified the Central Office of the Prison System Administration of the Justice Ministry on the established state.

Completion of the case: Central Office of the Prison System Administration of the Justice Ministry informed the Ombudsman that the decision of the warden of the prison in Dubrovnik, by which a reprimand was pronounced for a minor violation of the official duty was annulled and that the motion was filed for the initiation of the procedure for a major violation of the official duty.

(2) Case description (P. P. – 934/05): A citizen of Venezuela filed via the OSCE Mission in Zagreb a complaint about the conditions of serving a prison sentence in the penitentiary in Lepoglava.

The complainant stated he did not understand the Croatian language and was therefore unable to communicate with the staff and other prisoners. He was placed in a non-working group since he did not pass the exams for protection at work, due to his lack of knowledge of the Croatian language. He was banned from attending an information science workshop for verbal conflict he had with one of the prisoners. Since he has no money, and telephone calls to his family in Venezuela are expensive, he was unable to contact his family.

Undertaken measures: The Ombudsman visited the complainant in the penitentiary in Lepoglava and discussed with him, with an assistance of a translator for the Spanish language, the conditions of accommodation and the treatment, and established that the main reason for his dissatisfaction was the inability to realize his right to work from Article 14, Paragraph 1, Item 4 of the Act on Serving Prison Sentence (NN 190/03), and inability to talk to a psychiatrist. The fact that he could not communicate with almost anybody, since he did not speak the Croatian language contributed to such situation.

After talking to the prisoner, the warden of the penitentiary was informed of the prisoner's complaints. The Ombudsman proposed that the prisoner should be allowed to work and that he should get adequate psychiatric treatment. He requested a written report on the undertaken actions.

Case outcome: During a visit to the penitentiary, six months after the first examination, the complainant stated that he was satisfied with the treatment and conditions of accommodation, since he was engaged in the work. He also said that did not have any psychological problems, and that he learned some Croatian.

(3) Case description (P. P. – 831/04): A citizen of Bosnia and Herzegovina, serving his prison sentence in the penitentiary in Lepoglava, filed a complaint about the long duration of the procedure of his transfer from the Republic of Croatia to Bosnia and Herzegovina.

Based on the delivered documentation, the complainant filed in August 2003 a petition for transfer to the Justice Ministry, to which he received no reply. He readdressed the Justice Ministry in January 2004, and since he was not replied for the second time either, he filed a complaint to the Ombudsman in May 2004.

Undertaken measures: The Ombudsman forwarded the complainant's request to the Central Office of the Prison System Administration of the Justice Ministry and he requested a report on the undertaken actions. The central Office sent a report, stating that the prisoner's petition for transfer was forwarded to the Administration for International Legal Assistance, Cooperation and Human Rights of the Justice Ministry, but that they did not get any feedback information on the case status. The Ombudsman sent a rush note in February 2005 to the Administration for International Legal Assistance, Cooperation and Human Rights, after which they delivered a statement, saying that the reason for their failure to act was the official letter from the Justice Ministry of Bosnia and Herzegovina, in which they claimed that they did not receive the evidence that the ruling was delivered to the prisoner, for the reason of which they requested, via INTERPOL Zagreb, a prompt delivery of the valid ruling, since that was the condition for reaching the decision on the transfer. In August 2005, the Ombudsman requested again a report from the Justice Ministry on the undertaken actions in relation to the complainant's transfer. The Justice Ministry informed the Ombudsman in September 2005 that the ruling and decision of the Supreme Court of the Federation of Bosnia and Herzegovina were forwarded to the Municipal Court in Ivanac, to act upon the petition of the Cantonal Court in Novi Travnik.

Case outcome: The procedure of the transfer from the Republic of Croatia to Bosnia and Herzegovina was successfully completed.

(4) Case description (P. P. – 129/05): During the examination visit to the prison in Sisak, the Ombudsman was familiarized with the case of the prisoner who was

under the influence of medicines and she was not able to communicate. The prison warden presented the data on her status, from which it was clear that the conditions and treatment of the prisoner in the prison were not adequate.

Undertaken measures: After gaining insight into the prisoner's record, the Ombudsman requested a report from the psychiatric hospital Dr. Ivan Barbot, since the prisoner committed a felony during psychiatric treatment at the hospital. By gaining insight into the delivered report, it was concluded that she was hospitalized in the psychiatric hospital Vrapče for several times. The Central Office of the Prison System Administration of the Justice Ministry was informed of the established state, with a recommendation that the prisoner should be provided with adequate accommodation conditions, as well as with adequate medical care. Pursuant to Article 106 of the Act on Serving Prison Sentence (NN 190/03), stipulating that prisoners suffering from serious or chronic illnesses for which no adequate conditions exist in penitentiaries, i.e. prisons, should be transferred to the penitentiary, i.e. prison, which can provide conditions for such a treatment, or to the prison hospital, it was requested that the prisoner be transferred.

Case outcome: The Central Office of the Prison System Administration of the Justice Ministry informed the Ombudsman that the prisoner was first transferred to the prison hospital and then to continue serving her prison sentence in the penitentiary in Požega in which she was provided with proper medical care.

(5) Case description (P. P. – 859/04): The Ombudsman received a complaint about the treatment of an addict in the prison hospital in Zagreb. According to the complainant, methadone therapy that the prisoners start to undergo before the detention does not continue in the hospital prison, nor does detoxification.

Undertaken measures: During the investigation period, the ombudsman discussed the issue with the warden of the prison hospital, in order to get better insight into the methadone therapy and detoxification. He also asked Dr. Sakoman for an expert opinion. Based on the discussions, it was concluded that there is no uniform attitude of the medical profession as to the methadone therapy. According to the warden of the hospital prison, a methadone detoxification of the prisoner, i.e. addict who started undergoing a methadone therapy before determining detention, usually gets done, although the assessment on using methadone is a matter of each individual case, so it is possible not to implement it if the doctor in charge decides so. Based on the above mentioned, it is evident that starting a methadone therapy before determining detention is not a guarantee that it will be continued in the detention, which is not in accordance with the provision of Article 49, Paragraph 1 of the Book on conduct rules in prisons for serving detention.

The Ombudsman sent an official letter to the Central Office of the Prison System Administration of the Justice Ministry, stating that the problem did not lie in the implementation of the Rulebook, but in the provision of Article 49 of the Rulebook, dealing with the issue of methadone detoxification in an unclear and discriminating

way, by putting the detainees in an unequal position, compared to other detainees and persons to whom detention was not determined, by prescribing methadone detoxification only to the addicts who started with the therapy before determining detention. The provision of Article 49 of the Book of rules for the prisons for serving detention is therefore contrary to the provision of Article 5 of the same Rulebook, which prescribes that a detainee's rights can be restricted to the extent necessary for the realization of the purpose for which he/she is determined detention, to Article 7 of the Rulebook, guaranteeing equal position of the detainees, and to the provision of Article 12 of the Rulebook, according to which satisfying medical protection needs is ensured in accordance with the general rules on medical protection. The mentioned general rules on medical protection guarantee a comprehensive medial protection for all the citizens of the Republic of Croatia, equality in the entire procedure of realizing medical protection and a free choice between several possible forms of medical treatment, Articles 10, 11, 21, Paragraph 1, Items 1, 3 and 5 of the Act on Medical Protection (NN 121/03). Also, Article 3 of the Act on the Protection of Patients' Rights (NN 169/04) prescribes that the protection of the patients' rights in the Republic of Croatia is based on the principles of humanism and availability, whereas Article 5 of the same Act protects equal possibility of protection of the rights of all patients on the territory of the Republic of Croatia.

Case completion: Based on the Ombudsman's official letter, whose contents pointed to the discriminatory provision of Article 49 of the Book of rules for serving detention, by which the right to detoxification is enabled only to those addicts who started with methadone therapy before determining the detention, the Central Office of the Prison Administration System of the Justice Ministry delivered a report in which it stated that it would take into consideration the motion for the amendment to Article 49, when considering amendments to the Book of rules of conduct in prisons for serving detention.

Miscellaneous

Workers' claims against bankrupt employers

The Ombudsman received a significant number of citizens' complaints about the Development and Employment Fund, due to the violation of their right granted by Article 3 of the Act on securing workers' claims against bankrupt employers (Narodne novine, no. 114/03).

The contents of all the complaints are the same. The Development and Employment Fund (hereinafter: the Fund) established in a decision the amount of the complainant's claims against the employer in bankruptcy, in accordance with Article 3 of the Act on securing workers' claims against bankrupt employers. In Item 2 of the disposition of the decision it established the duty of the Fund to calculate and pay contributions for obligatory insurance, and Item 3 prescribes the obligation of the Fund to pay the net amount of the claims to the complainant within

30 days from the day on which the decision becomes final. After the decision became final, the complainants tried to urge the payment at the Fund, but without a positive result, after which they addressed the Ombudsman for help.

During the investigation procedure, the Ombudsman established that the Fund did not pay the claims identified in the final decision issued to the complainants whose employer was in bankruptcy, but he attempted to transfer the means allocated for the payment of claims to the giro account of the bankruptcy debtor or to the deposit account of the competent commercial court. The Fund informed the Ombudsman that it was their attention to legalize such a practice by initiating with the competent minister amendments to the Rulebook on the contents of the form of the employees' request for the realization of their rights in case their employers go bankrupt (Narodne novine, no. 126/03 and 124/04).

The Ombudsman warned the Fund that it acted against the provisions of Articles 3, 4, 5 and 13 of the Act on Insuring Employees' Claims Against Bankrupt Employers. He pointed out that by acting illegally the Fund put the pressure on the complainants whose employer went bankrupt to realize their rights in the execution procedure, incurring unnecessary expenses on them. The Fond failed to notify the Ombudsman on the measures undertaken on the occasion of his warning.

The Minister of Economy, Labour and Entrepreneurship introduced on 1st September 2004 a Rulebook on the Amendments to the Rulebook on the Contents of the Employees' Request Form for realizing their rights in case their employer goes bankrupt, and published it in Narodne novine, no. 124 on 7th September 2004. This amendment changed Item V of the request form, to read as follows: "The Fund for Development and Employment will make pay out the claims via giro account of the employer in bankruptcy or via deposit account of the Commercial Court in charge of the bankruptcy procedure against the employer, onto current account or savings-account book." The question is whether the quoted provision is in accordance with the Act on insuring employees' claims against the bankrupt employer.

The Commercial Court in Split, supported by all commercial courts in the Republic of Croatia, submitted in 25th March 2005 to the Constitutional Court of the Republic of Croatia a request for the assessment of coordination with the Constitution and law of the Rulebook on Amendments to the Rulebook on the Contents of the Employees' Request Form for the realization of their rights in case their employer goes bankrupt (Narodne novine, no. 125/04).

Based on the above mentioned, the Ombudsman recommended the Minister of Economy, Labour and Entrepreneurship to declare the Rulebook on Amendments to the Rulebook on the Contents of the Employees' Request Form for the realization of their rights in case of their employer's bankruptcy ineffective. He outlined that the amendment to the Rulebook was contrary to the legislator's intention, stated in the Act on securing Employees' Claims Against Bankrupt Employer. The Act protects socially sensitive category of the citizens of the Republic of Croatia, i.e. the

employees who lost their job and salaries after their employer went bankrupt. Means from the state budget have been allocated for their protection, and the Fund for Development and Employment has been established, as a guarantee fond for the payments of their claims.

The Minister of Economy, Labour and Entrepreneurship did not declare the Rulebook on the Amendment to the Rulebook on the Contents of the Employees' Request Form for the realization of their rights in case of their employer's bankruptcy. The state secretary with the Office for Labour and Labour Market of the Ministry of Economy, Labour and Entrepreneurship states that after the Constitutional Court of the Republic of Croatia reached the decision, certain actions would be taken to amend the provisions of the Rulebook in question. To the day of drawing this report, the Constitutional Court of the RC did not reach the decision on the request of the Commercial Court in Split.

Expropriation

Case description (P. P. – 1244/05): Mr. D. M. from Zagreb addressed the Ombudsman with a complaint against the conduct of the Justice Ministry, in the procedure of expropriation, for failing to reach the decision on the appeal he filed on 24th December 2003, with the petition for rushing the decision.

Based on the appeal he enclosed, the procedure is being conducted for the determination of the compensation for the real estate expropriated on 26th June 1980 to the benefit of the City of T., for which the complainant still has not received compensation (after 25 years), since the City of T. is stalling the procedure, refusing to pay out the compensation.

Undertaken measures: The Ombudsman requested from the Justice Ministry to examine the complaint and to deliver a report on it within 30 days. He requested the statement of the reasons for which the second-instance decision has not been reached within the period prescribed by Article 247 of the Act on General Administrative Procedure.

Since the Justice Ministry failed to act upon the Ombudsman's request within the set deadline, he sent a rush note for the delivery of the requested report.

Case outcome: Unknown. The Ministry did not act upon the Ombudsman's request to the day of creating this report.

Note: It is evident that a serious violation of the complainant's right to obtain the decision within a reasonable period has occurred.

Other complaints

As far as complaints outside the Ombudsman's jurisdiction are concerned, there has been an increase in the number of the complaints concerning financial issues.

It is the matter of complaints about the inability to charge the claims against legal persons, inability to pay litigation costs in the distraint procedure, as well as petitions for help for preventing distraint over real estate intended to pay the debts, about the inability to get loans and implement contracts on exchange of real estate, about charging telephone calls put on hold, inability to charge war damage, inability to charge old foreign currency saving with "Ljubljanska Banka", about inability of the depositors at former "Jugobanka" to get a subsequent payment of their foreign exchange savings.

The complainants were notified that such complaints were outside the Ombudsman's jurisdiction and were provided with adequate legal advice.

PART THREE

INTERNATIONAL COOPERATION OF THE OMBUDSMAN IN 2005

Apart from the activities performed within the jurisdiction of the institution of the Ombudsman, based on law, his international cooperation with counterpart institutions in Europe and in the rest of the world, as well as with the Committee for Human Rights of the Council of Europe and the UN High Committee for Human Rights, is very important.

It needs to be said that our institution is a full member of the European Ombudsman Institute with the headquarters in Innsbruck, Austria, and the International Ombudsman Institute with the headquarters in Edmonton, Canada. As a member of the two organizations, the Ombudsman, his deputies and co-operators are enabled to participate in all relevant summits organized by the two institutions.

The Ombudsman, his deputies and co-operators were involved in many activities through international cooperation, and during 2005 they participated in various international conferences, seminars and summits, mostly on the level of the ombudsman institutions of the European countries, which resulted in better work efficiency, exchange and acquiring of new experiences and the development of new ideas, efficiently used in the work of the institution.

The IX Round Table of the European Ombudsmen, organized by the Commissioner for Human Rights of the Council of Europe and the Parliamentary Ombudsman of Denmark, was held on 31st March in Copenhagen, on the following topic: "Role of the Ombudsman in Europe and mandate of the Ombudsman in future Europe". The Ombudsman actively participated in the gathering.

The deputy Ombudsman participated in the V UNDP International Round Table for the Ombudsman institutions in the ECIS region, held in Karlovy Vary in the Czech Republic. Many topics relevant for the work of the Ombudsman institutions were discussed there.

The fifth seminar of the national Ombudsmen of the members of the European Union, with the topic: "The role of the Ombudsman institutions and similar bodies in the implementation of the EU legislation", was held in The Hague on 12th and 13th September 2005, and the Ombudsman of the Republic of Croatia was invited there, too. The importance of the invitation lies in the fact that it was the first time that an Ombudsman of a country, i.e. candidate for the membership in the European Union was invited to that seminar. The tenth anniversary of the European Ombudsman institution was marked on that occasion, too. The Ombudsman and one of his deputies attended the seminar.

The representatives of the Office of the Ombudsman also participate in the activities of the UN OHCHR workshop, organized in Zagreb, and in the seminar organized in Bucharest by the European Commission, on the subject of anti-discrimination, and in the seminar in Sofia, organized by the European Centre for Minority Issues, and in a conference on the Ombudsman role in multiethnic societies, held in Novi Sad.

In early 2005, the Ombudsman was visited by the representatives of the UNHCR Mission in the Republic of Croatia, i.e. by Mrs. Catharine Bertrand, Mr. Hans Lunshof and Mrs. Jasna Barberić, with the purpose of familiarizing the Ombudsman with their essential activities, such as the return and reintegration of the refugees and the issue of asylum.

Within the procedure of the second round of assessment by the team of the "GRECO Agreement", the representatives of the assessment team visited the Office of the Ombudsman during their visit to Croatia, with the purpose of collecting additional information in the three areas in which the GRECO Agreement is implemented.

In order to familiarize better with the activities of the Office of the Ombudsman, representatives of the Delegation of the European Commission in the Republic of Croatia, i.e. Mrs Maria-Helene Enderlin, leader of the justice and interior affairs sector, and Mrs. Snežana Đokić-Marković, legal adviser, visited the Office on 14th April 2005.

The Ombudsman was in April visited by the first secretary of the French Embassy in Zagreb, Mr. Gilles Thibault et al, who expressed satisfaction about the way in which the Ombudsman discussed the issues and activities of the Office.

Mr. Jorge Fuentes, head of the OSCE Mission in the Republic of Croatia, and Mrs. Mary Wyckoff, visited the Office in early July. During the reception, they expressed mutual satisfaction about good cooperation between the Office and the OSCE Mission.

Mr. Walter Kalin, representative of the UN Chief Secretary for Human Rights of the displaced persons, had a meeting with the Ombudsman and he was particularly interested in the Ombudsman's assessment of the protection of human rights of exiled persons, development of the property restitution process, tenancy rights and complaints about discrimination.

Dr. Petar Teofilović, the Ombudsman of the province of Vojvodina and Mrs. Danica Todorov, Deputy Ombudsman for gender equality visited the Office on 27th September 2005. The aim of the visit was to exchange the past experience in the work of the Ombudsman institution, relation with the Parliament of the RC, procedure of drawing annual report and communication with the public.

The representatives of the OSCE Mission in the RC, Mrs. Mary Wyckoff, Mrs. Katarina Grbeša and Mr. Ignas Yonynas visited the Office on 23rd September 2005, with the purpose of introducing the organization of the Round Table with the topic "Contribution of the constitutional law on the rights of the minorities and protection of the rights in Croatia, and protection of the minorities in the context its approaching the European Union". They asked the Ombudsman to get actively involved in the activities of the Round Table, which he accepted.

During his visit to Croatia, Mr. Šefko Crnovršanim, protector of human rights and freedom (Ombudsman) of Montenegro, elected to that position in October 2003, also visited the Office of the Ombudsman.

The European Parliament adopted on 6th September 2001 a resolution by which it accepted the Code on Proper Conduct of Employees in the Administration, which need to be respected by the institutions and bodies of the European Union, as well as by their administration and employees, when it comes to relations with the citizens. The Office of the Ombudsman contributed to creating the European Code of Proper Conduct of the Administration Employees, which was printed in all official languages of the EU member countries, as well as in the languages of the candidates for the EU accession.

Considering a highly successful cooperation between the Office of the Ombudsman and the OSCE Mission in the Republic of Croatia, which started through joint projects aimed at promoting and strengthening the institution of the Ombudsman in the RC and has lasted for many years, the Ombudsman was asked to express his views about the work of the institution, on the occasion of marking 30th anniversary of the OSCE (1975-2005), i.e. to state his views about its significance and its future role. The OSCE Mission published the Ombudsman's statement on its web site, together with the statements of thirty other representatives of various European institutions. It also printed a special edition with all thirty opinions, under the title of "30 Years of the Helsinki Final Act 1975-2005", 30 Years, 30 Opinions.

PART FOUR

ASSESSMENTS AND PROPOSALS

The previous part of the report, pursuant to Article 8 of the Act on Ombudsman, showed statistical and other data on the work of the Office, as well as on the activities and actions in relation to the citizens' complaints, field work, cooperation with other bodies and associations in the country and abroad.

In this part of the report, and in accordance with the provisions of Articles 5 and 9 of the Act on Ombudsman, the Ombudsman provides a review and assessment of the level of respecting the constitutional and legal rights of the citizens in the spheres of particular importance, and he pointed out certain relations, occurrences and areas which deserve special attention of the Croatian Parliament and which are of great influence on the realization of the rights of the largest or most endangered part of the Croatian citizens.

Administration and citizens – reaching decisions in administrative procedures

In the last year's report, the Ombudsman outlined the problem of long duration of procedures in first-instance stage of dealing with administrative issues, particularly in the sphere of pension – invalid insurance, legal-property relations, reconstruction, construction and physical planning, and in second-instance procedures in all the mentioned and other administrative spheres. He also put out certain proposals and recommendations aimed at improving the situation.

Unfortunately, the situation did not change significantly. Most of the citizens' complaints still refer to long duration of the procedures in the above mentioned spheres, and in second-instance decisions, too.

We therefore remind all administrative bodies of their obligation to respect the provisions of the Act on General Administrative Procedure (Articles 218 and 247) on the deadlines for reaching decisions in first- and second-instance procedures, as well as the provisions of Article 296 of the same Act, according to which the official person conducting the procedure, i.e. reaching decision, is obliged to notify the party, within eight days after the expiration of the legal deadline for making decisions, on the reasons for which the decision, i.e. conclusion, is not reached and on the actions that will be undertaken in order to reach them.

In this sense, almost all the proposals and recommendations contained in the last year's report, for which we established they could be implemented relatively quickly, regardless of other necessary changes and reforms in the administration, are still effective.

1. There is still no effective system of monitoring and assessing decision-making processes in administrative sphere, or a system for the state administration as a

whole. Without such a system and its continual implementation it will not be possible to implement the control and supervision prescribed by law, or ensure the necessary vertical connection of the system from top to bottom.

The Central State Administration Office is still collecting information on the basis of informal forms and patterns. The Office has also outlined that the state administration bodies keep neither systematic records on dealing with administrative issues nor they continuously monitor the efficacy of reaching decisions in administrative matters during the year. They also brought attention to the non-existence of a uniform computer data processing and keeping, which results in long lasting procedures of data collecting, and those collected are often inconsistent and unreliable.

It is therefore necessary for the state secretary of the Central State Administration Office to introduce a guideline (instructions from Article 298, Paragraph 3 of the Act on General Administrative Procedure) and undertake necessary measures (education, seminars, counselling) for its application. Apart from uniform methodology, patterns and deadlines for the data delivery, obligations of the central state bodies in relation to the regional state administration offices need to be prescribed, too.

2. Administrative bodies, services and departments require strengthening and assistance in the spheres faced with the constant problem of failing to deal with cases within reasonable deadlines, whereas the services and departments of the central state bodies dealing with the complaints should be strengthened in terms of personnel and material means and trained for providing professional assistance and dealing with the cases in merit, whenever it is justified and possible.

The number of annulled decisions and those returned for one or more times to be dealt with again still points to the fact that there is a lack of professional supervision and help from the central state bodies.

3. When the ministers and other heads of administrative bodies fail to ensure, within their power and means or for objective reasons, that legal deadlines are continuously respected in as many cases as possible, they are obliged to inform the Government of the Republic of Croatia and the public about it.

The fact that legal deadlines are not respected in many administrative spheres, and procedures last for months and even years, without the citizens being informed of the reasons for which that is the case, or of the deadlines within which they could expect their case to be decided upon, only shows that the ministers and heads of other administrative bodies in whose departments such things happen do not sufficiently respect the citizens and do not perform their work well. Apart from being formally accountable with the Croatian Parliament and the Prime Minister, there is an actual responsibility to the citizens on whose rights and interests they decide.

4. As far as preparation and enactment of the laws regulating relations in individual administrative spheres, we bring to the attention the possibility of prescribing special (realistic) deadlines for dealing with certain administrative issues requiring such treatment, which would significantly reduce the number of unnecessary complaints, as well as of unproductive formal procedures resulting from the silence of the administration.

We also outline consistent application of the provisions of the Rulebook of the Government of the Republic of Croatia (Article 27a) according to which the central state administration bodies and professional government services are obliged, along with the proposals for the decrees passed by the Government and bills and other rules proposed to the Croatian Parliament by the Government, to create assessment of the effects produced by those rules, among the rest on the number of civil servants and employees (i.e. effects on administrative decision-making).

5. This year I find necessary to point out the issue of the system of salaries and wages and material position of the administration employees, since it significantly affect the quality and level of motivation of the employees, thereby affecting the realization of the citizens' rights and interests before the administration.

Current differences in the amount of civil servants' salaries, particularly of those highly educated and most professional, compared to their counterparts in other services and entrepreneurship, and to the ones employed in regional and local self-government units are unsustainable and make it difficult to keep the current employees, as well as employ the necessary experts.

Apart from dealing with the issue of salaries (primarily on the basis of rationalization), a vicious circle of employing politically suitable and personally favoured persons after each elections, or replacing ministers or other heads of the administrative bodies need to be cut in the practice and respect the legally restricted number of duties and posts.

Professionalism and constancy, and not political suitability and personal loyalty, must be the sole criteria for performing all (highest duties and positions) activities which involve reaching decisions on the citizens' rights and interests, in accordance with the law.

The past practice of major and unjustified replacements after each change of authority (or head officials), which the administrative court practice unfortunately has not prevented yet, has reduced and in some cases even destroyed professionalism, constancy and continuity, affecting the citizens' legal security.

6. And last, but not least, we bring to the attention the need to continue decentralization process and realize prompter transfer of administrative matters and financial means to the local and regional level, closer to the citizens and

immediately responsible bodies, in order to achieve better realization of the citizens' rights.

Complaints about the work of courts

The number of complaints about the court work has not reduced in 2005. The number of such complaints filed to the Ombudsman, and the number of constitutional suits filed to the Constitutional Court for disrespecting reasonable deadlines, as well as the latest statistical data on the work of the courts show that long duration of court procedures has remained a major problem of the Croatian judiciary.

In the 2004 report, we proposed that the Croatian Parliament should consider the need and possibility of the institution of the Ombudsman, as an independent and integral institution, to participate in certain forms of supervising the work of the courts and judges, particularly in relation to duration of the procedures and to other activities of the court administration.

The proposal was explained by the data that showed that all undertaken measures, from the changes of the legal framework to the control within the very system (courts, state court panel, Justice Ministry), failed to produce positive results and that the citizens started more and more to address institutions outside the system, as a result of long duration of the procedures.

Moreover, such a form of control by a parliamentary proxy would be entirely in accordance with the provision of Article 4, Paragraph 2 of the Constitution of the Republic of Croatia, according to which the principle of distribution of power includes forms of international cooperation and controlling the power holders, particularly with the fact that the Croatian Parliament and its boards have no other sufficient mechanisms for the realization of that constitutional principle.

Since the proposal was in a parliament session assessed as promising, I sent in late August 2005 an initiative to the Board for the Constitution, Standing Orders and Political System, the Committee for Human Rights and Rights of Minorities, to discuss the proposal within the initiative for making amendments to the Act on Ombudsman, by which the Act would, among the rest be coordinated with the provision of Article 92, Paragraph 4 of the Constitution, by which the Ombudsman was in 2000 given new authority and duties.

The discussion was initially supposed to assess the need for allocating such authority, and its framework, and then assess the need and possibility for making amendments to the provision of Article 92, Paragraph 1 on Ombudsman (within the framework of the first future amendment to the Constitution of the Republic of Croatia). As the initiative has not been considered yet by a single parliamentary board, except for the written (negative) reaction of the Croatian Judges'

Association, we deem it necessary to repeat it in this report to the Croatian Parliament.

Discussion on this topic, regardless of the result, will initiate the necessary discussion on the problem of long duration of court procedures and the efficiency of the current forms of control over the work of the courts and judges, and thereby fulfil its purpose.

It needs to be outlined that nothing that has so far been undertaken, even in 2005, is enough. By introducing the title of judicial inspectors, a new Act on Courts has neither increased nor specified their power and duties. Anything that will in that sense change in practice could have been changed within the past department of the judicial administration.

Establishing the authority of regular courts for deciding upon appeals for disrespecting legal deadlines will relieve the Constitutional Court of a large number of constitutional lawsuits, but it is unlikely to help the citizens to a larger extent. It is not even unrealistic to expect that a large number of such lawsuits will negatively affect the promptness of the courts which are supposed to reach decisions on them.

Apart from employing systematic measures and plans and actions for settling leftover cases, the issue of long lasting court procedures is possible to solve only by means of specified, daily mechanisms of supervision and control via court and judicial administration. It is therefore necessary to strengthen and train the court management for monitoring and controlling court files, from their reception to the moment of their sending off.

Actions and measures that have recently been undertaken by the Supreme Court of the Republic of Croatia, by properly interpreting its authority and duties, are going in that direction and they promise to achieve more than any of the measures undertaken so far. The measures that are being implemented in the cooperation with county courts are particularly directed to dealing with the leftover cases with concrete plans and the control over their implementation. A system of keeping records and data on the work and cases of each judge should enable systematic assessment of the results. It would be good if the programme would, apart from dealing with leftover cases and improving promptness, result in systematic supervision and assessment of the judges' work within the very judicial system, as well as in the removal of those judges who would not meet the required quality standards, either in terms of the scope of their work or the quality of their rulings.

Even if they are thought to be functioning well, we still believe these forms of control within the system should be combined with certain forms of supervision outside the system, particularly when carrying out supervision based on the citizens' reports and complaints.

It is our opinion that, apart from the already existing forms of supervision modelled by many European countries, the Republic of Croatia could introduce a kind of parliamentary supervision via the constitutional institution of the Ombudsman, whose primary responsibility I jest acting upon the citizens' complaints, and which could present the necessary link between the court authority and the Croatian Parliament.

However, it needs to be pointed out that long lasting court procedures is a major problem of the judiciary, but not the only one, and it is only a consequence of the generally poor state within it. Unfortunately, in spite of all the warnings coming from the profession and the public, the situation in the justice is not criticized enough within the system. The statements of the heads of the Association of Croatian Judges only confirm that, as well as the occurrence that ministers and heads of the court authorities speak out about the actual state of the judiciary only after they leave their post.

Based on the work activities of the State Council, it could hardly be concluded that the body has been realistically assessing the situation and undertaking measures based on it. Without such a realistic assessment from within the system, it is unlikely to expect the pressure necessary for the changes to be made. Status quo in the judiciary is no longer sustainable in the eyes of the Croatian citizens.

Although there have been the ones promising fast changes of the current state, it needs to be said that the process is going to be difficult and long lasting.

On one hand, because it requires re-examining many legal solutions and activities of other state bodies generating a large number of court disputes, but also (this needs to be said in public) because of a significant number of insufficiently educated permanently appointed judges. Speaking of those appointments after the enactment of the Act on Courts in 1993, Alan Uzelac, professor at the Law School in Zagreb, gave an accurate and summarized assessment of the state in his study titled "Croatian judiciary in the 90s" (Political Opinion, no. 2, 2001): "The quality of the work of court officials has deteriorated by a series of political appointment of incapable, morally dubious and/or inexperienced judges, as well as by politically-based dissolution of the capable, experienced and decisive ones. Simultaneously with politically-based appointments and dissolutions, political centres of power created a fort within the judiciary for securing their political positions and the privileges they acquired. That resulted in the creation of corporate structures getting out of democratic responsibility. Such structures, as well as the constitutional guarantees of independence of the judiciary might even be an adequate shield for the autonomy and dignity of righteous and high-quality judiciary – judiciary that would deserve them. But, in the situation where no such judiciary exists, but needs yet be created, those structures will present a new obstruction that would be difficult to surmount."

The quotation pinpoints the essence of the issue and identifies fundamental problems: (1) There are inexperienced, incapable and morally questionable judges within the system; (2) Independence and impartiality of some of those judges is questionable since they were not appointed based on the criteria of independence and expertise, but suitability or even relatedness with political, financial or other interested groups.

Therefore, each strategy within the judiciary reform, apart from systemic measures creating more favourable exterior environment for the judiciary, must be primarily focused on improvements and even changes in the court personnel, particularly:

1. By appointing new judges and advancing towards public and objective criteria;

2. By permanently educating all, and new judges in particular (judicial academy, seminars, counselling, specialization);

3. By systematically monitoring and supervising the work of each judge (quantity and quality);

4. By setting the minimum efficiency and quality standards and removing from the system those judges who fail to meet them;

5. By introducing the obligation for the court administration of higher courts to carry out special check-ups if there is a doubt about partiality.

Unfortunately, the strategy of the judiciary reform also puts emphases and sets goals, outlining only a need for as greater independence of the judiciary as possible from the formal structures of legislative and executive authority, and less emphasis on the inner dimension of the independence of each judge from other, particularly informal influences of interested groups and lobbies, as well as political and financial (often related) influences, and even those from the edge of the law or from outside it. These influences are much more dangerous, and according to the citizens – much more significant and more numerous.

The constitutional and legal framework in the Republic of Croatia, through the continuity of appointments and salaries, as well as strict restrictions for dissolutions via independent bodies – State Judiciary Council, is sufficiently protecting each judge from the political influence of formal structures of legislative or executive authority, providing them with full independence, if they choose so.

It seems that it is much more difficult for the judges to protect themselves from informal influences, either within the judiciary system or outside it. But even such influences should not present a challenge for an expert judge.

If the Supreme Court of the Republic of Croatia implements what it has begun with and takes the full responsibility, together with court administrations, for the

advancement of the judiciary from within, if it gets support for strengthening court administration and court management, as well as the necessary means and personnel, and if monitored by the State Judicial Council, desired results can be expected within a reasonable period.

Certain forms of control from the outside, via Justice Ministry and Ombudsman (particularly on the basis of citizens' reports and complaints) can only help the Supreme Court and the judiciary.

Returnees – reconstruction, housing, safety

The citizens do not usually state their nationality or ethnic extraction in the complaints they submit to the Ombudsman. Only few of them state they have been discriminated in certain procedures because of their nationality (those are mostly complaints related to employment, status-related issues, police conduct, etc.). Since there are other specialized bodies and associations whose main responsibility is to care for and protect ethnic minorities, members of minorities mostly address those bodies for the protection of their rights.

However, when it comes to complaints about the work and conduct of the state and local administration bodies, particularly in relation to long lasting procedures, which is the main subject matter of the Ombudsman's work, there has been a large share of complaints from the citizens of Serbian nationality. More than 70% of the complaints are related to the restitution of property, settling housing issues, reconstruction and pension insurance rights.

These data for 2005 show that many returnees and those who would like to return to the Republic of Croatia, have still not settled many issues of importance for their return or normal life in the Republic of Croatia.

Owing to a more favourable political environment and the government programmes, some of the problems have been settled or are on the way to be settled. Objective obstructions for prompter settling are mostly of material and financial nature, although there are still some subjective obstructions, mostly on the local level.

The issue of property restitution has mostly been settled, except for some 30 cases in which the housing problem of the temporary users is still being dealt with.

The problems of the owners whose property was devastated are also being dealt with, through the programme for the restitution of the devastated property, based on the conclusion of the Government of the Republic of Croatia.

The Ombudsman brought the attention of the competent services and state bodies to the problems that the returnees have with the realization of their right to compensation for the use of their property by others, to the problems of returning

business premises, as well as to the lawsuits filed by temporary users for the compensation of the means they invested into the property.

As far as the restitution of houses and apartments and financial supports are concerned, the programme was in 2005 being implemented in accordance with financial possibilities. According to a report from the Ministry of the Sea, Tourism, Transport and Development, 9,510 houses and apartments were reconstructed in 2005, 5,207 financial incentives were paid out for the houses with minor damages, 373 reconstructed apartments and 3,930 houses with a higher level of damage. According to the programme for 2006, 3,000 houses are planned to be reconstructed and the programme for the reconstruction and payment of financial supports for the rest 4,000-5,000 damaged houses should begin, too.

Complaints about the restitution mostly referred to long lasting procedures, particularly in relation to the appeals, the settling of which lasts for 2-4 years in many cases.

The process of settling housing issues of 2,440 families, i.e. former holders of tenancy rights, has begun in the areas under special state care (mostly in Vukovar), whereas another 5,236 requests still need to be dealt with, of which 1,719 refer to the users already temporarily occupying apartments.

Outside the areas under special state care, 4,463 requests were filed, i.e. 2,218 for the lease and 2,245 for the purchase of apartments. The preparation of a comprehensive plan has only begun, and the problems should be settled within four years, after establishing the rights in decisions.

Amendments to the Map of the way for the Implementation of the Sarajevo Declaration should be expected, too, but it is highly likely that the issue of settling housing problems of the former holders of tenancy rights will be assessed in the negotiations with the European Union, as one of the key conditions for the return of those who desire so.

The continuation and finalization of the reconstruction process and settling housing issue are important, but only initial presumptions on which basic conditions for the reintegration of the returnees into the Croatian society should be built upon.

At the same time, it is important to maintain and encourage a positive environment for the future return and create conditions for fully including the returnees into the political and economic spheres of life through political representative bodies, employment (particularly in the state and local administration and judiciary) and realization of other rights from the constitutional Act on the Rights of Minorities in the Republic of Croatia.

In this sense, the role of the police and other state bodies is particularly important, as they are the ones who must guarantee and provide all members of ethnic

minorities full safety and protection from all assaults and incidents motivated by ethnic (or some other) intolerance. Increased number of such incidents in the second half of 2005 demands not only public condemnation, but also introduction of concrete legal and organizational measures.

Legal security

Long lasting court and administrative procedures are only partially a consequence of inadequate laws and systemic solutions or personnel and material problems. They largely result from the disorder and neglect in the system of handling, controlling and supervision within the state and local administration system, as well as within the court and judicial administration.

Monitoring, controlling and assessing the work (in terms of both quantity and quality) of each individual civil servant and judge is the basic prerequisite for introducing order into the administrative and court decision-making. A lack of control favours arbitrariness and all forms of corruption, from disrespecting the order for settling cases to settling them in an impartial manner, regardless of whether it is the matter of friendly favours or favouring political or financial interests or lobbies.

In such a situation, the equality of all citizens before the law is brought into question. It is the duty of the state to introduce order, clear criteria and predictability and consistence in terms of deadlines and ways of handling matters.

In this sense, instead of the constant increase in the number of civil servants and judges who are immediate executors, the services in charge of monitoring, controlling and supervision within the central state administration bodies and the Central State Administration Office, as well as adequate departments and services within the court administration of the Supreme Court of the Republic of Croatia and county courts, should be strengthened (in terms of personnel, organization and materially).

Well performed work activities of those services could bring in more order and reduce the possibility of money becoming stronger that the law and justice, when it comes to the work and conduct of the state bodies, since that is what affects poor people the most.

Apart from monitoring and controlling the work of the judges, it is particularly important to monitor and control the work of the police and state prosecution in order to identify weak spots in the procedures of criminal prosecution, believed by the public to be inefficient and inadequately organized for fighting serious crime.

Social security

Apart from the complaints about illegal or improper work and about long lasting procedures before the bodies if the state and local administration and the bodies with public authority, more and more citizens approach the Ombudsman, pointing to the violations of employment and social rights, warning to the general state of insecurity of some categories and layers of population.

The citizens mostly refer to the constitutional principles and rights to work, medical protection, social security and dignified life.

The most jeopardized categories are the unemployed, those illegally employed, part of those employed with employers systematically violating employees' rights, and pensioners with the lowest income, particularly those retired after a new Act on Pensions came into force (1999).

Although the right to work does not imply a subjective (actionable) right which would at the same time include the obligation of the state to secure a job for everyone and at any moment, it needs to be emphasized that unemployment has become a permanent state of a large number of senior and young people, and has seriously out into question the right to work as a constitutional principle.

Apart from the unemployed, those working for employers who constantly violate legal regulations and deny their rights, without being protected enough by the competent state bodies (inspectorates and other administrative services), are also a seriously threatened category. Unfortunately, court procedures for the protection of the employment rights last for inexcusably long and are not efficient means of legal protection. A large number of people who are forced to work illegally with no protection at all also need to be put into the same category.

Pensioners are warning of unfavourable relation between pensions and average salaries and the fact that such low pensions, which are not sufficient enough to cover normal life expenses, continue to fall behind the increase in the costs, particularly those of utility services. That results in the increased number of distraints over the pensions and property belonging to the poorest citizens.

There have also been many complaints about the (unjustified) differences in the amount of the pensions within the same categories, between the so-called "old" and "new" pensioners.

The mentioned categories are the ones most severely affected by the measures undertaken within the health protection system. Without properly created social correctives, even some undertaken measures (prescription charge, travel costs) for the poorest sometimes resulted in a denial of the medical protection. All necessary future measures that will request from the citizens to participate more in the costs, will have to take this into consideration.

It is beyond doubt that these important and sensitive issues cannot be dealt with in a long term only by introducing social measures and redistribution, but attention should be brought to the threshold of social endurance of the mentioned categories, and of the employed persons with the lowest income.

A difficult situation of the poor and those on the edge of poverty is followed by the sense of injustice and lack of trust in the possibilities of changes, i.e. improvements. It is a general belief that there has been unfair distribution of the national wealth, particularly through privatization, to the benefit of the few people, resulting in unjustified inequality and too large differences in the possibilities and opportunities. Such a distribution, although unfair from the very beginning, would be tolerable and acceptable by the citizens if it would stimulate investments into the production and development, and if it would ensure jobs and fair chances for the advancement of the entire society. However, the experience in the past ten (post-war) years shows different. It seems (justifiably) that a large part of that wealth has gone into consumption or abroad, and the citizens cannot expect any improvements.

If the developments in this sense are not significantly changed, and the state is the one with a major role in it, the pressures on the distribution for the benefit of social equality will justifiably rise.

The citizens justifiably expect that these issues become crucial in the social and political developments and discussions, and not only in pre-electoral promises. They demand clear attitudes from both the ruling party and the opposition on the basic directions of the economic and social development. Instead of the still predominant ideological discussions and dealing with themselves and with the issue of distributing political influence and power, there should be a competition and a selection of programmes leading to a better life for everyone, as well as to offering a perspective to the poorest.

Work conditions of the Office

Altogether 3,538,283.00 kuna were allocated from the 2005 budget for the work of the Ombudsman, of which some 3,000,000.00 kuna for the employees and some 500,000 for other expenditure.

In the first half of 2005, the Office work was done by three deputies, six counsellors and six other employees (altogether 15 persons). After adopting the Report On Work Activities for 2004, base on the conclusion of the Croatian Parliament, the Office was approved, in a budget rebalance, additional means, and two new counsellors were employed in the second half of the year. So, the Office currently employs 17 persons.

In 2005, the Office realized the proceeds from the budget in the amount of 3,979,975.00 kuna and 110,343.00 kuna donations from the OSCE Mission in Croatia. In accordance with the agreement with the OSCE Mission, the donation

was used for the official travel expenses for visiting the counties, contracts on service related to the implementation of the agreement, office material and the translation of the Report of the Ombudsman for 2004.

In the last year's report, we brought attention of the Croatian Parliament to the multi-annual deficit in terms of personnel and material development if the institution of the Ombudsman, which was falling behind the counterpart institutions in the countries comparable to Croatia. We emphasized that the budget of the Ombudsman was bringing into question even the reached level of protection of the citizens' rights, not to speak of new obligations established by the amendments to the Constitution from 2000. That particularly referred to the possibility of performing fieldwork, i.e. visiting the counties and cities, without which a large number of the citizens were unable to approach the Ombudsman. We reminded them that the field work of the Ombudsman was in the past 2-3 years enabled by the OSCE donations, but the programme terminated in 2005.

We therefore proposed in the report a plan of strengthening the institution to 2008, which anticipated the increase in the 2006 budget by 1,205,139.00 kuna, i.e. by seven new employees, which was adopted by the Croatian Parliament in the conclusion of 3rd June 2005, thereby binding the Government of the Republic of Croatia to secure the means in accordance with it.

In spite of the explicit and unequivocal conclusion of the Croatian Parliament, the Finance Ministry prepared a draft, and the Government of the Republic of Croatia prepared a draft budget for 2006 in the amount of 4,691,244.00 kuna, which was adopted, but without even adopting the amendment of the Committee for Human Rights and Rights of Minorities, proposing the increase of the budget for the Office of the Ombudsman in the amount of 780,000 kuna, by which the conclusion of the Croatian Parliament would have been at least partially respected.

The budgetary increase by 11.42% compared to 2005, although insufficient for the planned and (by the Croatian Parliament) approved programme for the development of the institution, will still be sufficient for employing two or three new counsellors and improve the work of the Office. The issue of inadequate premises and insufficient means for material and functional expenses has still remained unsettled, but it will probably be settled with the support from the Croatian Parliament during 2006.

And last, but not least, I would like to warn of the absolutely improper way in which the constitutional and parliamentary institution of the Ombudsman is being treated in the procedure of preparing a draft proposal for the budget (I do not know if other parliamentary bodies and institutions are treated in the same way). I find it unacceptable that the Finance Ministry is preparing the budget for the Ombudsman up to the high stage of preparation before putting out the proposal before the Government, without consulting and cooperating with the Ombudsman, either directly or via parliamentary committees. I find it particularly unacceptable that the

competent (parent) committees of the Croatian Parliament are not involved in the discussion on the budgets of such parliamentary institutions, before creating proposals for the Government of the Republic of Croatia.

In this respect, the procedure of adopting the 2006 budget, from the point of view of the Ombudsman, was inappropriate and impermissible, considering the above mentioned conclusion from the parliamentary session. The draft was prepared without the participation of the Ombudsman, and the Committee for Human Rights and Rights of Minorities received it for the discussion after the Government established the proposal, when it was already impossible to make any changes by means of amendments. It is therefore not exaggerating to conclude that the 2006 budget for the Ombudsman was in actuality passed determined by the Finance Ministry, administrative body whose work and actions are supervised by the Ombudsman, under the Constitution and on behalf of the Croatian Parliament.

I therefore kindly ask the Croatian Parliament to undertake all necessary measures to enable the parliamentary bodies, instead of the state administration bodies, to have a say in deciding upon the budget for the Ombudsman from now on, and thereby affect his entire work and activities.

Such a practice would be more appropriate and productive from the point of view of distribution of power and constitutional role of the Croatian Parliament and the Ombudsman.

CONTENTS