REPUBLIC OF CROATIA

OMBUDSMAN

ACTIVITY REPORT FOR 2004

Zagreb, April 2005

SECTION ONE

1. INTRODUCTORY NOTES

The annual Ombudsman's report submitted to the Croatian Parliament, pursuant to the Ombudsman's act, is the survey of his/her work activities and information on the degree of complying with constitutional and legal rights of citizens in the previous year which he/she encountered during this work.

The Ombudsman of the Republic of Croatia submits this activity report for the year of 2004

under special circumstances.

The mandate of the Ombudsman, Mr. Ante Klarić, expired in June 2004, and the mandate for the deputy ombudsmen on 31 December 2004.

Since 1 December 2004 the Ombudsman's office (hereinafter referred to as the Office) has been operating with new members. A new Ombudsman was elected, as well as a new deputy ombudsman, and two deputy ombudsmen were re-elected.

This report contains statistical survey of cases by particular legal areas, and, partly, by geographical criteria: towns and foreign countries.

Due to the reasons mentioned above, this report does not contain a complete survey of conditions and degrees of complying with the constitutional and legal rights of the citizens, it is a survey of the most important and most numerous examples of civil rights violations and their causes that we have noticed.

We find it necessary to remind about some crucial emphases from the discussion held on the previous Ombudsman's report (for the year of 2003), in which the problems the Ombudsman faces in his work were emphasized, and about the conclusions of the Croatian Parliament about the report submitted.

2. DISCUSSION ON THE ACTIVITY REPORT FOR THE YEAR OF 2003

The Human rights and minority rights committee observed that throughout the year of 2003 much more complaints were filed than in the previous years (increase by 53,34 % compared to the year of 2002, or 44,8 % compared to the average of several years). Regardless of the Ombudsman's explanation that the increase in the number of complaints is the consequence of, first of all, going round ten counties, and that by this the citizens have an easier access to the Ombudsman, it is considered that this implies numerous issues that are still present in the work of government administration and bodies with public authorities, which directly influences an aggravated realization of constitutional and legal rights of the citizens.

Special concern was expressed because of the constant increase in the number of complaints about the slow and irregular work of the courts. The problem is this bigger since the Ombudsman does not have the authority to investigate these complaints. Therefore, it seems that the citizens, when it comes to such complaints, do not have an appropriate form of protection.

In this discussion there were differences in opinions when it came to the Ombudsman's point of view about the requests for the return of tenancy rights to tenants who had lost this right during the war, based on the application of the legal provision on tenancy right loss because their homes had not been used by them for more than 6 months.

On the one hand, an opinion was expressed that this is the matter of valid right that is included in the succession agreement. Postponing its settlement might cause numerous problems in the near

future, especially taken into account, as it was mentioned, a successful settlement of this issue in Bosnia and Herzegovina.

On the other, an opinion that this is primarily a political, and not a legal issue, was expressed, i.e. there is no legal basis for the actualisation of this issue, as well as that when observing this issue circumstances and ways in which this tenancy rights loss happened should be taken into account.

Some members of the Board accepted the statement set forth in the Report, by which there is also neither necessary records nor appropriate concern for state owned homes that are situated in the areas of special state concern. As a result, numerous citizens are not provided for with their homes, and in homes, quite often, there are users who have no right to that. A question was asked, how it is possible for a state to administer those homes, and now there are no records on who is living in them. A situation like this, as was stated, suggests non-functioning of the legal system, and the unacceptable tolerance to responsible individuals in the government authority who deal with these issues.

In this discussion it was strongly stressed out that numerous examples, set forth in the Report, imply that the matter of responsibility for the enforcement of laws and other regulations was not investigated in the right way, which leads to the perpetual repetition of the same issues, even though they have been pointed at in the reports of this institution year after year. The matter of responsibility, as emphasized, must be resolved concretely, and that means individually.

Also, an opinion was conveyed that the work of the Ombudsman, and large efforts he puts to make the realization of constitutional and legal rights of the citizens easier, are not presented in the right way to the public. Namely, while the media pay attention to legal actions started before the European Court of Human Rights, when it comes to the work of the Ombudsman, cases he deals with and problems he encounters are almost completely unobserved in the public.

With the suggestion of accepting the Report, members of this working body supported the Ombudsman's requests for the creation of the appropriate conditions that include premises, personnel, and finances that would make his work more efficient.

Congruent to the explanation and conclusions suggested together with the Report, it was evaluated that it is necessary to provide appropriate premises for the Ombudsman's activities, as well as additional financial assets in the Budget for the year 2005, that would be used for the Ombudsman's field work, and all this with the aim of making the communication and access to the help given by this institution easier for the citizens. The Government of the Republic of Croatia was suggested to examine the Ombudsman's request and suggest appropriate solutions regarding his requests.

It was also suggested to start the amendments to the Ombudsman's act, taking into account the experience of its 12-year-long application and the Ombudsman's suggestions, as well as recommendations of impartial experts, set forth in the Report. The Parliament of the Republic of Croatia was also suggested to deliver the opinions, observations and suggestions, set forth in the discussion on the Report, together with the Ombudsman's observations, suggestions and recommendations from the Report, to the Government of the Republic of Croatia with the goal of undertaking measures for more efficient work.

The members of the **Justice committee** supported the Report on the Ombudsman's work, expressing their pleasure with the fact that in the structure of complaints there are almost no complaints about the work of the Public attorney's office.

The committee for work, social policies and health assessed the Report as a detailed and quality survey of complainants' rights violations in certain aspects of administrative activities. It was observed in the discussion that the total number of complaints was increased, which is particularly obvious in relation to the number of complaints in the area of old-age pension and disability insurance, health insurance, health organization and social welfare and in the area of labour and labour relations of state and public officials and employees. The committee particularly discussed the part dealing with the violation of rights in the areas mentioned above, together with the violation of tenancy rights and refugees and exiles' complaints.

The most numerous complaints are filed about the work of the Croatian institute for pension insurance, its Central service and regional services.

In this Report, as well as in the one for the year of 2002, the basic motive for the complaints is inadmissibly long duration of administrative procedures and delays in decision-making within legal and reasonable periods. A part of the problem is, based on the Committee's members' opinion, the increased inflow of cases that result from the implementation of international agreements on social insurance with bordering countries. Thus, the Croatian institute for pension insurance must take appropriate organizational, personnel, and other measures, and perform the analysis of causes of slow work, so that the requests in cases for which the authorized officials of the Central service and regional services are in charge, would be settled as fast as possible. This is essential because, among other things, a significant part of the complainants are in a very difficult social situation, in which they are found against their will (for example, the retired who earn their pension or a part of their pension in former republics of former SFRJ.)

Complaints about the violation of rights belonging to the system of social welfare are also somewhat more numerous than in the previous years so the recommendation of the Committee is that the centres of social welfare process cases as promptly as possible and direct complainants to the procedures for the realization of their rights in the system of social welfare for which they meet legal requirements.

Since the number of complaints about the violations and breaching of tenancy rights, and it is mostly about the impossibility of poorer citizens to rent a flat intended for the socially endangered, appropriate measure for building of flats for people who are not able to solve this tenancy issue by themselves, are necessary.

Out of the discussion of the **War veterans committee,** whose members praised the Report, we single out the following requests or evaluations:

- on the status of Croatian soldiers and their rights by making the whole procedure as short as possible, it is necessary to finally solve the issue of endless decisions

- to try to settle the problem of illegally occupied property and return of the same to the rightful

owners,

- to make the possibility of the purchase of agricultural land easier and more available to those Croatian soldiers who live and work on agriculture and to make the priority purchase possible,

- required legal terms are not obeyed and administrative processes are too long

- the competent state bodies and bodies with public authorities,

- it is necessary to provide an adequate working premises for the Ombudsman's work as promptly as possible as well as the necessary resources for field work, because owing to such work larger numbers of issues were acknowledged and larger numbers of complaints were submitted.

The Committee suggested the Government of the Republic of Croatia should assume obligations to provide the appropriate premises for the Ombudsman's work till the end of 2005, and to allocate funds to the amount of 155.000 kn from the State budget of the Republic of Croatia for the year 2005 for field work of the institution.

Regional planning and environment protection committee, that suggested to the Croatian Parliament that it should take note of the Report, concluded that it is necessary that the Ministry for the environment protection, design and construction in cooperation with the Ministry for economy, work and entrepreneurship, questions the regulations on border emissions of air polluting substances and the regulations on the quality of oil derivatives that are beyond European standards. The working body warns the same state bodies to question the evaluations of the Ombudsman about the over-import of dangerous waste, since there is a ban prescribed for such import.

Immigration committee members stated that the report is high quality and praised the Ombudsman's work since he defends the rights of all Croatian citizens regardless of their belonging to ethnic groups. One could have been under impression, they said, that the Ombudsman defends the rights of ethnic community members only.

His intercession for Croatian soldiers and requests for the respect of the Administrative Court decisions, at which the soldiers submitted their complaints, with the warning that the Ministry for Croatian soldiers defaulted at their complaints even when they were adopted by the Administrative Court, were highly praised.

Members of the committee pointed at a very difficult situation of suspense in which the exiles from Bosnia and Herzegovina, Vojvodina and Kosovo have been living for years. They are forced to move often, their children have to change schools, and parents jobs. Many of them live in the houses belonging to the Serbian refugees, merely as guardians of the property until the owners return.

SECTION TWO

REPORT ON THE WORK ACTIVITIES OF THE OMBUDSMAN FOR THE YEAR OF 2004

1. STATISTICAL DATA FOR THE YEAR OF 2004

Citizens address the Office in written form, come to talk personally, or over the phone.

During the year 2004, 1067 talks with citizens have been performed, that personally asked for help at the Office.

On average, approximately 20 – 25 citizens address the Office by phone daily, seeking legal advice, instructions or information.

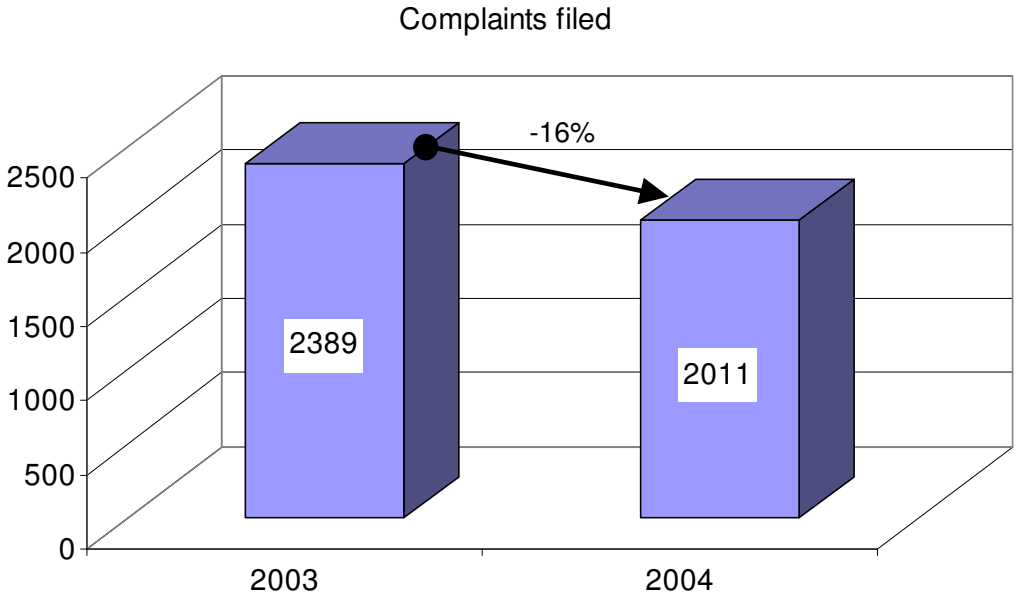
In cases of personal address, or address over the phone, usually the files are not opened, but, if it is the case that belongs to the work area of the Ombudsman, the file is formed at the receipt of the appropriate documents.

The data on the number of cases, stated in this report, refer only to the number of files opened when the complaints were submitted.

Throughout 2004, there were altogether 2710 cases in process. Out of this number, 2011 are new, and 699 cases were from the previous period.

Compared to the previous year, when 2389 new complaints were submitted, there was a decrease by 16 % in the number of newly submitted cases. However, the number of complaints in the year 2004 is bigger than the several years' average that amounted to 1650 new cases.

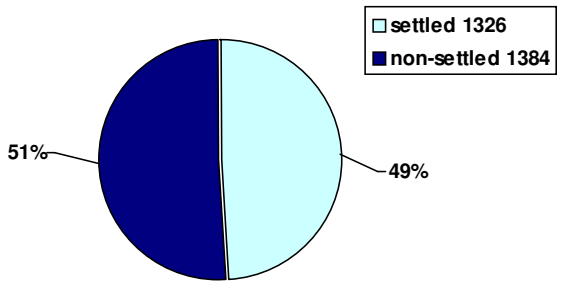
Picture 1.



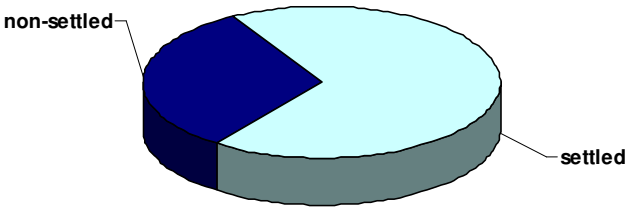
Out of newly filed 2011 cases, in 2004 849 were settled, and out of 699 cases from the previous period, 477 of them were settled.

Therefore, out of 2710 cases, in the year 2004 1326 cases of citizens' complaints were settled.

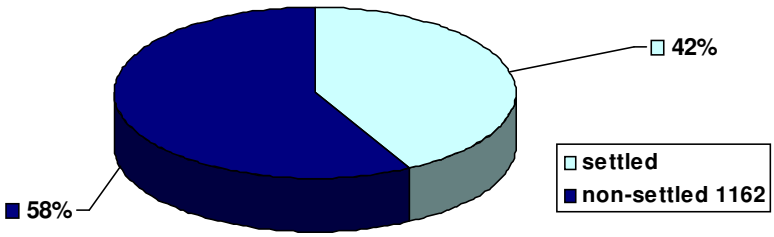
Picture 2. Out of the total of 2710 complaints in progress in 2004:



Picture 3. Out of the total of 699 complaints from previous years:



Picture 4. Out of the total of 2011 complaints submitted in 2004:

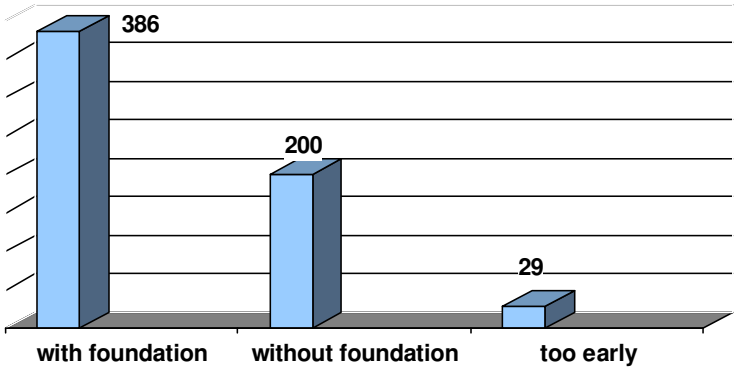


Out of 849 settled complaints submitted in 2004, 386 complaints were justified, 200 were without foundation, and other complaints were either too early or are about something that is not in the jurisdiction of the Office.

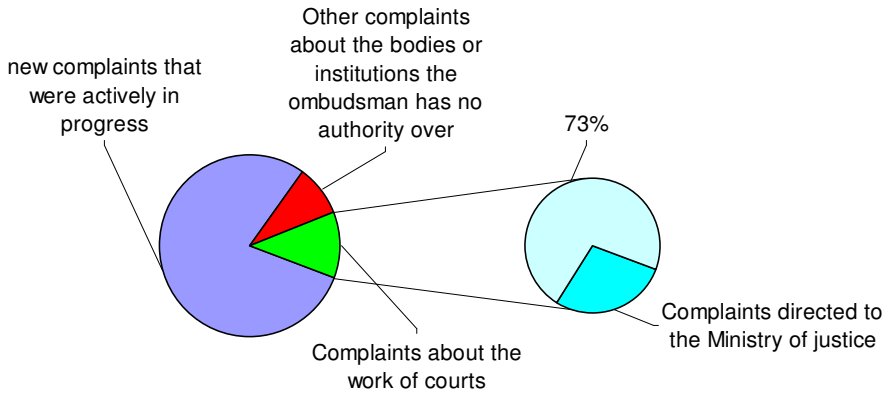
The number of complaints that do not enter into the sphere of action of the Ombudsman, point at the necessity of making the Ombudsman's authority, as well as his way of work, known to the citizens.

Therefore, it is again essential to stress out the fact, mentioned in the previous reports of the Ombudsman, that complaints about the work of courts primarily refer to the long duration of court procedures, which encouraged the Constitutional court of the Republic of Croatia to publicize its point of view on the problem of large number of court cases that are not settled in a reasonable period, because of which the Constitutional court is filled with constitutional complaints of the citizens, and suggested possible solutions to this important issue.

Picture 5. Settled cases submitted in 2004: with foundation, without foundation and too early



Picture 6. The share of the complaints about the work of courts (out of approximately 2011 cases):



The data on the smaller number of new complaints in 2004 must be viewed bearing in mind the fact that in 2003 the Ombudsman visited ten, and in 2004 only 5 counties. Going round numerous places in counties, the Ombudsman saw the citizens that addressed him with their complaints.

Apart form the differences in the number of counties that were visited during 2003 and 2004, there are also differences in the consequences of war that some counties suffered from. In 2003, the visit included all the counties (apart form Istarska) that underwent grave devastations in war, and in 2004 the visit included the counties in which devastations were less grave.

Counties visited in 2003.:

1. Sisačko-moslavačka
2. Vukovarsko-srijemska
3. Karlovačka
4. Šibensko-kninska
5. Ličko-senjska
6. Osječko-baranjska
7. Zadarska
8. Dubrovačko-neretvanska
9. Požeško-slavonska
10. Istarska

During the visit to ten counties mentioned above, the Ombudsman registered 641 complaints.

Counties visited in 2004.:

1. Bjelovarsko-bilogorska
2. Splitsko-dalmatinska
3. Primorsko-goranska
4. Koprivničko-križevačka
5. Virovitičko-podravska županija

Throughout the visits to the counties in 2004, the Ombudsman registered 131 complaints, which is almost 5 times less than in counties visited in 2003.

From the above we can conclude that the increased number of complaints from certain areas is in direct correlation with the consequences of war. The most common cases are the questions about the old-age pension insurance, renovation and property return.

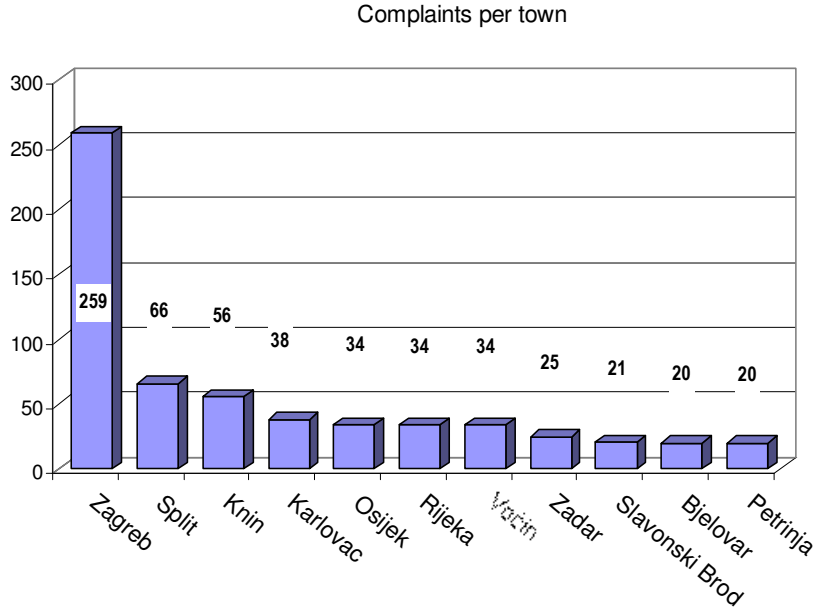
The large number of complainants, that contacted the Ombudsman while he was visiting places around Croatia, shows the need of the continuation of this activity. The citizens of poorer property conditions, and persons with health difficulties are not able to travel to the Office headquarter.

Apart from the fact that the fieldwork appeared to be directly useful to the citizens, it also enabled the Ombudsman to have an insight into the problems of citizens in certain areas, and in the problems of regional bodies of government administration and local self-governing entities.

Visits to the counties, towns and settlements were enabled by one-term donation of Norway and the help of the OESS Mission in the Republic of Croatia. It is essential to continue the fieldwork and allocate the funds in the state budget for this purpose.

The following picture gives survey of the number of complaints in Croatian towns. In order to make it easier to survey, the places with less than 20 complaints were left out.

Picture 7. The number of complaints per town in Croatia:



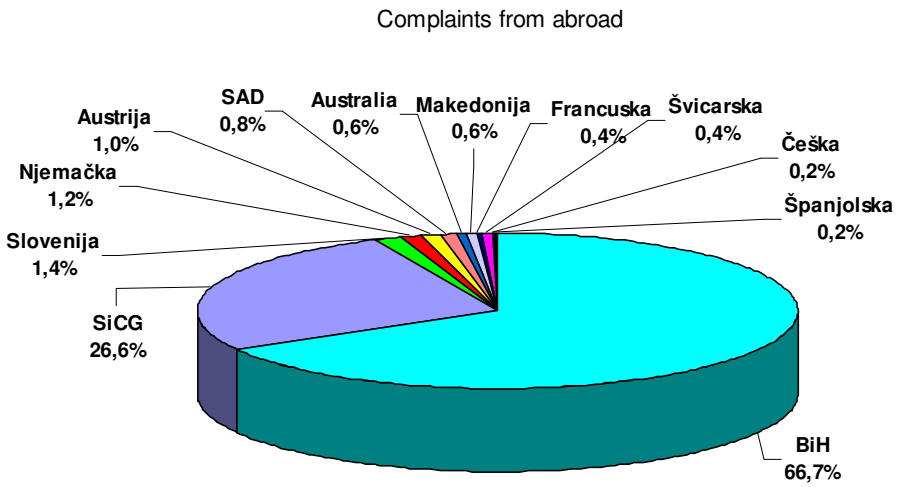
Note: The information on the larger number of complainants in the Zagreb area, apart form being a logical consequence of the number of citizens, can certainly be explained by the fact that these citizens have an easy access to the Ombudsman's office, unlike the citizens from distant towns, to which coming to Zagreb presents a large waste of time and money.

Complaints were also submitted from other countries, as shown in the chart below:

BiH	**341**	**Australija**	**3**
SiCG	**136**	**Makedonija**	**3**
Slovenija	**7**	**Francuska**	**2**
Njemačka	**6**	**Švicarska**	**2**
Austrija	**5**	**Češka**	**1**
SAD	**4**	**Španjolska**	**1**

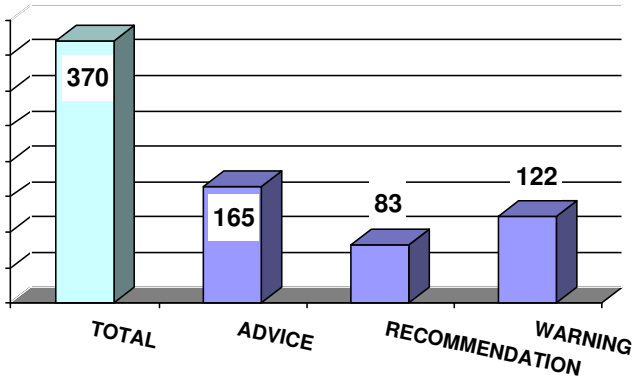
Picture 8.

Survey of the percentage of complaints from abroad



The measures, that the Ombudsman used in 2004 in the settled cases, include: legal advice to the parties, recommendation and warning to the competent body, as shown in picture 5 (legal advice given over the phone or in personal contacts, which accounts for a significant number, are not counted in).

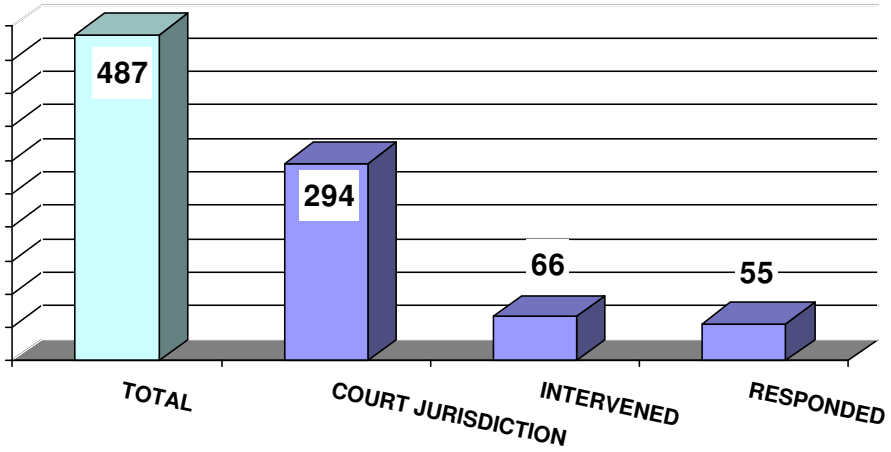
Picture 9.



In the part of the citizens' complaints, it was about the area beyond the Ombudsman's domain, usually within court jurisdiction.

Picture 10 gives a survey of complaints submitted in 2004: a) the total number of cases beyond the authority of the Office, b) the number of cases within court jurisdiction, c) the number of cases that were intervened in by the rush note to the Ministry of justice and d) the number of cases in which the court president's response to the report requested was delivered to the Office by the Ministry of justice

Picture 10.



The survey of cases filed in 2004, by different areas:

563 OLD-AGE PENSION

445 NON-JURISDICTION

212 RECONSTRUCTION

143 MISCELLANEOUS

103 HOUSING

93 CONSTRUCTION

76 OWNER'S RIGHTS

63 SOCIAL CARE

58 STATUS RIGHTS

46 OFFICIALS

40 SOLDIERS

37 CONFISCATED PROPERTY – COMPENSATION

23 EXILES

22 CRIMINAL

19 HEALTH

17 EXECUTION OF COURT DISTRAINT

15 ENVIRONMENT PROTECTION

11 PERSONAL INSECURITY

11 PROPERTY INSECURITY

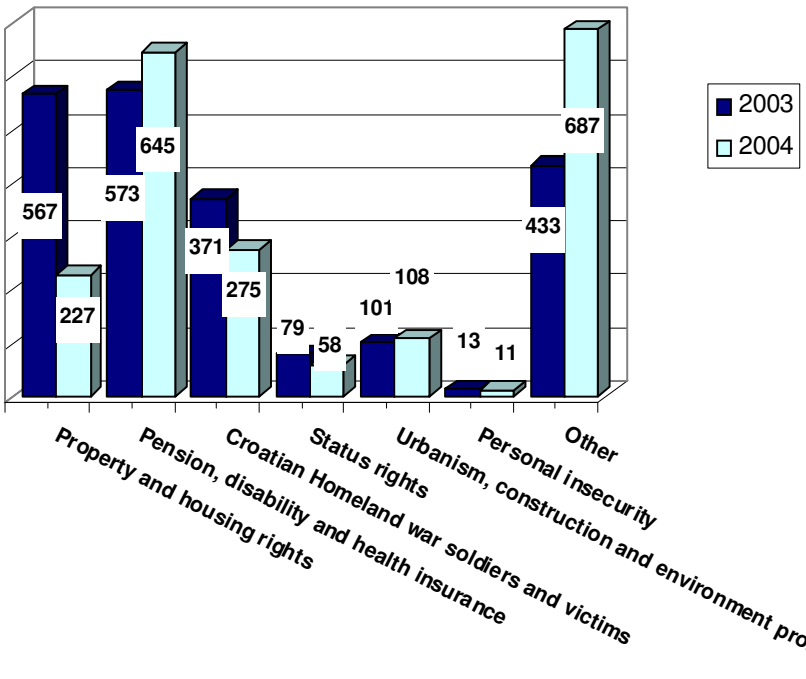
8 LEASE / LEASE OF STATE LAND

3 PROTECTION OF CHILDREN

3 TRANSITION

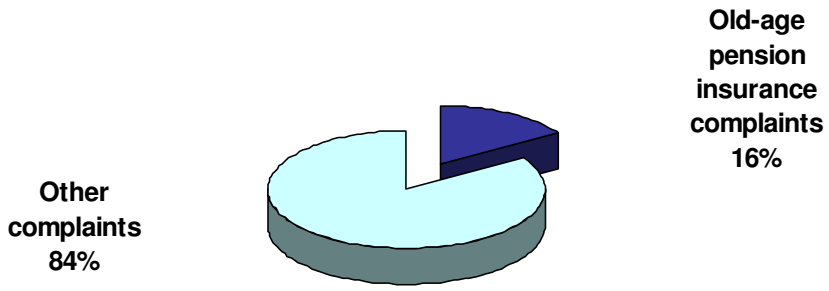
Picture 11.

Parallel survey by areas

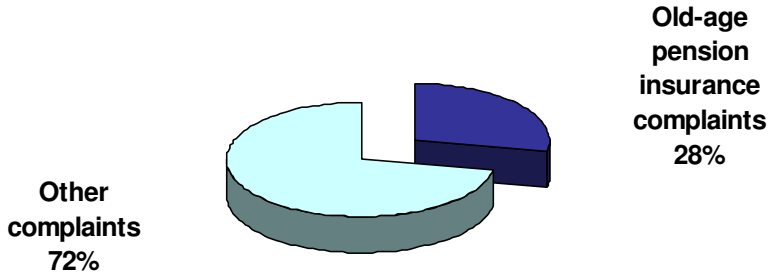


Considering the increase in the number of complaints about the old-age pension insurance, we find it important to compare their data for the year 2004 and the previous year, 2003.

Picture 12. Share of the complaints about old-age pension insurance in 2003 compared to the total number of complaints

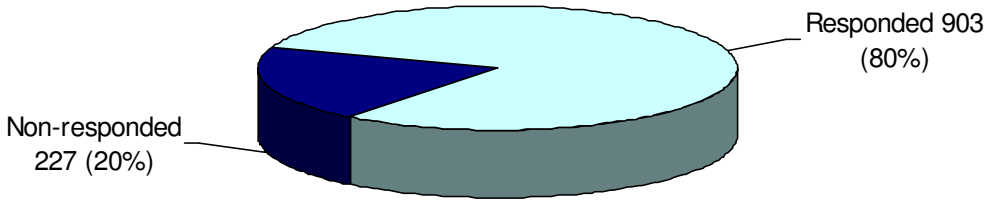


Picture 13. The share of the complaints about old-age pension insurance in 2004 compared to the total number of complaints



In the cases in which the investigation procedure was started, the bodies in authority must deliver the requested responses to the Ombudsman, but that was not always the case. In 132 cases in which the complaint was documented enough the investigation procedure was not carried out. In the year of 2004 the total of 1120 investigation procedures were started. Picture 14 shows the data on responded and non-responded requests in 1120 investigation procedures:

Picture 14. Investigation procedures carried out – responses to the request of the Office:



The bodies that ignore the Ombudsman's requests are in most cases the Ministry of environment protection, regional planning and construction – construction inspection, Ministry of justice – Civil law administration, Ministry of education, science and sport, Ministry of finance, Ministry of agriculture, woods and water economy, and State office for state property management.

2. ANALYSIS OF WORK BY LEGAL AREAS

1. Complaints about the work of courts

Pursuant to the regulations that determine the work of courts in the Republic of Croatia and the domain of the Ombudsman's work in the Republic of Croatia, the Ombudsman does not have the authority to influence the work of courts in cases in which clients complain about the long duration of procedures or irregularities in the work of courts.

As in all previous years, we find it necessary to emphasize that last year, again, a large number of citizens asked for help of the Ombudsman, stating that they already undertook numerous actions to have their case settled, but with no success. A large number of these clients is not informed about the authority of the Ombudsman's office , and they expect legal help. In all cases, the clients were said that the Ombudsman is not in authority to intervene by sending rush notes or in any other way, but can only concede the rush note to the Ministry of justice, that has the authority. As a rule, this reply makes the clients feel very anxious.

There is a large number of complainants about the work of courts who address the Ombudsman by phone, but a certain number addressed him in written form, pointing at the violation of their protected rights.

In order to give them instruction or advice, it is necessary to discuss the basic facts of their cases. In this way, the Ombudsman often comes into the meritum of the case. Of course, the clients are clearly made aware that the advice in these situations is a matter of priniciple, and that the reach of such legal assistance is very limited taking into consideration that the Ombudsman is not fully

acquainted with the condition of the document. All the clients are directed to ask for professional assistance of a lawyer, and are made aware of the possibility that the Croatian Bar Association might provide them with free legal assistance.

A large number of court cases that have been going on for years causes problems in the work of the Constitutional court, that is burdened with a huge number of constitutional complaints about the non-settlement of cases within a reasonable period. Since the Constitutional court is burdened with this, the settlements of cases last several years.

The problem of free legal assistance to the citizens will be solved with the new law that is supposed to be passed till the end of the year of 2005. The establishment of this institute will improve the realization of the right to access the justice, that is guaranteed by article 6 of the European convention on the protection of human rights and basic liberties.

We give a few examples of the complaints about the work of courts.

I.

Description of the case (**P.P. - 216/04**)**: M. P iz Z.** filed a complaint because she could not register the ownership of her real estate. The request for the registration was submitted on 9 March 2001 to the land registry at the Municipal court in Z. – registration of the flat ownership. A year later, she rushes the case, but with no success.

Further on, she points out that in the meantime, her mother bought a part of the house (at the same address) and rushed the registration. The competent court informs her that the case shall not be settled until her earlier request is settled. Since it is an issue important for her life, she asks for the intervention of the Ombudsman.

Measures undertaken: The Ombudsman directed the complaint to the Croatian Ministry of justice.

Outcome of the case: The Croatian Ministry of justice, pursuant to the authority given by article 38 of the Law on courts, asked the president of the Municipal court in Z. to question the claims from the complaint and to undertake the appropriate rushing measures in the case.

Note: The Ombudsman has no authority over this matter.

II.

Description of the case (**P.P.-634/04**)**:** On 26 March 2004 **K. Š**. from **R** filed the complaint about the work of the court in K. because of the slow course of the procedure. She emphasizes that the first hearing in the probate procedure was held on 14 April 2003 and that since that day not even one hearing has been held, and that there are no replies to the rush note of the attorney. At the same time, the other inheritor is taking away things from the house, i.e. makes claims on them.

Measures undertaken: The Ombudsman forwarded the complaint to the Ministry of justice.

Outcome of the case: The Ministry of justice of the Republic of Croatia, pursuant to the authority from paragraph 38 of the Law on courts, asked the president of the Municipal court in K. to investigate the claims from the complaint and to undertake the appropriate rushing measures in this

case.

Note: The Ombudsman has no authority over this matter.

III.

Description of the case (**P.P.-651/04**)**: R. B.** submitted a complaint about the work of the Municipal court in N. because of the long duration of the procedure. In this complaint he points out that the court does not set the date of the hearing, and that the complainant, as one party in this procedure, undertook all the activities necessary and met all the requirements.

Note: The Ombudsman has no authority over this matter.

IV.

Description of the case (**P.P.-776/04**)**: D. T.** filed a complaint about the long duration of the procedure in the County court via her mandatary Z. Š. from O., on 3 May 2004. The complainant succeeded in the labour dispute before the competent court in O., and the distraint was started before the competent court in Z. On 30 November 2001the distrainee filed the appeal suggesting delay. Since that day nothing has been done. The rush notes to the Appeal court gave no result, and the labour disputes are supposed to be urgent.

Measures undertaken: The Ombudsman forwarded the complaint to the Ministry of justice of the Republic of Croatia on 17 May 2004.

Outcome of the case:

On 31 May 2004 the Ministry of Justice of the Republic of Croatia, pursuant to the authority from article 38 of the Law on courts, asked the president of the County court in Z. to question the claims from the complaint and to undertake the appropriate measures of rushing the procedure.

Note: The Ombudsman has no authority over this matter.

V.

Description of the case (**P.P.-868/04**)**: V. M**. from **P**. filed a complaint to the Ombudsman on 24 May 2004, about the work of Municipal court in Š. – the rushing of the procedure.

In his complaint he states that he owns a lot in B., Primošten, and that on 13 July an agreement was made with his brother on the division of the lot – throughout the lot there should be a path of 1,5 m left (the neighbour left as much). The brother broke the agreement, narrowed the path at the entrance to the lot and by doing so made the drive to the house impossible. The complainant enclosed the substantiation of 100% disability. The only way to get to his house now is by a roundabout path, by 70 steps. The court in Š. to date has not acted upon his suggestion.

Measures undertaken: On 28 May the Ombudsman forwarded the complaint to the Ministry of justice.

Outcome of the case:

On 23 June 2004 the Ministry of justice of the Republic of Croatia, pursuant to the authorities from article 38 of the Law on courts, asked the president of the Municipal court in Šibenik to investigate the claims of the complaint and to undertake the appropriate measures to rush the

procedures of this case.

Note: The Ombudsman has no authority over this matter.

VI.

Description of the case (**P.P.-871/04**)**:** A. S., a complainant, addressed a request to the Ombudsman on 25 May 2004 with the goal of rushing the case of the Municipal court in K., about support.

Measures undertaken: On 4 July the Ombudsman forwarded the complaint to the Ministry of Justice.

Outcome of the case: On 19 November 2004 the complainant informed the Ombudsman about the positive verdict of the Court.

Note: The Ombudsman has no authority over this matter.

VII.

Description of the case (**P.P.-1745/04**)**: E. M.** from **V.,** the former employee of «V» d.d., filed a complaint on 25 October 2004 with the Court of commerce in B. As a representative of employees in the bankruptcy board, 2 years ago she contacted the Ministry of justice for the intervention, but received no notice on the procedure undertaken.

Measures undertaken: On 2 November 2004 the Ombudsman forwarded the complaint to the Ministry of justice of the Republic of Croatia.

Outcome of the case: On 7 February 2005 The Ministry of justice of the Republic of Croatia, pursuant to the authorities from article 38 of the Law on courts, asked the president of the Court of commerce in B. to question the claims from the complaint, undertake the rushing measures and to inform the Ministry following article 42 of the Law on courts.

Note: The Ombudsman has no authority over this matter.

2. Pension and health insurance rights and health organization and social welfare rights, and labour relations of government and public officials

2.1. Pension insurance

563 persons complained about the violation of the old-age pension insurance rights, as well as about the violation of the procedures regarding the realization of the old-age pension insurance rights. A year before, the number of these complaints was 386.

The main reason for these complaints is long duration of the administrative procedure, and long duration of the execution of procedures after the verdict has been passed by the Administrative court of the Republic of Croatia.

When the Administrative court cancels the decision against which the administrative dispute was started, the case returns to the state in which it was before the cancelled decision was made. If, by

nature of the issue that was the subject of the dispute, instead of the cancelled administrative decision another one should be passed, the body in authority must do this without delay, at the latest within 30 days from the date of the delivery of the first decision. In doing so, the body in authority is limited by legal understanding of the court and remarks of the court regarding the procedure. The exceeding of this term, in these cases, is the most common ground for the complaints of the citizens.

Throughout 2004, The Central service of the Croatian institute for old-age pension insurance (Hrvatski zavod za mirovinsko osiguranje – HZMO), hereinafter referred to as HZMO, and regional services of the HZMO, in most cases, reacted within a reasonable period to the statements of the Ombudsman. There has been a significant decrease in the number of cases in which the Central service of the HZMO merely informs the Ombudsman that the file is being dealt with in a regional service of the HZMO that is in authority for that matter (with the decree and instruction for the body in authority that it must respond promptly to the Central service of the HZMO and to the Ombudsman to the inquiry.)

Namely, the regional services of the HZMO, after the warning of the Central service's body in authority, started delivering their reports on the actions undertaken directly to the Ombudsman after submitting the complaint.

The matter of long duration of procedures must also be pointed out at the application of the agreement on social insurance with foreign insurance holder.

By drawing an agreement with the countries of former SFRJ, there was a sudden inflow of requests for help in cases dealing with realization of old-age pension insurance rights directed to the Ombudsman.

In all the cases the Ombudsman intervened with the rush note directed to the HZMO, or in some rarer cases, with the request for the intervention of the Ombudsman of Bosnia and Herzegovina.

The complaints filed that deal with the area of the realization of old-age pension insurance rights are illustrated by these examples:

I.

Description of the case (**P.P.-1422/03**)**: J. J.** from **K**. filed a complaint on 17 July 2003 – right to family pension and making of the final decision

The complainant states that she filed the complaint on 17 December 1999 with the first-instance body in authority the HZMO PS in Š.

On 27 March 2000 a regional service of HZMO made a temporary decision.

To the date of the filing of the complaint, no final decision has been reached, not even after several interventions.

Measures undertaken: In the letter from 12 August 2003, 13 October 2003 and 26 January 2004, regarding the complaint mentioned above, the Ombudsman asked for the declaration on the claims of the complaint and the reasons for such long duration of the procedure and the failure in reaching the final decision in this particular legal matter.

Outcome of the case: The central service of the HZMO, without any explanation, delivers the decision of the Regional service of the HZMO to the Ombudsman in Š. dating from 9 January 2004. It is obvious that the complainant is recognized her right to family pension starting with 1 July 1999.

Note: A violation was identified due to the long duration of the procedure.

II.

Description of the case: (**P.P.-764/04**): **G. T.** from **K. (Bosnia and Herzegovina)** filed a complaint because of non-deciding on his request for the pay-out of the remaining pensions, that he submitted on 12 February 2001. Till the day of filing of the complaint the HZMO's body in authority has not made a decision on his request.

Measures undertaken: On 13 May 2004 the Central service of the HZMO was asked for a declaration on the claims of the complaint in a written form.

Outcome of the case: On 9 September 2004 a response was delivered together with the notice with the copy of the decision of the first-instance body of the HZMO. The complainant was approved of the pay-out of the pension with the date of 1 May 2000, and his request for the acknowledgement of rights to the pension pay-out for the period from 1 March 1992 to 30 April 2000 was denied.

Note: A violation was identified due to the long duration of the procedure.

III.

Description of the case (**P.P.-217/04**): **Đ. B. from B.L.** filed a complaint on 17 February concerning the pay-out of disability pension. After the decision, not even one instalment of the pension was paid out.

Measured undertaken: The declaration was asked on 18 February 2004 on the claims of the complaint in writing.

Outcome of the case: The central service of the HZMO delivered a report on 16 April 2004, that shows that the regional service in S., with its decision dating from 5 April 2004, acknowledged the plaintiff's right to disability pension, starting with 6 February 2003. The pay-out of the pension and the delayed instalments for the period from 6 February 2003 till 31 March 2004 started on 14 April 2004.

Note: The procedure of the realization of disability pension rights was started at the suggestion of the chosen doctor on 21 June 2001, and the first-instance decision about the recognition of the disability pension right was reached after almost three years.

Therefore, the procedure lasted long, and the pension pay-out was late.

The intervention succeeded.

IV.

Description of the case (**P.P.-1273/03**): **K. B.** from **B. L.** filed a complaint on 30 June 2003 about the HZMO on the grounds of the failure to act in the subject of appeal decision, filed on 29 November 2002. Till the date of filing the complaint, the body in authority has not decided on the appeal.

Measures undertaken: In writing, a declaration on the claims of the complaint was asked for on 1 July 2003.

Outcome of the case: The appeal of the complainant was recognized by the decision dating from 4 July 2003, the first-instance decision was cancelled, and the matter was returned to the regional

service to be re-decided on. In writing dating from 13 April 2004 the HZMO Central service, Department of execution, delivered a notice stating that the Regional service, after the rush note sent by the Central service on 6 February 2004, reached the decision by which the complainant is recognized the right to the pay-out of the disability pension.

Note: A violation was identified due to the long duration of the procedure of decision on the appeal.

V.

Description of the case (**P.P.- 225/03**): **Đ. G**. from **K.** filed a complaint on the subject registered at the HZMO regarding non-deciding on the pension right, by the request filed on 15 March 2001.

Up to the date of the complaint, the first-instance body has made no decision, nor has it informed the complainant on the reasons for such long duration of the procedure.

Measures undertaken: In the official letter dating from 1 July 2003 a declaration on the claims of the complaint were requested.

Outcome of the case: On 11 December 2003, the HZMO Central service informed the Ombudsman that the body in authority of the HZMO Central service requested the declaration on this case on 13 January 2004. The HZMO Regional service, Department for first-instance decisions on rights in Š. delivered a copy of the decision in which it was decided on the complainant's complaint.

Note: Intervention succeeded, a violation of rights was identified due to the delay of the procedure.

VI.

Description of the case (**P.P.-1837/03**): **Č. D.** from **G.** filed a complaint on 6 October 2003 on the subject of deciding on her appeal dating from 4 July 2003, and the HZMO body in authority still, to the date of filing of the complaint, has not made a decision.

Measures undertaken: On 13 October 2003 a prompt declaration of the second-instance body was requested about the claims of the complaint and the reasons for the failure to make the administrative decision.

Outcome of the procedure: In the letter dating form 15 December 2003 the HZMO Central service delivered its notice that the second-instance body did not register the appeal, and ordered its regional service to deliver reports on this legal matter.

By referring a notice to the HZMO Central service, on 17 February 2004 the Ombudsman again requests and asks for the response on the reasons for the body in authority's failure to act.

On 19 March 2004 a copy of the decision dating from 17 February 2004 was delivered, in which the appeal of D. Č. is recognized and the decision dating from 23 May 2003 was cancelled. The case is returned to the regional service with the purpose of making a new decision.

The first-instance body stated the right of the complainant to the old-age pension on the basis of the HZMO Central service notice and the copy enclosed.

Note: A violation of the complainant's rights was identified due to the delay of the procedure.

VII.

Description of the case (**P.P.-2169/03**): **M. R.** from **B.** filed a complaint on 24 November 2003 on the subject of deciding of her request for the family pension rights, submitted in February 2002. Till the day of the complaint the first-instance body did not make the decision.

Measures undertaken: In the letter from 26 November 2003 a declaration on the claims of the complainant and on the procedure undertaken so far was requested.

Outcome of the procedure: On 12 January the Central service informs that on 30 December the Regional service in Z. was requested a decision on the activities undertaken.

Outcome of the case: The regional service in Z. informed on 24 February 2004 that the interim decision (from 24 January 2004) defined the right to an advance for the family pension.

Note: It is obvious from the explanation of the delivered decision of the regional service that the complainant filed her request on 27 February 2002, and that the first-instance decision was reached on 14 January 2004.

It is obvious that the legal deadline for decisions was failed to be observed.

VIII.

Description of the case (**P.P.-1687/04**): **J. Ć.** from **B.** filed a complaint on 15 October concerning the right to disability pension. The request was submitted on 10 November 2003. By the date of the complaint it was still not decided on.

Measures undertaken: On 20 October a declaration on the claims of the complaint and on the procedures undertaken was requested.

On 4 November 2004, the HZMO Central service informs the Office that by its letter from 27 October 2004it requested a prompt decision.

Outcome of the procedure: On 12 November 2004 the regional office in Z. delivered a copy of the decision (dating from 12 November 2004) by which the right to disability pension due to the professional incapability for work is recognized to the insurant J. Ć.

Note: The intervention succeeded. The violation of the plaintiff's right to the decision within a legal period was stated.

IX.

Description of the case (**P.P.- 520/03**)**: S. B.** from **B. L.** filed a complaint regarding the work of HZMO bodies in authority. She claims that on 1 October 2002 she submitted a request for the pay-out of the pension instalments that were not paid out to her after the death of her husband. By the date of the complaint, her request was not decided on, not even after filing a complaint with the HZMO Central service.

Measures undertaken: In the letter from 11 June 2003 a declaration on the claims from the complaint and on the procedure undertaken so far, was requested.

Outcome of the procedure: On 30 June 2003 The HZMO Central service informed the Ombudsman that it requested a notice, from the Regional service in Z., on the state of this case, on the

actions undertaken and on the reasons why the client's request was not processed.

On 23 January 2004 the Central service delivered a copy of the second-instance decision, enclosed with its letter. In this decision, the appeal was denied.

Note: The intervention succeeded. The violation of the right to the decision within a legal period was stated.

X.

Description of the case (**P.P.-2178/03**): **M. N.** from **Š** in **Bosnia i Herzegovina** filed a complaint on 25 August 2003 on the subject of the realization of his right to disability pension. The complainant submitted his request to the HZMO body in authority on 27 February 2002. Till the date of the complaint it was still not decided on.

The measures undertaken: By the letter from 27 November 2003 a declaration on the claims from the complaint and the reasons for the delay of the procedure was requested. The HZMO Central service, on 22 December 2003, informed the Ombudsman that it ordered the first-instance body the delivering of the data with the purpose of getting insight in the complainant's case as well as the duty of direct informing of the Ombudsman.

The HZMO registered the notes on 28 Janury 2004, 2 August 2004, 14 January 2005 and 22 February 2005 from which it is obvious that the insurant did not meet the requirements of the Regional service in Z. regarding the decisions on the legal matter of the complainant (conversion of pension pursuant to the regulations of the article 43 of the Agreement on social insurance between the Republic of Croatia and Bosnia and Herzegovina, hereinafter referred to as the Agreement).

In addition, on 22 February 2005 a copy of the official letter of the HZMO Central service, Department for the Implementation of international agreements on social insurance dating from 27 January 2005 directed to the Pension and disability insurance Fund RS, Branch office Banja Luka, was delivered. It is obvious from the official letter mentioned above that in the complainant's case the HZMO body in authority was informed, by the official letter from the foreign insurance agent dating from 11 March 2004, on the putting out of effect the process of re-defining of pension applying article 43 of the Agreement and the announced processing of the plaintiff's request applying the Agreement on agreed forms (with the form BH – HR 207) and medical documentation.

The ordered processing of the request for the disability pension has not been registered to date by the regional service in authority in Z., as well as the Central service.

It is obvious from the document that the HZMO body in authority speeded up the procedure and process of the request that the foreign insurant announced on 11 March 2004.

Note: The complaint has no grounds, and the outcome of the procedure has not been informed on.

2.2. Health insurance and health organization rights

Regarding the realization of health insurance rights and rights within the system of social

welfare it is important to say that these complaints represent general social circumstances in the society, and that bodies in authority of the Croatian institute for health insurance, as well as the centres in authority for social welfare centres, in protecting rights and interests of the complainants, in most cases act promptly by the Ombudsman's request, within law and measures and authorities proscribed.

We can conclude that social welfare centres, with the resources provided and constant lack of officials with the appropriate characteristics, despite all the limitations, perform the work within their authority meeting deadlines and with the purpose of protecting and helping socially endangered categories of citizens.

I.

Description of the case (**P.P. - 110/04**): **J. G.** from **B.** filed a complaint on 28 January 2004 on the work of HZZO in the subject of paying medical treatment for the deceased R. G. abroad.

Till the date of the complaint the body in authority did not act according to two verdicts of the Administrative court of the Republic of Croatia, reached on 19 September 2001.

Measures undertaken: In writing, on 30 January the body in authority was requested to decide on these legal issues and to declare on the reasons for non-execution of the sentence.

Outcome of the case: HZZO informed the office that the Administrative committee reached a Decision on consent to paying medical treatment for the deceased R.G. abroad.

Note: A violation of the complainant's rights by stalling the procedure was observed.

II.

Description of the case (P.P. - 490 / 04): V. A. from **S .,** the owner of the private pharmacy in S. filed a complaint about the work of the Ministry of health and social welfare because it issued consent to the Pharmacy J. in the process of establishing a pharmacy unit at a new address. According to the complaint, the location of this pharmacy unit is not 300 metres away from the pharmacy in the complainant's ownership.

When finding out about the consent on the issue, the complainant filed a request for the renewal of the procedure on 24 September 2003, and in March, to the Government of the Republic of Croatia, for the cancellation of the consent, by the right of supervision, to Pharmacy J. . .

Measures undertaken: Declaration on the case was requested in writing from the body in authority (the Ministry), and if, or how, the plaintiff's request for the renewal of the procedure was decided on.

The Ministry delivered the declaration in which it claims that the complaint has no grounds: the complainant filed an objection against the decision from 15 September 2003, by which the moving of the pharmacy unit of Pharmacy J from S., part Ž., to Gundulićeva 27 in S., was allowed. Enclosed with the complaint she delivered the measurements of the Independent geodesic company from S., according to which the distance between Gundulićeva 27 and her pharmacy, in S. street 24 a , is 295,50 metres, and to Pharmacy S. in Gundulićeva 52, is 264, 55 metres.

Pharmacy J declared about the complaint and delivered geodetic measurements of a court expert for geodetics and the report and opinion of the permanent court expert for street traffic, from which it comes out that the distance between the pharmacies in question is more than 300 metres. Therefore a disputed decision was reached. The request for the renewal of the procedure was dismissed by the Minister's conclusion from 25 May 2004.

Against this conclusion the complainant started the administrative suit, which is in progress, so the Ombudsman, pursuant to article 6 of the Ombudsman's act, did not act on the case.

Outcome of the case: Unknown.

III.

Description of the case (**P.P. – 683/04**)**: M. R.** from **D.** filed a complaint about the work of HZZO. The mother of the baby born before time (V.) that has serious damages (the complaint does not mention what they are). She has been going on rehabilitation regularly to the hospital for mental and physical retardation Zelengaj. Till the baby's third year, HZZO was paying for all the costs of rehabilitation that was performed four times a year, in periods of 14 days.

After that, the costs of parents' staying in hospital, were paid by the parents (they stayed in hospital because they were educated on the damages). They performed hospital rehabilitation only twice a year, in periods of up to 5 days, since the financial situation does not permit them more.

The complainant also states that for an orthopaedic examination, despite the previously arranged appointment, she has to wait longer than 3 hours just to get the notes of remittance for orthopaedic shoes.

Measures undertaken: The body in authority was asked by an official letter to declare themselves about this case and the claims from the complaint and about the possibility of the HZZO paying the costs of rehabilitation even after the third year of life.

The Ministry of health and social welfare declared himself on the claims of the complaint in which they point out that pursuant to article 14 of the Rulebook on conditions and ways of realizing rights from the obligatory health insurance for hospital treatment through medical rehabilitation and physical therapy at home, by the suggestion of the chosen doctor of primary health protection, and based on the opinion of the specialist doctor, medical committee of the HZZO can approve of staying at a special hospital for medical rehabilitation to a person defined as a chaperon of a child up to the third year of age provided that a strictly determined programme «mum –baby» for the education of the chaperon is applied, and when there is the need for breast feeding of the baby.

Congruent to all the above, the costs of the treatment after the third year of age are paid by the parents themselves.

The complainant is informed about the content of the declaration and is forwarded to refer to the Centre of social welfare in the place where she lives about the help in settling the costs mentioned above.

Outcome of the case: Unknown.

2.3. Social welfare rights

The majority of cases belonging to the area of social welfare, which the Ombudsman's acted on, are not complaints by their content.

Namely, in their petitions citizens do not complain about the violation of their rights on social welfare, but address the Ombudsman because they are in difficult social circumstances due to unemployment, old age, disease, impossibility of solving housing issues, impossibility of settling the costs of housing, etc.

In such cases the Ombudsman intervenes by recommendations to the Centres of social welfare in authority to process the cases, and, pursuant to what is defined, refer citizens to the procedure for the realization of rights within the system of social welfare for which they meet legal requirements.

We again stress out very good cooperation with Centres of social welfare and pleasure with the results of that cooperation.

In significant number of cases the Office helped the citizens to fulfil rights within the system of social welfare that belong to them.

In the year of 2004 the number of complaints about Centres for social welfare, about procedures dealing with deciding which parent a child is going to live with, and about determining meetings and socializing with the other parent, was significantly reduced.

This Office assumes that what contributed to this was the establishment of the Children's attorney office.

A certain number of complaints, by its content, reveals mentally ill persons acting as complainants.

In these cases the Ombudsman asks for health-social anamnesis for these complainants from Centres of social welfare, to find out if it is really about a sick person, and if it is, whether his/her rights are protected appropriately.

I.

Description of the case (**P.P. – 1752/04**): **I. P.** from **S**. filed a complaint about the Elektra's actions. He lives with his wife and two children. 8 months ago electricity was cut off because of the charges that he was «stealing» electricity. In judicial proceedings, started by the Elektra's suit, the theft was not proved. Because of the cutting off of the electricity the conditions of life for his family are made very difficult.

Measures undertaken: Elektra was on 5 November 2004, in writing, sent a recommendation to promptly turn on the electricity to M. P., and was asked the information on what was done.

Elektra informed the office on 7 December 2004 that it will continue providing P. with electricity if he pays for the quantity of unauthorized use that was found (10. 319,64 kn), by which he caused damaged to HEP, as well as the cost of the turning on of the electricity, or they will do it by validly finished criminal proceedings.

After that response, the Office immediately sent an official letter to the mayor of the town of S,

and to the Centre of social welfare S.

«8 months ago, Elektra stopped providing M. I. P. from S with electricity, due to theft accusations «.

County public attorney's office filed an accusatory proposal against M. P. due to the criminal offence against property – by theft, described and liable to punishment pursuant to article 216, paragraph 1 of the Criminal act. In criminal proceedings number K-.., started by the accusatory proposal mentioned above before the County court in S., a verdict was reached on 29 October 2004, by which M. P. was **acquitted**. Despite this verdict, Elektra did not turn on the electricity to the family P.

The Ombudsman sent a recommendation on 5 November 2004 to Electra by which he asked prompt electricity turn-on to M. P. In declaration to this recommendation of the Ombudsman from 7 December 2004, HEP Distribucija d.o.o., DP Elektra V states that it will continue with electricity provision to M. P. provided that «he pays for the liability for the determined quantity of unauthorized use to the amount of 10.319,64. kn or at the valid end of the criminal proceedings that is led against him.» Namely, the County state attorney's office and Elektra filed an appeal against the second-instance verdict that acquitted M.P.

We want to point out that Elektra itself stated that the alleged electricity theft by M. P. damaged it for 10.319,64 kn, while the County court in S., by its first-instance verdict, stated that electricity consumption for the year of 2003 did not differ significantly for the consumption in 2001 and 2000.

The Ombudsman, unfortunately, apart from what was done, does not cannot use any other measures by which it could order Elektra to turn on the electricity to M. P. To overcome the difficulties of the family P., caused by the arbitrariness of Elektra, the Ombudsman, pursuant to article 7 paragraph 1 of the Act on the Ombudsman (Narodne novine issue 60/92 recommends that the town S. and the Centre for social welfare give help to the family P. to settle the debt to Elektra, so that electricity would be turned on and conditions for normal life would be provided. Promptly inform the Ombudsman on the measures undertaken regarding this recommendation.»

At the same time the Ombudsman sent HEP Distribucija, DP Elektra V. a warning in which, among others, he states: « From your response follows that you have accused M. P. unlawfully for electricity theft and also stated that by this you were damaged to the amount of 10.319, 00 kn. You also applied sanctions for the guilt thus stated and stopped electricity supply. After that you reported M. P. to the County public attorney's office that started criminal proceedings against him on the grounds of theft. Finally you state that you will remove sanctions to M. P. (continue with supply), if the criminal proceedings states that he is not guilty.

Article 28 of the Constitution of the Republic of Croatia proclaims: «Everybody is innocent and nobody can hold him guilty for a criminal act until he is not found guilty by a valid court verdict. ».

In accordance with the Constitutional provision quoted, you could have stopped electricity supply to M. P. only in case he was found guilty for the criminal act of theft by the valid court verdict.

Pursuent to article 7 paragraph 1 of the Ombudsman's act (Narodne Novine issue 60/92) the Ombudsman **warns** you that you have violated M. P.'s right guaranteed by article 28 of the Constitution of the Republic of Croatia. Promptly inform the Ombudsman on the measures undertaken.»

Outcome of the case: Electricity was turned on and the supply continued, about which the

Office was informed by Elektra.

II.

Description of the case (**P.P.- 1009/04**): **J. M.** from **Z.** filed a petition in which she states that she is a single mother of two minors, aged 15 and 10. The family is supported by the support help to the amount of 1.280,00 kn that they get through the Centre for social welfare in Z. which is not enough for their needs. Therefore she turned to the Office for help.

Measures undertaken: Having considered the complaint, the Office sent an official letter to the City government of Z., Centre for work and social welfare, in which, after the description of the case, he said: «Pursuant to article 7 of the Ombudsman's act (Narodne novine issue 60/92), the Ombudsman recommends that you investigate the case of Mrs. M. and find whether she fulfils all the conditions for the realization of her right to the help in the payment of housing costs (rent, communal fee, electricity, gas, heating, water, etc.) and, based on what you find, refer her to the procedure needed to realize this right. Inform the Ombudsman on the measures undertaken regarding this recommendation within 30 days.»

The service for work and social welfare informed the Office that the complainant meets the requirements for the realization of rights to help in the settlement of housing costs. After the legal assistance, she submitted a request that will be decided on positively.

Outcome of the case: Successful intervention.

III.

Description of the case (**P.P.: 115/04**): **Š. Š.** from **O.** filed a complaint on 28 January in which she states that she is of poor health with insufficient material income for life.

Measures undertaken: In the procedure of examining her claims the Office asked the Centre for social welfare in K. for a social anamnesis of the complainant's family and a declaration about the actions undertaken regarding the realization of the complainant's rights from the Law on social welfare.

Outcome of the case: The Centre for social welfare in K. promptly, on 23 February 2004, delivered the declaration wanted from which it is obvious that the complainant's family live in good housing and average material circumstances (found by the direct insight on field and with the confirmation of a user of pension insurance right) and that the members of the family are in agricultural business, and receive income on that basis as well. Taking into consideration all the above, requirements for the acquisition of support rights are not met. (income in the complainant's family are higher than the census stated by article 15 of the Law on social welfare).

2.4. Labour relations of government and public officials

In 2004 the number of complaints about the violation of government and public officials and employees rights was reduced compared to the year of 2003 (by approximately 40 %).

After the Decree of the Croatian government was passed on the inner structure of ministries, government administrative organizations and Government offices (August 2001), and the Decree on the inner structure of government administration offices in counties (March 2002), by which government administration in counties was rationed, the majority of complaints in this area were submitted by government officials that were not assigned to new posts or to who the civil service ended.

In 2004 complaints in this area were various, which is obvious from the cases described below. They referred to: introduction of solidarity share for civil officials and employees who were not members of unions; non-execution of valid court decisions; violations of contest procedures; violations while being assigned or transferred to a new post etc.

It is important to mention that in 2004 the Office registered a significant number of complaints about the violation of labour relation rights, and that does no enter into his scope of work.

In cases in which those complaints were clear and complete, the Office still gave legal advice and instructions for the further procedure so that their rights would be protected, but this, considering the small number of advisers in the Office, presents a significant case load to the Office.

We should also stress out the problem that waits to be solved for several years, and refers to the application of article 111 of the Law on government officials and employees, ant that determines the possibility of awards for success in their work, but who cannot realize that possibility.

Even though there have been years since the Law mentioned above was passed, (March 2001), the Government has not fulfilled the obligation to enact a decree that would determine the criteria and way of payment of bonuses for accomplishments at work, and determine the quantity of funds for those bonuses.

If the employer's will was to introduce the possibility of awards with the 4-year delay, the Law would contain this term.

We find this a serous failure, and above all, we find it discouraging for quality work and dedication of the government officials and employees.

I.

Description of the case (**P.P. - 1854/04):** Amendments to the Labour Act (Narodne novine issue 30 / 04) introduced the possibility that Collective agreements determine the obligation to those who are not members of the union to pay the solidarity share while the collective agreement is valid. The Office registered a large numbers of complaints (both in writing and by phone) of civil officials and employees who are not member of unions, and who consider that by the deduction of solidarity share their rights to the freedom of joining a union, guaranteed by the Constitution of the Republic of Croatia, was violated.

Measures undertaken: After having closely inspected the complaints received, the Office submitted a request to the Constitutional court of the Republic of Croatia on 22 November

2004, about the evaluation of consistence of the provision of article 197 of the Act on work with the Constitution of the Republic of Croatia:

«Pursuant to the article 36 subsection 6 of the Constitutional act on the Constitutional court of the Republic of Croatia (Narodne novine issue 49/02 – final draft), and regarding the complaint of J. M. from Zagreb, the Ombudsman submits a Request for the evaluation of consistence of article 197 of the Labour Act (Narodne novine issue 137/04 – final draft)with the Constitution of the Republic of Croatia.

I. The Ombudsman considers that the provision of article 197 of the Act on work is not consistent with the provisions of the article 14, article 43 subsection 1 and article 59 subsection 1 of the Constitution of the Republic of Croatia.

Article 197 subsections 1, 2, and 3 of the Labour Act prescribes:

"(1) Collective agreement can determine the obligations of workers who are not members of unions to pay the solidarity share as a compensation for the benefits arranged by the collective agreement.

(2) If the collective agreement determines the solidarity share, the collective agreement takes effect if the employees of the area for which this agreement is conclided accept it by referendum.

(3) Referendum is valid if at least one third of the employees of the area for which the collective agreement is colected and if more than half of the employers who took part in the referendum declare themselves for the acceptance of the collective agreement.

II. Subsection 1 of the article quoted prescribes the possibility that the union in collective agreement concluded with the employee determines the obligation of union non-members to pay the solidarity share because they use benefits determined by the collective agreement. In this case the employers at referendum must declare themselves for the acceptance of the collective agreement, which is also the condition of its taking effect. Subsection 3 prescribes that referendum succeeds if at least one third of all the employees (both member and non-members of the union) takes part for the area included in the collective agreement and if more than half of all the employees who participated in this referendum declare themselves in favour of the acceptance (one sixth of the employees).

The prescribed way of accepting the collective agreement by referendum is not in accordance with the provisions of article 14 of the Constitution of the Republic of Croatia. Provisions of article 197 subsection 2 and 3 discriminate the employees who are not members of unions in relation to those who are, or in other words it puts them into the position in which they are not equal before the law considering their membership in the union. Namely, employees who are members of unions conclude a collective agreement with their employer through their representatives, and then they declare themselves about the acceptance of this collective agreement by referendum. Therefore, employees who are not members of the union, unlike the members, decide on the collective agreement twice.

III. Article 116 subsection 3 of the Constitution prescribes: «The status of civil officials and labour and legal status of employees is determined by law and other regulations».

Article 12 of the Labour Act mentions, as the source of labour rights for other employees, law, regulations on work, agreement made between employees' committee and employer, collective agreement and labour agreement.

Therefore, the Constitution prescribes the obligation that the status of civil employees and

labour and legal status of employees is completely arranged by law and other regulations. Therefore it is contrary to the quoted provision of the Constitution to regulate very important issues of employees or labour legal status of employees, such as basis for the salary calculations or annual vacation (we mention only Constitution guaranteed labour rights), not by law nor other regulations, but collective agreement only, by which in an unconstitutional way civil officials and employees are forced into joining unions.

The issues of labour legal status of other employees can be regulated by different acts from law to labour agreements.

Article 174 subsection 4 of the Labour Act prescribes: « Based on the statute the purpose of the union must be the conclusion of the collective agreement.»

What follows from the provisions quoted above is that every single government official or employee or other worker who wants his labour legal status to be regulated by the collective agreement can, using his right to free associating guaranteed by the Constitution, join the union, whose purpose is the conclusion of the collective agreement.

Government officials or employees and other workers who, using the same constitutional right to free associating, do not want to join the union, have chosen his labour legal status to be regulated by other sources of the labour right.

From all the above, it is obvious that the provisions of article 197 subsection 1 of the Labour act are based on the wrong presumption that all the workers who are not members of the union use the benefits regulated by the collective agreement and because of that they are imposed with the obligation of paying compensation (solidarity share).

IV. Article 197 subsection 2 and 3 of the Labour act prescribes that the collective agreement which regulates the solidarity share, and which is, pursuant to the article 174 subsection 4 of the same Act, the purpose of the existence of unions, takes effect if at referendum for its acceptance at least one sixth of all the workers of the area for which it is concluded decide in favour of it.

Therefore, due to the fact that the union decided on the solidarity share, the Labour act prescribes that the collective agreement with such a clause applies to all the workers, if it is approved by one sixth of the workers at referendum. Thus the collective agreement applies to every single worker, regardless of his will, and by force of law (article 191 subsection 2 of the Labour act) the employer deduces the solidarity share from his/her salary.

The Ombudsman finds the provision of article 197 of the Labour act against the spirit and dictum of provisions of article 43 subsection 1 and subsection 59 of the Constitution. Article 43 subsection 1 prescribes: « Everybody is guaranteed the right to freely associate with the purpose of protecting their interests or standing for social, economic, political, national, cultural or other beliefs or goals. Owing to this everybody can freely establish unions and other associations, joining them or leaving them pursuant to the law.»

Article 59 subsection 1 says: « All the employed have the right to establish unions to protect their economic and social interests and join them or leave them freely.»

What is obvious from Constitutional provisions quoted above is that every individual who wants to support his/her social and economic rights by concluding the collective agreement, is guaranteed the right to establish or join the union freely. Free right of every individual to such a

support cannot be replaced by the will of the majority of one sixth of all the employees, expressed at referendum.

The Ombudsman finds that the provision of the article 197 of the Labour act leads to a dangerous precedent that violates human rights and Basic freedom guaranteed by the Constitution - the right to free associating. Apart from that, the union puts itself without basis into a better position by the quoted legal regulation. Therefore we suggest that the Constitutional court of the Republic of Croatia, pursuant to the article 55 subsection 3 of the Constitutional law, cancels the provision of the article 197 of the Labour act.

Outcome of the case: The Constitutional court of the Republic of Croatia has not yet decided on the Ombudsman's request.

II.

Description of the case (**P.P. – 678/04**)**: M. Š.** filed a complaint about the work of the Ministry of finance, Customs administration. Namely, after the apprentice period he was not extended the civil service to a permanent period.

Measures undertaken: After having carefully considered the complaint and the documents enclosed, the Ombudsman did not find the violation of the complainant's rights, about which he informed him in the following official letter: «Out of the documents enclosed it is obvious that by the decision of the Ministry of finance on 17 June 2003 you were admitted into the civil service as an apprentice for a temporary period of 12 months. By the decision of the Ministry from the 27 August 2003 you were assigned as an apprentice to the work of the III category in Customs administration, customs office Z., customs branch office H. K., Customs unit I, Z. Despite the negative conviction of your labour capability to perform the work of customs apprentice from 12 September, you remained in the civil service till the 8 August 2004. It is obvious from the decision of the Ministry of finance from 8 September that your temporary civil service ends due to the end of the period you were admitted to.»

Article 80 subsection 2 of the Act on civil officials and employees (Narodne novine issue 27/01) prescribes that apprentices are admitted into the civil service on a temporary period necessary to perform apprentice practice. The same article prescribes the possibility of extending the civil service to a permanent period, if in the body of government authority there is a vacancy to which the apprentice can be assigned after he/she passes the state professional exam. Thus, the Law on civil officials and employees, under the requisitions prescribed, gives possibility, and not obligation, to extend the civil service to a temporary period for an apprentice."

III.

Description of the case (**P.P. – 498/04**): **B.Č.** filed a complaint about the work of the Ministry of the interior – non-execution of the valid verdict. Namely, by the verdict of the County court in Z. from the 7 November 2002 decisions of the Ministry from 30 August 1991 and 25 September were cancelled and the Ministry was ordered to admit him into the labour relation with 1

October 1991 and to assign him to the post that suits his professional qualifications.

The county court in Z., also reached a decision on 16 January 2004 on distraint by which the execution of the verdict was ordered within 3 days from the day of the decision delivery, under the threat of fine to the amount of 10.000,00 kn.

Together with the complaint the complainant enclosed copies of responses to his reports from the Office of the President of the Republic of Croatia, Ministry of the interior, Administration for legal and personnel issues and Counter-intelligence agency.

It is obvious from the reports that the reason for the non-execution of the decision is the dispute about determining the legal successor of the Protection of constitutional order service, in which the complainant worked.

Measures undertaken: The Office intervened by sending a recommendation to the Government of the Republic of Croatia in which he said:» Since the valid verdict finds that the labour relation was interrupted illegally, the complainant started the procedure against the Ministry of the interior for the compensation of the damage caused by that, and this procedure is run before the County court in Z. Once again we mention that by the decision on the constraint the Ministry of the interior was ordered to admit the complainant back to work under the threat of fine to the amount of 10.000,00 kn. Due to the non-execution of valid court verdict, the amount for the compensation of damage increases and the costs, paid by the state budget, increase.

Following all the above, the Ombudsman, pursuant to the article 7 of the Ombudsman's act (Narodne novine issue 60/92) recommends that within your authorities you enable the complainant the fulfilment of his rights guaranteed by the valid court verdict. Inform the Ombudsman on the measures undertaken regarding this recommendation within 30 days.»

Outcome of the case: Unknown.

Note: The government of the Republic of Croatia has not responded to the recommendation of the Office, nor has the complainant contacted the Ombudsman again.

3. Property and housing rights (ownership, housing, expropriation, denationalization, property insecurity)

3.1. Ownership rights and property return

The protection of the ownership rights and other real rights is performed by the court. Therefore the authority of the Ombudsman in discussing and/or investigating individual violations of constitutional and legal rights of the citizens is limited.

The procedure of investigation was performed by the Office only in those individual cases in which the rights of the citizens were violated due to procedures and mistakes of the units of local self-government as holders of ownership rights. The intervention of the Office at the same time has a point of view regarding the violation of rights and the recommendation and suggestion for the removal of

consequences.

In this report period the number of complaints of the owners whose property was given to temporary use, is reduced, but there were citizens for whom the procedure of return lasts extremely long. The number of solved cases in which the owners are led into the property is evident.

What remained unsolved is the matter of term by which the user must move out of the property of the owner. Determining the term is particularly doubtful in cases in which the user's housing provision is solved by giving construction material – the building of the house (the term is not determined but determinable). Apart from that, in some cases it has been noted that, when the user does not want to leave the real estate, the bodies in authority do not act pursuant to the provisions of the Law on areas of special state concern. In such cases, it is the duty of the Ministry of sea, tourism, transport and development, to file a suggestion to the state attorney's office immediately when finding out that the user does not want to leave the object, about the starting of the court procedure of eviction.

In some cases it was noted that the Ministry does not do that within the legal term. Court procedure can also be started by the owner, but it is a notorious fact that conducting a court procedure is a financial burden to those who live at their homes, and this particularly implies this category of citizens who, as a rule, do not have enough means of sustenance.

The additional problem is the investigation of the information about the user of the real estate, regarding the common claims that the user (co)owns a real estate somewhere else, but that he or she does not want to move out.

It is important to correct this practice and check the facts in all the cases in which the owner claims that the user has the property over a real estate.

Housing provisions of refugees and exiles is in the majority of cases solved by giving the construction yard and construction material. Returnees get reconstructed houses by the system «key in hands».

To the returnees from Serbia and Montenegro houses are reconstructed by building new houses according to the number of family members in the time of establishing right to renovation (note: the majority of families got new members in the meantime, through marriage and babies born in exile). Also, categories of destruction are now bigger, since houses are devastated because they were not used for a long time (8 – 10) years. Present returnees do not have a ban on disposal of the renovated house for the period of 10 years, unlike those citizens who renovated the house following the earlier regulations, through the renovation loan from 1992/93. Houses are also reconstructed for the inheritors who in 1991 did not register the place of reconstruction as their domicile.

Favourable conditions of realization of rights to reconstruction for the people who are realizing it now, are the reason why in the areas of special state care there is the feeling of discrimination among the Croats.

Approximately 750 owners still wait to have their property returned.

I.

Description of the case (**P.P.- 1342/04**): Through the Committee for human rights Karlovac

the Office was informed about the case of the violation of property return right. The owner submitted a request for the property return of his possession in August 1997. Family house in K. in C. is still possessed by the user A. B. The same refused several times the alternative accommodation offered. Finally she accepted the donation of building area and material, but she still stalls moving out.

Measures undertaken: The report was asked from the Administration for the exiles, returnees, and refugees about the real situation, and this was stated: « Investigation of the situation implies the delivery on data whether the Administration for the exiles, returnees and refugees carried out the supervision of the user's right to housing provision, in order to prevent further stalling of returning the property to the owner. Namely, the term for the return of the house to the owner in his possession cannot be undefined, in the way that it is determined by the temporary user.»

Outcome of the case: The owner was returned the possession on 3 December 2004.

Note: A violation of the right by stalling the procedure was observed.

II.

Description of the case (**P.P.- 313/04**)**: N. V.** submitted the request for the return of his property on 26 November 1997. He got the decison on the withdrawal of the right to the temporary use of his house in K., cadastre particle no. .../69,cadastre municipality K., as well as the valid and distraining verdict of the County court in B. about the eviction of the user V. B. who does not realize his right to housing provision (providing alternative accommodation).

Since the County court in Benkovac needs administrative decision on the withdrawal of the right to temporary use, certified by the clause of validity in order to carry out the procedure of distraint, the same administrative decision was asked for by the request form 15 October 2003. However, the complainant still did not entered into the possession of his house, for the reason of not having been delivered the certified decision.

Measures undertaken: The Administration for the exiles, returned refugees and refugees was asked to declare themselves about the reason why it did not act on the client's request.

Outcome of the case: The complainant realized the compensation of damage caused by the non-usage of his property, to the amount of 7 kn/m2 a month.

Note: A violation of right by stalling the case was observed.

III.

Description of the case (**P.P.-1625/04**): **M. K.** and **N. K.** are owners of the family house in **K.**

They submitted the request for the return of their property on 18 September 1998. Officials of Regional office for exiles, returnees and refugees do not want to enter them upon the possession of property. Their house was given to temporary use to family M. D. that at that time had refugee status. In the meantime, family D. solved the housing issue. They moved out of their house in R. no. 59, but did not return the house in possession to the Office. (in other words they did not handed in the keys).

Measures undertaken: Since the house has been empty for a month, the Administration for the exiles, returnees and refugees was pointed at this case in order to carry out the procedure of entering upon the possession of the property without delay: « The Office for exiles, returnees and

refugees can/must by its official duty determine the real situation and by official duty end the procedure, when this is made possible by the objective circumstances.»

The outcome of the case: The owners were entered upon the possession of their property on 18 July 2003.

Note: A violation of right by stalling the procedure was observed.

IV.

Description of the case (**P.P.-1542/04**)**: D. Š.** got the decision of the Administration for the exiles, returnees and refugees from the 30 October 2002 by which D. B. and others are withdrawn the right to temporary use of his house at the address K., cad. part. no. 1.../2 cadastre municipality K. The owner was still not entered upon the possession.

Measures undertaken: The report from the Administration for the exiles, returnees and refugees was requested about whether the user was admitted the right to housing provision on the area of special state concern, and, in accordance with that, about the reasons why the owner has not been entered into the possession of his real estate even two years after the day of the validity of the decision.

Outcome of the case: Unknown. The Office was asked to deliver more detailed information on the owner and real estate for identification.

Note: A violation of the right by stalling the procedure was observed.

V.

Description of the case (**P.P.-145/04**)**: D. K.** from **V.** filed a complaint on 31 March 2004 (via NRC – CRP from Sisak) related to the request for property return into the possession. She emphasizes that temporary user has three flats, that they all have places to live, and that he was offered a temporary appropriate housing provision by the Regional office for the exiles, returnees and refugees, local office V., but he refuses that.

Measures undertaken:

On 3 March the Office requested eviction from the Administration for the exiles, returnees and refugees, together with the explanation of reasons for the delay of the owner's entering upon the possession of her property.

Outcome of the case: The Administration for the exiles, returnees and refugees reported on 14 June as follows:

« We enclose the official letter form the Regional office S. delivered on our request, and related to the housing provision for J. V., the temporary user of the complainant's property. Out of the letter it is obvious that the temporary user has not submitted and does not want to submit a request for the housing provision on the area of special state concern.

As the result of the above, it was found that J. C. does not realize his right to housing provision pursuant to the Act on areas of special state care – final draft (Narodne novine issue 26/03). Based on the described, J. V. was issued the Warrant for eviction from the housing object in private property, from 14 November 2003. Considering that the user of the property did not act on the warrant, this

Administration directed a request to the County state attorney's office for the starting the procedure of eviction of an illegal user on 12 December 2003. The procedure of the eviction is in progress.

Pursuant to the article 27 subsection 4 of the same Act, the owner who submitted the request for the return of the property, and who is not entered upon the possession of his property within terms of subsection 2 and 3 of this article, must be compensated for the damage caused by that state.

Pursuant to the Decision on the amount of compensation to the owners for the damage done, (Narodne novine issue 68/03), article 1 determines the amount of compensation for the damage caused to the owners who were not entered upon the possession of their property within terms determined by the article 27 of the act quoted above. The compensation amounts to 7,00 kn/m2 of housing surface. After the poll with the owner in which he stated that he wants the eviction of the temporary user and compensation of the damage until the eviction from his housing object is performed, this Ministry directed a settlement which determines terms of compensation for the damage described, as well as the withdrawal of the charges filed before the court in authority.»

The complainant signed and certified the settlement on the basis of which the compensation will be paid out.

Note: The intervention succeeded, and the violation of the right by stalling the procedure was observed.

VI.

Description of the case (P.P.-988/04): **D.** and **A. C.** from **O.** submitted a request to the Office for the help in realization of their right to the return of their flat and business premises in K.

Measures undertaken: Gaining the insight in documents enclosed, the Office found that by the verdict of the County court in K. (reached by the charges of the owner of the flat – the City of K.) the tenancy right of the complainant expired.

As far as the business premises are concerned, it can be accepted that the damage was done, but from the documents enclosed it is not obvious who the owner of the business premises is. The data from the report of the on-site investigation from 26 August 1991 – quote «in the buffet C., ownership of C. D. form K.» can refer to the ownership of the business, and not real estate.

Outcome of the case: the Complainants were given instruction:

«...it follows that the protection of ownership right and/or the right to the return of possession over this real estate, i.e. to the compensation of damage, can be realized only in court.

Namely, in court procedure about the withdrawal of tenancy right the (only) matter taken into consideration was using the flat to which this tenancy right applied. Therefore, it is necessary to establish in a separate procedure, on the basis of the contract on real estate exchange – house on B. for a flat in K. (with the consent of the owner of the flat to this exchange), the existence of your ownership over the flat (in the sense of acknowledging, stating the act). If by the return of the house, with the purpose of exchange for a flat, you did not become the owner of that flat, nor in part, and if it is not found by court in a separate law suit, then it is necessary, to submit a request for housing provision

(getting a state flat on lease or purchase of flat as part of the POS programme) until 31 December 2004, on the basis of your status of the former holder of the tenancy right, at the Ministry of the sea, tourism, transport and development, Administration for the exiles, returnees and refugees, Zagreb, Radnička cesta 22. Namely, every earlier request for the return of the flat was not considered reasonable, since by withdrawing your tenancy right and court order for eviction you lost your authorization and/or active identification for the possession and use.

If you are the owner of the business premises then as an authorized person of the right you can be entered into the possession, and in case the possession was illegally taken away, you need to ask for the possession protection. For the compensation of the damage, that was done by an unknown perpetrator on 26 August 1991 around 23.15, the compensation should be asked from the Republic of Croatia, on the basis of the Act on responsibility for the damage done as a consequence of terrorist acts and public demonstrations (Narodne novine, issue 117/03).

...However, the Ombudsman does not represent citizens in court and cannot in any way interfere with the matters that are protected by judicial authorities. Therefore, since till now your rights and legal interests have obviously not been properly protected, we refer you to the professional help of a lawyer.

Finally, you cannot realize the right to the protection at the European court for human rights, as you announced in your letter of intention when you addressed County karlovačka, unless you use all the legal resources of the domestic legal system before that.»

VII.

Description of the case (**P.P.-1739/04**)**: I. G.** from **O.** and **D. G.** from **Z**., owners of the business premises in O., filed a complaint to the Office because of rough violation of compensation right, the right to lease concerned. The real estate, that was returned to them pursuant to the Act on compensation for the property taken away during Yugoslavian communist regime, is now used by the Government authority office in Županja.

Measures undertaken: The procedure of investigation on the basis of documents enclosed with the complaint was started. It was found that the decision on the compensation became valid on 5 January 2001, and that the ownership of the complainants is not in question. Moreover, they also have the decision of the County court in O. on the registration of the ownership rights into the land register. However, the Government authority office in the county, as the user of the part of the real estate that was returned in possession – business premises on the ground floor of the building – has not drawn a contract on lease of the business premises with the owners for more that three and a half years.

The reasons for which the contract on lease is refused cannot be understood. This is an obvious violation of the ownership rights. And it is even more serious since it is performed by the government administration body.

On the basis of the determined, the director of Government authority office was warned: «. . . about the illegal behaviour and the violation of the right to the compensation for the use of business premises, so that the owners would realize the right to the rent (non-paid and for the future), but also to

solve the issue of legal basis for the use of business premises for the work of government authority bodies, without delay. It was also mentioned because the right to ownership of the Republic of Croatia in two fourths of the real estate was cancelled (note: all the legal consequences that this determination caused were cancelled; a legal situation arose as if nothing was established)»

The warning was, as an information notice, delivered to the Central government office for the state property management.

Outcome of the case: Unknown. The report requested was not delivered.

Note: Complainants' ownership rights are violated.

VIII.

Description of the case (**P.P.-38/04**)**: K. J.** filed a complaint to the Office about the work of the local self-government unit. Since 1989 he cannot solve the issue of the purchase of a part of the neighbouring particle with the aim of creating construction particle on which he built his family house. Even the Administrative court of the Republic of Croatia was deciding on this case. On the 20th meeting of the County committee, held on 12 October 1995, the decision was made by which the requested sale was approved, all with the goal of executing the decision mentioned above.

Pursuant to this decision, and with the goal of paying the fee, the evaluation of the value of 145 m2 was performed. After 8 years, and after the total of 13 (thirteen) years, on 5 November the decision was made on the same case by which the request was denied. This decision is the direct motive for the complaint.

Measures undertaken: The investigation procedure was started. The starting point was that the complainant cannot finally solve the matter of construction particle only because of, due to illegal building, or to be more accurate, due to the tolerance of the usurpation performed to the benefit of the owner of the building cadastre particle no. 4 cadastre municipality S., the situation in nature does not coincide with the cadastre situation. Therefore he is put in an unequal position – the right to the formation of the particle (confirmed by the Administration court decisions) is denied and violated.

The Administration court was asked a declaration and the accurate information and the real reasons on the basis of which it was concluded that 145 m2 of the real estate in question cannot be sold with the goal of forming a construction particle to the benefit of K. J. the deceased Stipan from S.

Since the reply was not sent within the period of 30 days, the same case was rushed by the rush note in June 2004., and again in September 2004 together with the warning about the authorities of the Ombudsman.

Outcome of the case: In the investigation procedure it was evaluated that there is a reasonable doubt that the rights of the complainant are seriously violated by delaying decisions of bodies in authority, by decisions not made within reasonable periods, as well as by non-performance of these bodies in accordance with the legal understanding and instructions of the Administrative court.

On the failure of the president of the County committee to obey the requests of the Ombudsman in order to deliver information necessary to consider this case, and pursuant to the provisions of article 7 subsection 4 and subsection 5 of the Act on Ombudsman, the Croatian parliament and the public were informed.

IX.

Description of the case (**P.P.-1644/04**)**: M. P.** from **P.** filed a complaint to the Office about the help in the protection of the right to ownership that was taken away – compensation for 15 000 m2 of land on the area of industrial zone in P.

Measures undertaken: It was concluded that the land in question was sold to K... d.o.o. by the city of P. without the public bid, and all the information available signify that at the time of the sale the City was not the owner. Therefore the Local government was given a suggestion to carry out the settlement procedure for the compensation. . . « starting from the fact that: M. M. P. (1) is the person of old age, ill and widowed, (2) that the matter of validity of the contract is questionable since the act and way of sale is questionable; (3) the conclusion is made that the complainant is put in an unequal position to other citizens who have been in the same or similar legal situation, since the compensation was recognized and given.»

Outcome of the case: Unknown.

3. 2. Housing relations

In the area of housing relations citizens contacted the Ombudsman mainly because of his legal assistance in solving their housing issue.

Namely, relations within this area are defined by court, and the authority of administrative bodies is reduced mainly to solving the previous issue and to the area of housing provision, but only for those cases that are not considered social, in the usual sense of the word.

During 2004 the Ombudsman was contacted mainly by those citizens who lost their apartments –loss of the right to the apartment based on the decision of the government body (administrative and judicial) and by those citizens who can not move into their own flat.

Further on, the Ombudsman is addressed due to the violation of their rights, by citizens who did not buy their apartments under the terms of the Law on sale of the apartments on which there is the right of tenancy.

The interests of former tenants in private apartments, who find themselves harmed and discriminated, on one hand, and on the other, the interests of the owners of these apartments, who often try to clear the apartment in an extremely inappropriate way, come into conflict. This problem asks for an urgent settlement, so that the existing doubts and disputes about whose right is stronger, could be settled. We witness unpleasant events covered in media. The fairest solution must be found by the appropriate changes of regulations, and funds from the state budget must be provided for the compensation of one of the parties mentioned above, depending on the decision the legislator makes.

The Government administration, by missing the reasonable deadline in which a decision must be made about the property confiscated during the Yugoslavian communist regime, questions legal safety of its citizens and the realisation of the right to the purchase of the apartment guaranteed by the law.

Former holders of tenancy rights to the apartment which, after 1991, was transferred into the state ownership (area of special state concern), rose the issue of non-recognition of the legal position of

the protected landlord on the other apartment, that is to be given to them after reconstruction.

Namely, "former" tenants in the areas of special state concern find themselves in the situation where their housing issue is decided on according to the unique programme of housing provision. This programme does not make a difference between the legal grounds for the loss of the possession over an apartment: between those tenants whose flat was destroyed in war and those who lost their tenancy right by an eviction notice.

I.

Description of the case (P.P. – 1366/04): **tenancy rights eviction notice and loss of the apartment:**

Mr. M. A., the resident of Serbia and Montenegro, complains about the work of government bodies of the Republic of Croatia, the City of Z., and the County court in Z., all because of the tenancy right eviction notice and the loss of the apartment in the settlement T., to which he had tenancy rights till 1991.

Measures undertaken: After having considered his complaint, it was estimated that there are no grounds for the investigation procedure. Therefore M. A. was given the reply:

"Starting from the crucial fact that the tenant is not the owner of the apartment, pursuant to the Law on housing relations (on the basis of which you acquired tenancy right), the tenant can be given tenancy right eviction notice when he and the members of his household stop using the apartment for longer than 6 months without interruptions. Regarding this provision, and under circumstances from 1991, the Supreme court of the Republic of Croatia took the view that the war by itself, without some concrete reasons for the impossibility of using the apartment, does not present a justified reason for non-use of the apartment. Based on the same view, illegal moving in of the third person also does not justify the non-use of the apartment. The Supreme court of the Republic of Croatia explains the view taken by the fact that the tenant would not have been given tenancy right eviction notice if he had undertaken appropriate steps and actions for getting the apartment into his possession. The necessary actions were supposed to be taken within the legal period of 6 months.

The issue of tenancy rights is confirmed in the same way and explained in whole by the verdict of the European court for human rights, from 29 July 2004, in the case of the tenancy right holder from Z. against the Republic of Croatia. The European court for human rights found that the tenancy right eviction notice due to the non-using of the apartment for a period longer than 6 months did not violate the Convention for the protection of human rights and basic freedoms and the corresponding Protocol no. 1.

In the area of the Republic of Croatia now you can have the legal position of former tenancy right holder.

Therefore we advise you, pursuant to the special programme for housing provision for former tenancy right holders, to request an apartment at the Ministry of the sea, tourism, transport and development, Administration for exiles, returnees and refugees, by 31 December 2004 (Zagreb, Radnička cesta 22). This Ministry is authorized for housing provision of citizens (returnees) who in the Republic of Croatia acquired tenancy right to an apartment in social property by 8 October 1991. The condition for the acquisition of housing provision right is that you do not have a house or apartment in

your ownership or co-ownership in the Republic of Croatia or in the areas of former SFRJ republics, and that you did not sell, give, or in any other way abalienate such property after 8 October 1991. Together with the request you must enclose documents that prove that you had had tenancy right (decision on the allotment of the apartment, contract on the use of the apartment, verdict on the tenancy right eviction notice and other.)".

II.

Description of the case (P.P. – 617/04): **right of the tenants to the purchase of the apartment**:

Mrs B. D. –C. from Z., received a notice from the Town office for constructing the town, no.:ZK-00…/97 from 6 April 1998 by which she was informed that for the apartment on the address in M… no. 27, Z,. for which she acquired tenancy right and for which she submitted the request for the purchase (in 1993), there was a request submitted for the return of the property into the possession of the former owner from whom it was confiscated. The same notice contains the information that this is also the explanation of the reason for which the request of the above-named for the purchase of the apartment pursuant to the conditions of the Law on sale of the apartments upon which there is a tenancy right, is denied.

Measures undertaken: It was assessed that the complainant has been in the state of legal insecurity since 1993, when she submitted the request for the purchase of the apartment. Namely, the above-named has an information that the former owner died, on 7 July 1945 with no inheritors of the 1st inheritance line (unmarried, with no children and closer family). Therefore an investigation procedure was started at the City office for the property-legal issues. The delivery of information on the real situation was requested by the compensation request submitted for the real estate M. no. 27 in Z., i. e. the information on the closing of the procedure by that request.

There was an appeal lodged against the decision about denial of the compensation request for the property confiscated. Considering that the administrative procedure is in progress, the complainant was given the reply: " The Ombudsman does not deal with issues that are in progress. Therefore there are no other ways in which we can intervene for now. Any other interference would be considered untimely. . . if second-instance procedure is not performed within a reasonable period (closed by the second-instance decision), you can contact us again. . .".

III.

Description of the case (P. P. – 1465/04): S. K. from D. filed a complaint stating the violation of the right to home and the right to apartment (for which he acquired tenancy right).

Measures undertaken: Having inspected the documents enclosed with the complaint it was found that this is the issue over which the Office has no authority. Therefore the complainant was, among other, given the reply: ". . . since this is the matter for the jurisdiction of court, the Ombudsman has no authority to initiate any other procedure with the purpose of recognizing, returning or protecting your lost right (tenancy right eviction notice by the decision of the Municipal court in D. from 14 September 1993, that resulted in the loss of the apartment).

At the same time, the attention is drawn to the expiry of legal period within which suggestions can be made in court or legal expedient can be filed. Protection of the European court for human rights

can be requested only when there are no other legal expedients before domestic bodies (which means that the procedure has already been processed by the Supreme court of the Republic of Croatia, Constitutional court).

IV.

Description of the case (P.P. –513/04): Z. H. from Z. filed a complaint – request for legal help and initiative about solving the issue of the return of apartments to former owners by solving housing issues for protected tenants.

Measures undertaken: The complainant was given the following response:

". . . The Ombudsman has already asked the question of amendments to the Law on lease of apartments, in the part of enabling owners to move into their own apartments, i. e. eviction of protected tenants into an apartment that is supposed to be provided by the units of local self-government (municipality, town). The Ombudsman's interference in solving this issue is limited by this, but final amendments to this Act are still not passed.

Legal position of a protected tenant can be held only by a person who, until the Law on lease of apartments took effect, was the holder of the tenancy right, since that position is personal and cannot be transferred to other persons. Mentioned with that fact is that in the contract on the lease of apartment with protected rent all the members of the tenant's family who use the apartment at the time of the conclusion of the contract on the rent are inscribed.

According to the present situation, you must inform the City of Z. about your intention of moving into your own apartment and about the necessity of eviction of the protected tenant, with the remark that the City must provide the tenant with another, appropriate apartment, within a year from the date of submitting the request (note: this term is specified by the suggested amendments to the Law on lease of apartments). However, in order to evict the protected tenant it is necessary to file a suit (charges with the purpose of eviction). The justification of the charges must be based on the fact of the unsolved housing issue: you rent an apartment in the ownership of another person, and you or your wife do not have another housing premises in your ownership that suit your housing needs in your domicile.

V.

Description of the case (P. P. – 813/04): D. M. from V. filed a complaint about the work of the Administration for the exiles, returnees and refugees. He considers that a rough violation of justice was done to him in the way that his apartment, for which he acquired tenancy rights before 1991, was, after renovation, given to the third person for use. He registered for "his" apartment on 20 July 1998, at the Administrative department for the management of municipal property of the City of V. As the holder of tenancy right, for his housing provision he wants that apartment which became unsuitable for housing in 1991 because of war damages**.**

Measures undertaken: The Administration for the exiles, returned refugees and refugees was submitted a request to declare themselves about the possibility of permanent loss of the acquired right to further living in the apartment at the address: Vijeća Europe street (former Proleterska), in V., surface of 73 m2, given for use to the complainant in 1965 by "V. . . ".

In relation to the declaration of the Administration delivered about the objections of the complaint, and in connection with the acquired tenancy right for the demolished apartment, it seemed necessary to warn again:

"Mr. D. M. acquired tenancy right for the apartment, which in the meantime, became state property. By entering into force of the Law on lease of apartments (Narodne novine, issue 91/96), the holder of tenancy rights also acquires the rights and obligations of the landlord. The person who acquired tenancy rights, pursuant to the provision of the article 31 of the Law on lease of apartments, from 5 November 1996, acquires legal position of the protected tenant.

The declaration delivered contains only the statement that the tenancy right expired, however, it does not contain the information whether the complainant is recognized the legal position of the protected tenant.

Further more, the loss of complainant's right to the priority in housing provision is the consequence of the fact that he solved the housing issue himself, by renting an apartment in the ownership of a physical entity, under market conditions, and not with the help of a government body and not on the burden of the state budget.

Therefore in the Ombudsman's procedure a conclusion was reached that the complainant's rights were violated by putting him into an unequal position.

The fact that he could and was able to temporarily solve the housing issue himself, put him into the situation in which his apartment allotment was deferred. Namely, his request for housing provision was for this reason put into the category of "other complainants".

Following all the above, the Ombudsman does not have the information for reaching a decision in the sense of article 12 subsection 1 of the Ombudsman's act (Narodne novine, issue 60/92), necessary for the termination of the procedure and for taking a stand on whether the injustice of the complainant's legal right was done.

All the above is at the same time the explanation of reasons for which the declaration delivered cannot be considered an official letter by which the request was granted in full."

Note: The procedure has not been closed. The investigation is in progress.

VI.

Description of the case (P.P. – 708/04): D. M. from Z. filed a complaint about the actions of the judicial authority – decision on the right to the purchase of the apartment after the death of the tenancy right holder. His father, as the tenancy right holder, submitted a request for the purchase of the apartment. His father died before the contract on the purchase was concluded.

Measures undertaken: D. M. asked the Office for the intervention after his constitutional appeal was denied and before he submitted the request for the protection of his right beyond domestic legal system. Therefore the following response was delivered to him:

"The Ombudsman cannot discuss the court decisions, nor the decisions of the Constitutional court that observed the case and discussed it from the aspect of the constitutional rights, or from the aspect of the violation of basic human rights.

VII.

Description of the case (P.P. – 1232/04): V. P. filed a complaint about the actions of the judicial authority. By the verdict of the Municipal court in K. in 1995 his tenancy right was cancelled. Since that apartment was empty, the complainant moved into it and for its use was regularly paying the monthly rent to the Ministry of defence of the Republic of Croatia.

In the distraint procedure (eviction due to the execution of the verdict on the tenancy right eviction notice), the further use of that apartment (housing premises) was questioned. V. P. is a retired person, of old age, short-sighted.

Measures undertaken: The investigation procedure was carried out at the Ministry of Defence as the authorized to the right of use of the state apartment. In this procedure the following answers were requested: (1) was the above-named in the meantime evicted (29 July 2004); (2) the reasons for which V. P. (military pensioner), as the former holder of the tenancy right to this apartment, cannot get a valid contract on the lease of the apartment; (3) the reasons for which the above-mentioned cannot be recognized right to further use, as was tacitly recognized, since September 2000.

The same official letter emphasized: " Taking into consideration that the complainant is a short-sighted person of old age (67 years) who cannot solve his housing issue in any other way since he does not have another apartment in which he could live, we suggest taking into consideration the possibility for recognizing rights to the lease of apartment, for the period the above-named needs the apartment for his own housing provision.

Outcome of the case: Unknown.

3. 3. Property confiscated during the time of the Yugoslavian communist regime

In 2004 complaints of citizens regarding the realization of their right pursuant to the Law on compensation for the property confiscated during the time of the Yugoslavian communist regime, as a rule contained complaints about the long duration of administrative bodies procedures (of first and second instances) and about the "silence of the administration". Complaints about the "silence of the administration" and missing deadlines for making decisions were, as in previous years, explained by reasons such as complexity of procedures and lack of the sufficient number of officials that carry out procedures by compensation requests.

Throughout 2004 a significant number of citizens asked for legal help/opinion of the Office also because they wanted to examine their own understanding of the right to a compensation, or because they wanted to examine the validity of the administrative body decisions.

I.

Description of the case (P.P. – 149/04): M. K. from S. filed a complaint about the work of Administration for civil right of the Ministry of justice – because of non reaching the decision on the appeal in the procedure of nationalized property return. The request was submitted on 25 January 1997. The first instance decision was reached on 16 September 2003 and, by the day of filing the complaint, the complainant's appeal was still not decided on.

Measures undertaken: On 7 April 2004 the Office asked for the report from the Administration for civil right of the Ministry of justice about the reasons for the delay of decision on

the appeal.

Outcome: On 15 July 2004 the Ministry delivered the report in which it states that the complaint was not decided on due to the large number of complaints filed. The total number of cases that are being processed is 4013, out of which about 85 % refer to the procedures of the realization of rights to the compensation for the property confiscated during the time of Yugoslavian communist regime, which are, as a rule, very complicated.

Note: The case has not been closed.

II.

Description of the case (P.P – 1616/04): S. B. filed a complaint about the actions of the Fund for the confiscated property compensation – the right to the purchase of a part of the apartment. The state became the owner of the apartment pursuant to the provisions of article 2 of the Law on the compensation for the property confiscated during the time of the Yugoslavian communist regime. The building was taken away from two brothers, P. P. and S. At the time of the confiscation of the building they were joint owners, each owning ½ of the building (in indivisible parts). P. died without inheritors. S. was inherited by his wife and she asked for the compensation for the property confiscated from the deceased husband.

It is stated that the other tenants in the same building purchased the apartments for which they have tenancy rights.

Measures undertaken: It is established that the case should be taken as a complaint about the work of the bodies of government administration since it contains basis for complaint about: (1) the complainant was put in an unequal position in relations to other tenants who have already purchased apartments in the same building; (2) stalling of the case of tenant's B. request for the purchase of the (other) indivisible part of the apartment.

The conclusion that there was a violation of rights to equal position was based on the provision or the article 32 of the Law on the compensation for the property confiscated during the time of Yugoslavian communist regime (Narodne novine, issue 92/96, 80/02). The provision about the return of the apartment into ownership does not refer to cases in which the former owner was confiscated only the indivisible part of the apartment. In such a case the former owner – the authorized for the compensation (in this case the widow S. P.) has the right to the compensation in terms of article 22 of the Law on compensation (former owner has the right to the compensation, and tenant to the purchase of the apartment).

Therefore the Fund for confiscated property compensation was drawn attention to the fact that this is the case in which the right to the purchase does not exclude the former owner's right to the compensation.

Since the tenant can realize the right to purchase in terms of article 9 subsection 2 of the Law on sale of apartments for which there is tenancy right (if the seller does not conclude the contract at the buyer's request, the buyer has the right to start the procedure and ask the court for the decision that completely replaces the contract), we asked for the declaration about the reasons for which by now the contract on the sale of the other part of the apartment to M. B. was not concluded.

Note: The investigation procedure is in progress.

III.

Description of the case: (P. P. – 515/04): B. I. from P. filed a complaint to the Office about the realization of rights within a reasonable period. The decision on the property return by his request submitted almost seven (7) years ago was not reached by the date of the complaint. The complainant points out that he is in direct verbal contact with the Service for property-legal issues in V. However, he always gets the same answer: his request is not in line for the decision.

Measures undertaken: The Service for property-legal issues of the Office of government administration in Vukovarsko-srijemska county was requested a declaration on the reasons for missing, not only legal, but also reasonable deadline for making the decision.

Outcome of the case: The report was delivered that shows that the case has not been solved yet because the complainant did not complete his request, even thought he was asked to.

Note: The case closed. There was no violation of rights in the procedure of the government body.

IV.

Description of the case (P.P – 1385/04): S. R. from G. filed a complaint to the Office because of the failure to make a decision (administrative procedure – work of the second-instance body). The violation of his right was explained by the fact that the administrative procedure has been in progress for whole seven (7) years. In June of this year the complainant contacted the Minister of justice for the same issue with the suggestion of making a second-instance decision by the Administration for civil rights.

Measures undertaken: The Administration for civil rights of the Ministry of justice was pointed at the facts defined in the procedure run by the Office: the second-instance procedure in 2001 was carried out superficially and incompletely (note: the consequence of this was that the deadline for making the final administrative decision was extended by more than three years); complainants, as former tenants, were recognized as parties, even though they have a house/flat in the same town in which they live, their legal status of protected tenants is doubtful; the appeal obviously has no character of the protection of rights but is a means of stalling and recognizing rights beyond the measure and level guaranteed by the Constitution and laws of the Republic of Croatia.

Therefore, conducting the procedure in the shortest period possible was suggested (official letter from 22 November 2004)

Outcome of the case: By 31 December 2004 the Office still has not received the report on what was done, requested pursuant to the article 11 of the Ombudsman's act .

V.

Description of the case (P. P. – 727/04): I. S. from Z. filed a complaint to the Office because of the failure of not making a decision in the administrative procedure. The Municipal office for property-legal issues, after seven (7) years from the date of submitting the compensation request, still did not close the procedure pursuant to the Law on compensation for the property confiscated during the time of the Yugoslavian communist regime. Since only two hearings were held before the first-

instance body until the complaint, the conclusion was drawn about the neglect on this issue. Particularly because it is about the request for natural restitution of two business premises in Z., Ko. . . street, no. 28 and T . . . street, no. 55. By stalling deciding on this matter, the complainant suffered damage – in the form of the lost profit.

Measures undertaken: During the investigation procedure it was found that, by stalling the procedure, the complainant's right was extensively damaged. Therefore the first-instance body was requested a report on objective reasons which prevent the decision to be made, or in other words, on reasons for missing the reasonable period within which the decision of the government body must be made.

Outcome of the case: Based on the report of the authorized body it was stated that the procedure was still in progress due to its complexity. Beside, the lawyer representing the complainant, asked for the extention of the period because of the delivery of the necessary documents. Therefore, this is also one of the reasons for non-closure of the procedure.

Note: The complaint about the work of the first-instance body was without foundation.

VI.

Description of the case (P. P. – 644/04): V. M. from Đ. asked the Office to interpret the Law on compensation for the property confiscated during the time of the Yugoslavian communist regime and the Law on inheritance. All this because of her right to the confiscated property.

Measures undertaken: The Office replied as follows: ". . . The Ombudsman cannot be engaged in giving the requested explanation or opinion. Considering the procedure of the second-instance body is in progress, the matter of the authorized to the compensation on the grounds of the right of inheriting the inheritor of the first inheritance line will be validly discussed in this procedure by the authorized body (the Ministry of justice).

Regarding the complaint, the second-instance body must make the decision and deliver it to the party within 60 days. After the expiry of this term, your right to the decision of the government body can be protected by submitting a written request to the second-instance body for making decisions within the seven- (7) day period, under the threat of submitting the administrative charges before the Administrative court.

VII.

Description of the case (P.P. – 733/04): M. T. from V. asked for assistance in finding the legal way to shorten the period of getting the legally valid decision on the compensation for the property confiscated (the so called denationalization).

Measures undertaken: M. T. received the following:

"Documents that you delivered to us do not contain the second-instance decision, which means that your case was returned to the Service for property-legal issues in K. by all your requests, and therefore it is not possible to establish the reasons for which the state of administrative issue was returned to the state as if the decision was not made at all.

However, the administrative decision (regardless of whether it is the first or second-instance decision) can be altered on the occasion of administrative dispute, particularly if the reasons for the

charges are evaluated as the reasons for which the charges will be adopted. Decisions can also be altered for the reasons that allow the re-trial, or in other words continue the procedure with the goal of making the final decision – if in the meantime the regulation needed for making the final decision was passed. . . there is no obligation of the administrative body to act in the way described –the body itself makes the decision about this.

. . . special measurements were established for determining the value of some real estates (agricultural lot, business premises, construction lot). Therefore, we can only refer you to submitting the suggestion to divide the procedure by requests in keeping with the cases (as you stated: request I, request II)".

4. Rights of Croatian Homeland war soldiers and rights of the members of their families and war victims

4. 1. Rights of Croatian Homeland war soldiers and rights of the members of their families

The most common reason for contacting the Ombudsman in the procedures of recognizing rights of Croatian Homeland war soldiers and rights of their family members is the long duration of these procedures. The interventions referred to the Ministry of family, Croatian Homeland war soldiers ("branitelji") and intergeneration solidarity as a rule requested rushing the cases. Documentation delivered to the Office by complainants shows that there is a probability of missing the legal deadline for performing revision, so instead of applying the provision of article 4 subsection 131 of the Law on rights of Croatian Homeland war soldiers and rights of their family members, this revision is performed also in those cases for which several months have passed from the deadline determined by this article:

> *"(4) If there is no appeal against the decision of the first-instance body that is subject to revision, and revision is not performed within three months from the date on which the second-instance body received the case, the revision is considered to be performed and consent to the decision is considered to be given.*

I.

Description of the case (P.P.: 1677/03): On 29 December M. Ć. from O. filed a complaint to the Ombudsman stating that the authorized body of the HZMO made a temporary decision on the case no. 167219 on 28 February 2002 by which the complainant was recognized the right to disability pension starting from 16 September 2001, and was determined the advance of the pension money.

By the day of filing the complaint his legal issue was not decided on by the final decision.

Measures undertaken: Pursuant to the authority given by the provisions of the Ombudsman's act , on 29 December 2003 and 16 February 2004 urgent declaration of the HZMO on the progress of the procedure and on the reasons for not making the final decision was requested.

Outcome of the case: The report requested was delivered by HZMO PS in Z. in the file no. 16729 on 4 March 2004.

It is obvious from the detailed report of the HZMO PS in Z. that in the case of M. Ć. the procedure for the realization of the disability pension right was initiated by the Homeland war HRVI (Homeland war disabled veterans) – at the suggestion of the chosen doctor on 21 April 2000.

By the decision of the Ministry of defence disability committee, class: UP/I-805-02/00-03/186, reg.no.:512M2-0303-01-01 from 7 May 2001, the complainant was found incompetent to perform active military service.

On 27 September the HZMO was delivered the decision on honourable dismissal on 15 September 2001.

Test results and opinion of the authorized expert of the HZMO no. 167219 from 19 December the insurant proved total incapability to work.

On 28 February 2002 a temporary decision on the recognition of disability pension rights was made, and the advance of the pension was determined.

On 28 March 2002 test results and opinion of the authorized expert was sent to the military Committee for the disability evaluation revision.

On 9 December 2003 the case was returned from the military Committee for disability evaluation revision with the consent to the evaluation of disability given by the authorized expert on 19 December 2001.

On 26 January 2004 a temporary decision on the recognition of the disability pension right, together with the appropriate pension compensation, was made.

The decision was temporary because the MORH did not deliver the form of guard salary.

On 24 February 2004 the Department of the registry records got the information on the amount of guard salary for 2000.

On 3 March the final decision on the disability pension of the Homeland war HRVI for M. Ć. who suffered from permanent loss of working capability (general incapability to work) due the wounds that were direct consequence of participating in Croatian sovereignity defence, and disability pension is determined starting with 16 September 2001.

Note: the intervention succeeded. It is important to warn the authorized bodies about the long duration of the procedure after filing the complaint about the realization of rights.

4. 2. Right to reconstruction

The basic problem of the majority of complainants in procedures started with the purpose of realizing rights to reconstruction is the long duration of procedures. As a rule, authorized bodies do not comply with the legal periods within which they must decide on a request or complaint.

I.

Description of the case (P. P. – 1071/04): reconstruction of a building damaged in war.

Complaintant L. V., from Dragalići, contacted the Ombudsman because of the complaint against the work of the Administration for the reconstruction of family houses, Ministry of the sea,

tourism, transport and development, that did not decide on the appeals against first-instance decisions on house reconstruction.

Measures undertaken: The Ombudsman requested the report from the Administration for the reconstruction of family houses on 13 July 2004, about the reasons for which decisions on appeals were not made. In the response from the Administration, from 22 October 2004, it was stated that it is not possible to obey the legal period for the decisions on appeals, because the number of appeals is too big, and the number of the employees working on them is too small.

On 6 December 2004 a rush note was sent, however, the same response was delivered. After that another rush note was sent, and the response was delivered that on 19 January 2005 the decision on the appeal was made, by which the appeal was adopted and the case was returned to the procedure before the first-instance body.

Outcome of the case: the case was closed.

Note: the Ombudsman was addressed by a large number of citizens with the identical requests about reconstruction issues.

II.

Description of the case (P.P. – 122/04): reconstruction of a building destroyed in the war:

Mr. M. B. from J. filed a complaint because he was not recognized his right to the reconstruction of his parents' house at the address P . . . 8, in P. The complaint at the same time requested the development of the appeal extension against the decision on the reconstruction request rejection.

Measures undertaken: The Ombudsman cannot undertake legal actions in the capacity of the citizens' authorized, and Mr. M. B. was answered as follows:

" . . . the Ombudsman cannot make petitions and submit them to government bodies, since such behaviour would not be pursuant to the law. The response and explanation of why we cannot create the extension to your appeal, submitted to the Administration for the reconstruction, against the decision that rejected the reconstruction request in full, is also stated.

However, we also find it necessary to explain that this right is not recognized for the reason of not meeting the requirements of the domicile registered by 1991 (as the place of permanent residence), at the address of the house for which you submitted the reconstruction request. Since your case was not the only one, the Ombudsman could only do so much as to warn the Government of the Republic of Croatia and the ministry in authority, and to suggest the amendments to the Law on reconstruction, in the way that the reconstruction right is recognized without this condition of earlier registered domicile at the address of the object of reconstruction, but with the statement that obliges the owner to future residence at that reconstructed house. The last suggestion of such kind was sent in February this year. If the preposition is adopted, you will be informed in due time.

However, in July 2003 the Law on the responsibility of the Republic of Croatia for the damage caused by terrorist actions was passed. Even though this Law refers to the application of the Law on reconstruction, we refer you to the Municipal state attorney's office to submit the request for the damage compensation. Namely, in case you do not achieve out-of-court settlement with the state attorney's office, you could request the compensation of damage of your demolished house in court.

III.

Description of the case (P.P. – 1937/04) reconstruction of the building damaged in the war:

Mr. D. Š. contacted the Ombudsman on 17 December with the complaint and request for help in the matter of realizing his right to the reconstruction of the house damaged in the war.

He states that the Decision of the Government administration office, Šibensko-kninska county from 14 June 2002, defines the right to the support in equipping the household with the most essential objects, and that the Agreement was concluded on the reconstruction of the house damaged in the war, but the obligation from the issue 3 was not performed.

Therefore he asks the Ombudsman to rush the administrative body in authority to act according to the Decision, within his legal authorities.

Measures undertaken: On 13 December 2004 the Ombudsman requested the Administration for the reconstruction of family houses, Ministry of environment protection, regional planning and construction, the report on reasons for non-execution of the Decision, urgently, within 30 days at the latest, pursuant to the provisions of article 7 and 12 of the Ombudsman's act (Narodne novine issue 60/92).

Outcome of the case: The Administration for the reconstruction of family houses of the Ministry of the sea, tourism, transport and development of the Republic of Croatia, delivered the declaration, as follows:

"According to the reconstruction registry of the Department for the reconstruction of family houses, Š. D.'s house was reconstructed by the donor ASB, and technical check-up was performed on 1 July 2003. The donor ASB did not report the technical check-up for the house in question until June 2006 to this Ministry, and the furniture in question was ordered by the TVIN company from Virovitica in the current programme of equipping houses.

Note: Intervention succeeded.

4. 3. Exiles and refugees

I.

THE AREA OF COMPLAINT: **complaints of exiles and refu**gees

Description of the case (P.P. – 1783/04): On 3 November 2004 the Ombudsman was addressed by Mr. B. C. from Drniš, Paklari 8, with the complaint and request for help in the matter of realizing her rights to the green card.

The request was submitted to the Regional office Knin, on 1 March 2004, and the procedure was not decided on even though 8 months have passed.

Measured undertaken: On 9 November the Ombudsman requested the Administration for exiles, returnees and refugees, Ministry of the sea, tourism, transport and development of the Republic of Croatia, to investigate the case and the notice on the reasons for not deciding on the request, immediately, and within the period of 30 days at the latest, pursuant to the provision of article 7 and 12 of the Ombudsman's act (Narodne novine issue 60/92).

Outcome of the case: On 2 November 2004 the Administration for the exiles, returnees and

refugees, Ministry of the sea, tourism, transport and development of the Republic of Croatia informed the Ombudsman that Mrs. B. C. realized her right to the returnee status on 22 November 2004 (number of card 2-02234082).

5. Rights in the area of regional planning, construction and environment protection

Analysis: Based on the complaints of the citizens who contacted the Ombudsman in 2004 because of the violation of their rights, it can be concluded that the situation in the area of construction and urbanism has not significantly changed in relation to the previous reporting periods. The basic complaints about the work of government administration bodies still refer to the violation of the neighbour's rights.

In this reporting area the fact of neglecting the rights of neighbours was particularly manifested in procedures conducted by construction inspectors; the citizens are taken away their status of the party and interested person who has the right to protect his/her interests before the government administrative body (executive branch of government). Finally, non-efficiency of the inspection, which is particularly evident in the non-execution of the most serious measure ex officio, is of wider social interest. Coercive execution of construction inspectors decisions about the removal of illegal construction is not carried out in time, or is not carried out at all. Therefore the state of tolerating illegally changed environment is obvious.

Construction inspectors cannot carry out the supervision of every single construction yard due to objective reasons (inspectors are employees of the Ministry for regional planning and environment protection, and not of the government office in a county, or of the municipal service, therefore there are not enough employees). This situation causes dissatisfaction primarily of local authorities (in units of local self-government). Units of local self-government do not have the legal expedient to ban and/or stop construction, or to order removal in order to protect their areas so they feel inefficient and helpless. Local government is responsible for the situation in the area of its territorial authority. However, by the transfer of responsibilities, the resources (material, active identification – authority, employees) by which it could perform the duties within its responsibilities, were not transferred.

Moreover, the institute "appeal does not deter the execution of construction inspector decision" is not applied at all. This practice directly changes the will of the legislator conveyed by the Law on construction. Coercive execution of the order on the removal of illegal construction is performed after the regular legal way against the administrative decision (appeal, administrative appeal), within the period determined by the Annual plan of execution and sequence criteria, is completely exhausted. Therefore the measure of construction removal loses its purpose for which it was decided on. (note: illegal change in the environment often permanently remains there.)

The lack of regional – planning documents is still the reason for legal insecurity of citizens, regardless of their status of investors or parties that need to protect their interest and rights in the procedure. Some areas and particles are changed their purpose by regional planning documents, and for these changes, as a rule, the owners find out after they took effect. Namely, the institute of public discussion is public only to a certain extent – in units of local self-government citizens do not get the information on the possibility of complaining about regional planning in time.

I.

Description of the case (P. P. – 432/04): construction permit

Citizens of the local committee O. – Centre II filed a complaint regarding the construction of a residential-office building and two garages underground, by the investor L… do.o.o. Z., all on the particle registered as cadastre particle no. …cadastre municipality O. The main reason for the complaint of the residents (about 1000 of them) of this area are two streets, that lead to their family houses and flats, known as Put for P. and Šetelište C., that were not taken into consideration as existing while giving the construction permit and therefore are now in question.

Measures undertaken: Discussing the complaint, it was found that the complaint is about the construction permit issued by the of Government administration office in Primorsko goranska county, Service for regional planning, environment protection, construction and property-legal issues of the branch office O., from 11 July 2003, or about the decision of the Ministry of environment protection and regional planning, from 23 April 2003, made regarding the complaint of the city of O. The administrative suit of the city of O. against the location permit is in progress.

Starting from the fact that the access is obstructed, and that it is impossible to reach the existing resident buildings, due to the administrative decision – construction permit, the Ministry of environment protection, regional planning and construction was suggested, quote: " . . . to perform the supervision over this construction and location permit, ex officio. The execution of this legal expedient must not be influenced by the fact of submitting the administrative suit. Otherwise, every further determent of investigating the permit will cause the changes in regional planning and then consequences for all the citizens who have the undoubtful interest to keep the above-mentioned roads. " (in reality they are blind alleys for which the unit of local self-government have proofs of existance in reality from 1963 and 1965.).

Outcome of the case: The procedure was carried out ex officio at the Ombudsman's suggestion. The construction permit for the building of resident-office building and two garages underground, was cancelled by the right of supervision.

II.

Description of the case (P. P. – 1888/04): removal of the construction built before 15 February 1968

I. and M. A. from I. filed a complaint about the violation of property rights caused by obvious violation of material right – the violation of the provision of article 92 regarding article 119 of the Law on construction (Narodne novine , issue 52/99, i. e. the obvious violation of the provision of article 162 of the Law on construction (Narodne novine, issue 175/03).The main reason for the complaint is the removal decision of the building at the address P. street no. 34, I. In the complainants' opinion this particular case is not about the building built without construction permit, since the building was built based on the decision on the building approval, from 6 June 1966.

Measures undertaken: The complaint was observed as a suggestion for submitting the request for the decision cancellation by the right of supervision. Therefore the Administration for inspection issues of the Ministry of environment protection, regional planning and construction, pursuant to

article 7 of the Ombudsman's act (Narodne novine, issue 60/92), was delivered a warning that the removal decision was issued, while at the same time all the circumstances lead to the conclusion that the removal would be unauthorized, since this order cannot refer to the case of the existing building, quote: " in order to prevent causing irretrievable damage to the owners, the same must be investigated and once again discussed".

Outcome of the case: The Administration for inspection issues, Ministry of environment protection, regional planning and construction sent the reply from which it was found that the removal order was issued for the illegally built part of the building.

III.

Description of the case (P.P. – 183/04): change of the particle purpose.

The Ombudsman was addressed by the petition of 45 citizens - the tenants of the residential building in K. street, no. 14 and 16, D. M., who were complaining about the conversion of the purpose of the cadastre particle no. . . ./7, cadastre municipality D. M., without knowledge and discussion. It is about the land that was until recently a public green surface with the purpose of being children's playground. However, the complainants indirectly found out that the procedure for issuing the location permit is in progress, i. e. that on the same surface a residential-office building is planned to be built (the construction work for the preparation of the construction site were started). All the circumstances lead to the conclusion that the future building will be at an insignificant distance from the complainants' building.

The complaint conveys serious doubt about the non-authorized conversion of the public good status, which cannot be legally altered, as well as about the regularity of the conversion of the purpose of the particle from the green area into the construction particle of mixed purpose, without carrying out the procedure prescribed for the amendments to the regional plan.

Measures undertaken: The Institute for regional planning of the County and the Service for regional planning of the Government administration office in Osječko-baranjska county, pursuant to the article 11 of the Ombudsman's act , were requested a declaration about the complainants' case, about the complaints about the change of regional planning, and the information about the situation of issuing the location permit.

Outcome of the case: After the report was delivered at the Ombudsman's request, the complainants were sent this reply:

" . . . We understand your dissatisfaction, however, the issue of the validity of the contract on the sale of the particle in question is not within the authority of the Ombudsman. Therefore, for this part of the complaint we refer you to the authority of the municipal State attorney.

At the same time, we inform you that we started the procedure of investigating the regularity and legality of the conversion of purpose of the particle and investigating the situation connected to issuing the location permit – in the part of actions of bodies of government administration on the area which is now registered as green. . ."

After receiving the whole report, it was found that in the procedures of location and construction permit the building took part in the administrative procedure via the manager of the building. Following this situation, the Ombudsman did not find legal basis for the complaint about

government bodies, i. e. for his interference with the purpose of protecting tenants' rights to the way of living they have had so far.

IV.

Description of the case (P.P. – 1959/04): legal assistance for the creation of a particle

Ms. M. M. from R. asked the Ombudsman for legal assistance needed for the creation of the particle on which her family house was built.

Measures undertaken: Pursuant to the right based on article 46 of the Constitution, the complainant was given the following response:

"On the basis of the documents that you have enclosed together with your complaint, it is found that you performed the legalization of the house and that you have the valid construction permit. This permit is the legal basis for filing the request to the county Service for regional planning about the procedure for defining the land necessary for regular use of the building, or for defining the construction particle.

Namely, in cases when the construction particle for the existing building (family house) is not defined, then the construction particle is necessary to be defined by a special decision of the above-mentioned service. If the construction particle or land necessary for the regular use of the building cannot be defined on the basis of the regional planning documents (regional plan, detailed plan), then the construction particle is defined in accordance with the regulations of the profession. The construction particle defined by the regulations of the profession, by shape and size must be defined in the way that enables the regular use of the building.

Therefore, we refer you to submit a written request for the definition of the land for the regular use of the building – family house to the Service for regional planning in R., Government administration office in Promorsko-goranska county. This will initiate the administrative procedure, which will be closed by making the administrative decision. The right to forming the construction particle and the protection of this right cannot be realized if you do not have the decision deciding on this.

The Ombudsman considers cases of violations of rights that were performed by government administration bodies. If you cannot prove the fact that the procedure was not started at all by the government administration bodies, then these actions, that the Ombudsman would initiate with the purpose of protecting your right, could be defined as unreasonable."

V.

Description of the case (P.P. – 1818/04): removal of illegal construction

Based on the complaint of the interested party, the Ombudsman found out about the case of illegal construction of a simple farm building in P. street in front of no. 54, V. M., the area of the city of V. G. For this building the removal order was issued by the decision from 27 November 2000. The order from the construction inspection's decision was found final, by the decision on the execution permit of the same classification sign, from 15 January 2001. Illegal building was performed in urban area and in close vicinity to business premises. The same presents a threat in the sense of hygiene, so the execution of the removal procedure was already rushed by the Municipal state attorney's office and

Town government of the city of V. G., several times. However, despite these special execution requests, the removal has not been performed to date.

Measures undertaken: The administration for inspection issues, the Ministry for the environment protection, regional planning and construction was pointed out at this individual case of simple building. The execution of the procedure via other party was suggested, without delay. Also it was emphasized that the reason for further delay of the removal cannot and must not be the order of priority, defined by the "Removal plan".

Outcome of the case: Unknown. The report requested was not delivered to the Ombudsman.

VI.

Description of the case (P.P. – 750/04): violation of ownership right by neighbour's building

Ms. N. K. asked for the Ombudsman's assistance about the construction in Z., next to the particle at the address Street M. no. 4., performed by the investor "Č.gr." According to the statements of the complaint, the problem is in building and locating the construction directly next to the complainant's bounds, in the way that the balcony comes to the inappropriate and illegal vicinity of the existing building. Therefore the complainant expresses serious doubt that during construction there was deviation from the construction permit issued.

Ms. N. K. asked for the supervision of the construction inspector over the building. However, she does not know if the authorizing procedure was performed by the request.

Measures undertaken: The Administration for inspection issues, at the Ministry of environment protection, regional planning and construction was requested to deliver the information about the above mentioned case by Ms. N. K.'s complaint, and according to that also about the size allowed to the investor. At the same time, it was suggested to get the insight into the construction permit with the purpose of establishing rights of the real estate owner at the address M. no. 4, Z., for the protection of her rights and legal interests (the right of the party in administrative procedure).

Outcome of the case: Unknown. The duty rising from the provision of article 11 subsection 3 of the Ombudsman's act (Narodne novine issue 60/92) was not performed.

VII.

Description of the case: (P.P. – 1008/04): violation of rights to undisturbed enjoyment in property

Ms. M. V. from S. suffers the violation of her right to ownership and undisturbed possession of her real estate, and emission, all due to the catering establishment in direct neighbourhood, at the address A. K. M. street, no. 3 in S., owned by T. R. Z. The main complaint is about the conversion of purpose of the real estate, that was performed without the necessary construction permit, as well as about the illegal connection of T. R. Z.'s real estate to the M. V.'s septic tank.

Measures undertaken: Based on the information contained in the complaint, it was found in the procedure before the Ombudsman that the inspection with the purpose of control was performed on 9 and 11 March 2004. However, the situation after the supervision was not altered.

Therefore the Construction inspection in authority was called to deliver the report on the

complete and real situation found, as well as on all the work performed with the goal of the conversion of purpose. At the same time, the information about the decisions made (administrative decision, the copy), and the information about whether the town of S., which is the owner of utility services, was informed about the connection to the septic tank of the neighbouring real estate, with the purpose of professional and authorized intervention.

After having received the report of the construction inspection that was requested, we came to the conclusion that the work at the address A. K. M. street, no. 3, in S., on which the inspection supervision was performed in March this year, was defined as the work of the building maintenance, and that by the work performed, according to the Conservatory department in S., the monumental integrity was not damaged. It was also found that the owner did not get the consent to connect to the utility infrastructure because she does not own the construction permit. However, the request for issuing the construction permit was submitted later on.

Outcome of the case: The inspection procedure with the purpose of supervision was performed, the procedure for obtaining the construction permit is in progress.

The legal and valid decision is expected to be made, and the complainant is expected to protect her right in the administrative procedure of issuing the construction permit. The matter of the undisturbed possession of the real estate and suffering emissions coming from the catering establishment (in direct neighbourhood), should be solved by court. The Ombudsman does not represent citizens in court and cannot in any way interfere with the matters belonging to the authority of judicial bodies.

6. Violation and endangering of status rights

I.

Description of the case (P.P. 632/04): A. F. from M. L., filed a complaint about deciding on the request for obtaining Croatian citizenship, submitted on 31 March 2003. The appropriate decision on the request has not been made by the date of the complaint.

Measures undertaken: On 26 April 2004 the declaration about the actions undertaken, and about the reasons for long duration of the procedure and non-making the decision, was requested.

Outcome of the case: From the declaration received on 1 June 2004 it is obvious that in the legal matter of the complainant, with the purpose of defining facts from article 8 subsection 1 and 2 of the Law on Croatian citizenship, via the Ministry of foreign affairs, the investigation of the validity of the decision on the discharge from Macedonian citizenship was requested.

On 20 September the Office received the report that the body in authority decided on the acceptance in Croatian citizenship, pursuant to article 8 of the Law on Croatian citizenship, and on the request regarding the complainant's children under age, pursuant to article 13 of the Law on Croatian citizenship.

Note: Intervention succeeded.

7. Personal insecurity

I.

Description of the case (P. P. – 339/04): S. P. from K. filed a complaint on 8 march 2004 about the work of the police.

He states that the Police station in S. in 2003 submitted several requests against him with the purpose of opening disciplinary proceedings. He finds the requests insubstantiated and states that multiple disciplinary charges are in fact harassment.

Measures undertaken: The office requested the Interior control of the Ministry of the interior to declare themselves about the charges. The Ministry delivered the declaration with the notice that in March 2004 the Police station Karlovac sent the response to the complainant on his complaint, finding his complaint unfounded.

The request for starting disciplinary proceedings was sent to the Disciplinary court in S. because of reasonable doubt that the complainant violated article 5 of the Law on violation of public peace and order, and that the court made the decision by which the complainant was found guilty, and against which the complainant filed the appeal. The appeal proceedings regarding that matter are in progress before the High disciplinary court.

In January 2003 Police station S. submitted the request for starting the disciplinary proceedings to the disciplinary court in S., because of the reasonable doubt that the complainant committed the offence by article 39 of the Law on weapons. The disciplinary proceedings were stopped and the protective measure of taking away of the pistol "Zbrojevka" in complainant's ownership, was made.

Outcome of the case: on 21 July 2004 the response of the Ministry of the interior was received. Having inspected the documents enclosed with the response, it is concluded that the Ministry acted within its authorities and pursuant to legal regulations.

Note: The complaint was unfounded.

8. Other rights

I.

Description of the case (P. P. – 1934/04): S. B. from Z. filed a complaint with the request for the intervention of the Office with the purpose of obeying the law and the constitution on all levels of executive and judicial authority.

Official letters show that the complainant is not able to satisfy his basic needs. He is put into this position because of the deductions of his pension due to the repayment of the loan to a bank. All the debts to the bank are his own.

The centre for social welfare accepted his request for one-time help so he was given the amount of 800,00 kn twice and the amount of 4.200,00 kn once. The fact that with these amounts he still did not manage to pay his debts, was not the fault of the Centre for social welfare T. or of the Ministry of health and social welfare. Namely, the limits of this financial assistance are regulated and cannot be exceeded.

Furthemore, the complainant is the owner of the real estate in Z. (flat) and in Šibensko kninska county (house built in 1977). The letter from the complainant does not include the information on the monthly pension, and as the owner of the real estate, he cannot be freed of paying judicial taxes

(complaint about the registration of this house into the land register).

Finally, his submission also requested "H. I." d.o.o. to give him material help.

Outcome of the case: After his complaint was considered and discussed in full, it was found that matters, for which legal assistance and intervention was asked, are not within the authority of the Office. Therefore he was delivered the following notice:

"Non-authority over the issues over which you requested protection also means that the Ombudsman does not have instruments for the correction of the situation in which you are, and which apparently resulted from various circumstances that occurred at the same time.".

II.

Description of the case (P. P. – 1327/04): J. C. from Z., represented by a lawyer, filed a complaint about the work of the Service for regional planning, environment protection, construction and property-legal issues, Department for property-legal issues and reconstruction in K. In his complaint he states that his appeal with the files of the case was not delivered to the second-instance body, the Ministry of justice, to be decided on.

Measures undertaken: The Government administration office in Karlovačka county was requested to declare itself about the submission considering the period in which the decision on the appeal must be made and delivered to the party (60 days).

Outcome of the case: Unknown.

III.

Description of the case (P.P. – 1543/04): D. C. from Z. filed a complaint because of the impossibility of obtaining the driving licence for C and C+E category of motor vehicles. Namely, he finds himself in a situation in which he has to wait for a year to get this licence, even though he has passed the test. The same complaint was delivered to the Ministry of the interior in August 2004.

Measures undertaken: The Police administration of the Ministry of the interior was warned that by non-sending the reply to Mr. D. C. they violate his constitutional right.

Outcome of the case: The declaration that was delivered contained the response given immediately after making the enquiry. The complainant was answered:

"After the termination of the period of a year, you will meet the requirements of the new Law on security on roads (Narodne novine, issue 105/04), and then you will acquire the right to drive a particular category of vehicles. The fact that you were allowed to take the test for C+E category three days after the new Law took effect, cannot be evaluated as a failure made at your damage. Namely, the driving test that you passed is not cancelled and its validity is not in question.

If you still find that you were damaged, due to the impossibility of driving vehicle of C+E category for a period of a year, we advise you to consult a lawyer if you want to request damage.

Finally, in relations to the objection regarding the exchange of "old" driving licences, it is important to mention that driving licences, issued in accordance with the valid regulations, will be exchanged within 5 years from the day when the new Law came into force. At the exchange of driving licences, the driver who has the driving licence for A, B, C, D, and E categories, together with these will be authorized A1, B+E, C1+E, C+E and D+E categories."

IV.

Description of the case (P. P. – 1464/04): B. K. filed a complaint about the work of employees of the Police station in O., the Police administration of Vukovarsko-srijemska county and about the work of employees of the Customs administration authorized for the collection of customs duty. The complaint refers to the taking away of parts of household objects and to the payment of export duties for some other things of the same kind, on the border crossing between the Republic of Croatia and Serbia and Montenegro in B. in February 2003.

K. asked for the things taken away several times. The written request for the return of temporarily taken objects was submitted on 20 January 2004. However, he did not have them returned.

Measures undertaken: The Administration for border of the Ministry of the interior and the Customs administration of the Ministry of finance was requested the report on reasons for which the freighter of the above-named was taken away the things, on reasons for the payment of export duties and for non-returning of the things not even after the measures for determining a "temporary" period.

Outcome of the case: Unknown.

V.

Decription of the case: (P.P. – 470/04): The Office was addressed by the Hunting society from G. which reported the illegal use of the property of the Republic of Croatia and the damage caused on agricultural and wood lot and on the existing hunting ground no. . . . "I. – I. S.". – taking and using the property that APN bought from the owners who left the Republic of Croatia. Together with the complaint they enclosed a record and photo-documentation of the Police station in G. P. The property is now used by G. Z. from N. G. and G. L. from T. P. for keeping the flock of 545 sheep; Ž. I. from D. R. and Ž. V. from G. P., for keeping 603 sheep (and dunkeys). For those flocks they receive state incentives.

Measures undertaken: The Municipal state attorney's office was suggested to investigate the case by calling upon the circumstance that there is a reasonable doubt of a criminal act.

Further more, the APN was requested a declaration about the state of the real estate, registered in register land as no. . . . cadastre municipality T. P., as the property of the Republic of Croatia, on the basis of the sales contract concluded with D. and Ž. M. on 23 April 1998. The same letter asked for the declaration on the cases from the complaint of the Hunting association, and on the measures undertaken for the property protection, or for the management of the property by the attention of a good master.

Since this case deals with keeping the sheep in (deserted) housing objects, but also with the inappropriate disposal of the deceased animals (throwing 40 – 50 dead animals into the well which is no longer used), the Veterinarian inspection was asked a report on the measures undertaken regarding the charges of the Hunting association, as well the general state of the matter.

Outcome of the case: All the bodies that were addressed by the Office sent their declarations. The Agency for legal issues and mediation in real estate issues asked the State attorney's office to undertake measures necessary for the protection of the state property; the Municipal state attorney's office is processing complaints with the goal of filing charges; the Veterinarian inspection supervised

the place and started disciplinary proceedings against V. Ž. and Z. G. (April, February 2003.).

Note: Government bodies carried out the procedure within their authorities, and there are no grounds for complaint about their work. The procedure on the complaint is closed.

VI.

Description of the case (P. P. – 1375/04): B. N. complained about the state of traffic on the Adriatic tourist road in the part of C., because of everyday insecurity of pedestrians in traffic, and because there are no traffic signals.

The same letter contains the complaint about the non-execution of the Decision on establishing the settlement of city character, i. e. of the Law on settlements. Namely, the settlement of C. still includes the settlement of O. This fact has some consequences that are relevant to the residents. For example, keeping the borders of the local self government unit influences: defining the type of the tourist settlement in relations to the obligation of paying the sojourn tax by tourists; performing tourist activities and so on.

Measures undertaken: Based on the allegations of the complaint it is not completely certain whether B. N. has already filed the request for the conduction of the supervision on the spot. Since this fact is important for the intervention of the Office, the Ministry of the sea, tourism, transport and development was asked about that. At the same time it was suggested that : " . . . if M. N. has not contacted the Ministry or the county service authorized for transport so far, we suggest taking into consideration his complaints and defining the real situation, i. e. taking his complaint as a submission which starts the procedure."

Outcome of the case: The complainant was delivered the notice: " . . . we find it necessary to warn that the Ombudsman cannot act as the authorized of the citizens, in the sense of submitting requests and starting procedures at government bodies. The authority of the Ombudsman refers to the investigation of particular cases of violation and endangering citizens' rights, which was performed by government administration bodies or bodies with public authorities – in the procedures that were already started."

VII.

Description of the case (P.P. – 1216/04): A. N. from V. filed a complaint about the work of government bodies in the procedure of recognizing rights guaranteed to people who, during the Homeland war, had the status of the exile (person who avoided direct danger of aggression by leaving the domicile and going abroad). This complaint deals with the recognition of the exile status on the basis of documents issued by a foreign country and the Croatian consulate in Pečuh and the Ambassy of the Republic of Croatia in Budapest as well as with the recognition of years of employment.

Measures undertaken: The Administration for exiles, returnees and refugees and the Ministry of economy, work and entrepreneurship were suggested to investigate the complaints, and pursuant to this, undertake measures with the purpose of removing consequences of the situation (threatened survival) in which N. finds himself due to some reasons which are beyond his responsibility. To avoid unnecessary repetition, and to get the whole insight into the matter, the N's complaint was delivered together with the part of documents by which he proves the statements of the complaint.

Outcome of the case: Unknown.

VIII.

Description of the case (PP.P. 1966/04): Ž. L. from B. filed a complaint via his lawyer I. F. from Đ. about the case of the execution of the verdict of the Croatian Constitutional court.

In the complaint it was stated that in the case of the complainant the Constitutional court of the Republic of Croatia, by verdicts no.: Us-4518/2003 from 25 February 2004 and US-7265/2003-8 from 17 March 2004 cancelled the decision of the Ministry of defence of the Republic of Croatia from 17 March 2003 and 15 May 2003.

It is obvious from the explanations of the verdicts mentioned above that the Constitutional court of the Republic of Croatia did not find basis for deciding on the termination of public service for I. F.

I. F., via his lawyer, on 24 September 2004, started the administrative dispute for the third time against the new decision of the Ministry of defence from 23 August 2004 which places him at their disposal from 2 March 2003 with the three-month period of notice, and his public service stops mandatory with the expiry of the period of notice by which he was placed at disposal from 19 June 2003. Based on the decision mentioned above he is not entitled to the pay-out.

Measures undertaken: The Office directed the copy of the complaint, and its suggestion to the Administrative court on 4 February.

Since it is obvious that the procedure on this legal issues lasts long, and with the purpose of the efficient protection of rights and interests of the complainant, pursuant to article 1 subsection 7 of the Act on the Ombudsman, the Office rushed the decision on the case mentioned above.

Since the Administrative court has already acted twice on the same legal issue, on same factual and legal basis, the Office, after having considered the case again, finds that the Court might take into consideration the application of article 63 of the Law on administrative procedures.

Namely, article 63 of the Law on administrative procedure prescribes that if the body in authority, after the cancellation of the administrative decision, makes the administrative decision against the legal understanding of the court, or against the suggestions of the court regarding the procedure, and the plaintiff files another appeal, the court can cancel the decision contested, and, as a rule, decide on the issue by reaching the verdict.

This verdict replaces the decision of the administrative body in all.

The court informs the supervising body on such cases.

Note: A serious violation of the complainant's right was observed due to irregular execution of the verdict. The outcome of the case is not known.

SECTION THREE
EVALUATIONS AND SUGGESTIONS

The report on the Ombudsman's activities for the year 2004 is submitted to the Croatian Parliament under special circumstances.

The mandate of the Ombudsman Mr. Ante Klarić expired in June 2004 and the new Ombudsman was not elected before 30 November 2004, so that the Office operated without the Ombudsman for almost the whole second half of the year. Two deputy ombudsmen were re-elected for the new mandate, and instead of the deputy ombudsman Ms. Marta Vidaković Mukić a new deputy was elected, Mr. Dejan Palić, who assumed the post at the end of 2004.

In the annual report, the Ombudsman, pursuant to the provisions of article 8 of the Ombudsman's act, publicizes the information obtained about the degree of obeying constitutional and legal rights of the citizens.

In his annual reports so far the Ombudsman has, pursuant to the provisions of articles 5 and 9 of the Act, to a varying extent but regularly, attempted to give both a survey and an evaluation of the condition and degree of complying with the constitutional and legal rights of the citizens at least in those areas that he considered particularly important and urgent in a certain period.

Even though in some years those parts of the report were occasionally and individually disputed, the practice was established that those reports, together with statistical data on the degree of complying with constitutional and legal rights of the citizens, on the citizens' complaints, on the field work, cooperation with other bodies and associations with the purpose of protecting human rights in the country and abroad, also include a part in which the Ombudsman warns the Croatian Parliament about the areas and occurrences in which the rights of individuals, groups or all citizens are most often violated or most commonly broken.

This practice, of course, puts me under the obligation to do the same.

Therefore, together with the part of the report that gives survey of the former Ombudsman's activities (for the time he was performing that duty), and of the activities of his office, that was prepared by the officials and employees of the office (using the methodology and instructions given by the former Ombudsman) who also carried out those activities in 2004, I enclose my part of the

report in which I particularly want to emphasize some relations, occurrences and areas that in my opinion deserve a special attention of the Croatian Parliament and the attention of all the government and local bodies, and that influence the realization of rights of either the largest or the most endangered part of Croatian citizens.

l/ Deciding on administrative issues – long duration of procedures

The duty of the Ombudsman pursuant to the Constitution of the Republic of Croatia is primarily to protect constitutional and legal rights of citizens in the procedure before the administrative authority and other bodies with public jurisdiction. Therefore, the majority of citizens' complaints is about the work and (non)activities of these bodies. It is also important to stress out that by far the majority of complaints is filed because of the long duration of procedures and because the decisions are not made within the legal period (60 days) or at least within a reasonable period. This refers to both the first-instance decisions (mostly in the areas of pension-disability insurance, reconstruction, returning of the property, construction), and also to the second-instance decisions where the procedures dealing with complaints last as a rule and almost in all areas longer than legal 60 days.

Even though there are some objective reasons that explain why the periods within which decisions should be made are failed to be observed (such as a large number of cases in a short period of time, the complexity of procedures or even the shortage of material resources), it is important to say that as a rule these circumstances could have been anticipated. It is a common fact that the Parliament committees, in relation to discussions about previous reports, already asked Ministries and the Croatian institute for pension insurance to undertake the appropriate organizational, personnel and other measures and to analyze what causes this slow work. What presents a serious concern is the non-existence of the permanent and well-established system of monitoring and reporting to the representative and executive bodies, higher bodies or even the public, about decisions made in administrative procedures. This system would insure monitoring and evaluation of the number of cases decided on in total and per every official, terms, methods of deciding, the abolished, cancelled or changed decisions. These records are not made neither by all the Ministries, nor by the Central government office for administration for the total of government administration.

Neither the Government nor the parliament committees discuss deciding on administrative issues, even though this is about the function of administration that influences greatly the every day life and the realization of citizens' rights.

Therefore it is possible that laws and regulations for certain administrative areas, or their amendments, are prepared and passed, while at the same time the possibility of administrative bodies to decide on the cases within legal periods is not taken into account. Also, the possibility, when necessary, to prescribe special (longer) periods, that would be realistic and feasible, is not used. The general period of 60 days pursuant to the Law on general administrative procedure, which refers even to those administrative issues in which this period is not feasible due to objective reasons, causes the

flood of complaints and formal procedures before the administration and Administrative court because the administration - the procedures of which are useless, not necessary, and give no result - keeps quiet.

The duration of administrative decisions is to a large extent caused by slow (and illegal) practice of first-instance and second-instance bodies to decide about procedures of appeal. First-instance bodies rarely use the authorities given to them by the provisions of the Law on general administrative procedure (articles 235 – 237) according to which they have the authority to make a different decision on the appeal themselves; and as a rule the second-instance bodies do not obey the provisions of article 242, subsection 1, and article 243 of the same Law, according to which they have the obligation to decide on the administrative issue regarding the appeal themselves, except for the cases in which they estimate that the faults of the first-instance procedure will be removed faster and more economically by the first-instance body. Therefore what should be an exception has become the rule.

This practice causes decisions on cases to be very slow, and a large number of cases is returned two or even three times to the same body, or even to the same official, to be decided on. Not to mention how this makes the taking of the firm legal points of view and permanent administrative practice difficult.

Unfortunately, the Administrative court itself does not make enough use of the authorities given to it by article 42 subsection 3 of the Law on administrative cases to decide on the administrative issue itself, and there are also cases in which it does not obey the obligation given by article 63 of the same Law to decide on the administrative issue itself when the body in authority, after the cancellation, makes the administrative decision in contrast to the real understanding of the court or in contrast to the objections regarding the procedure.

When, together with such actions of administrative bodies and the Administrative court, it is also known that a large number of cases waits for a decision to be made at the Administrative court for up to two years, it is not strange that many administrative issues (not that complicated) wait to be finally decided on for several years.

All that we have mentioned above warns about that, that in view of its important function in deciding on administrative issues (which means on rights and legal interests of its citizens), the state administration is in serious neglect and urgent measures are necessary to improve this condition.

There are some suggestions and recommendations following that can be implemented relatively fast, parallelly and relatively independently on other necessary changes and reforms in the administration.

1) It is important to implement an efficient system of monitoring and evaluating decisions in administrative issues and in different administrative areas (or portfolios), and in state administration as

a whole. In this sense it is important to strengthen and enable the Central government office for administration and state the obligation of regular reports to the Government and Croatian Parliament.

2) It is important to strengthen services and departments of central government bodies that decide on complaints and put them under the obligation and enable them to decide on cases in meritum, whenever possible.

3) First-instance bodies must be provided with material and personnel conditions in those departments and services in which a large inflow of cases in a short period of time is expected or already happening.

4) When preparing and passing regulations in certain administrative areas it is necessary to take into account and predict the consequences concerning decisions on administrative issues, including possible prescription of special terms or periods when necessary.

5) Respect the obligation of all administrative bodies that, in cases when they cannot decide within legal periods, always inform the public and the parties in an appropriate way.

Together with all the measures mentioned above, in the long run decentralization should be continued, and administrative issues and decisions on administrative issues should be transferred to the local level so that it would be closer to the citizens and to everyday control through local bodies. This, as is obvious from the experience, could lead to prompt and more quality administrative decisions.

II/ Return of the property, reconstruction, housing provision

Related to deciding on requests about administrative issues and before administrative bodies, it is particularly necessary to pay attention to some areas and issues, without which a part of Croatian citizens cannot realize not even some basic conditions for normal life. Those issues are above all the issues of the return of the property and reconstruction, and complainants are in the majority of cases Croatian citizens of Serbian nationality, returnees or refugees that still have not come back to the Republic of Croatia.

As far as the return of the property is concerned, in Croatia there are still about 1000 occupied houses, the most of which (about 750 of them, and their owners request return) should be returned by the summer of 2005. Together with some objective problems, such as the lack of accommodation for temporary users, the Ombudsman intervened in a larger number of cases when temporary users were unjustifiably favoured, even though they refused alternative accommodation for various reasons or didn't even use the house or a part of the house for housing but for some other, sometimes even commercial purposes. There were also some cases when temporary users who had houses and flats in another town were not evicted.

Lately this long waiting to move into one's own house was relieved to only a certain degree by arranging a compensation to the owners until they move in, but even in such cases the Ombudsman's intervention was necessary so that these compensations would not impede the eviction procedure.

Destruction of abandoned property and unresolved issue of fast reconstruction or compensation still present a special problem. The position of the owners is also aggravated by temporary users' requests for compensation, as well as by some court decisions that put all the burden on the owners who should not bear consequences for which they are not responsible.

When it comes to renovation, the procedures, particularly concerning complaints, last very long, and decisions depend partly on material and financial resources available. The majority of complaints to the Ombudsman are about the long duration of procedures and about the delays of decisions, which are not made within legal periods. Also, there is a large number of complaints about the priorities and time of execution. As a rule, the Ombudsman's enquiries and suggestions are reacted to, but in order to have a real insight into certain cases there should be more field work. The same as with the return of property, a part of Ombudsman's interventions gave results, which also implies a superficial and bureaucratic attitude to these issues in some cases. It seems that some officials still do not accept that in these issues there is no political arbitration and that these are legal issues regulated by the Croatian regulations and the decisions of the Government, not to mention that it is in Croatian national interest that all the Croatian citizens are insured equal treatment before the law.

In this year it is expected that a large number of requests for housing provisions of former holders of tenancy rights will be submitted. The total number of holders is 8000, out of which 2500 are outside the area of special state concern.

Returnees - former holders of tenancy rights that are returning to the Republic of Croatia and who require housing provision in the place of their (former) domicile, or somewhere else in the Republic of Croatia, are mostly Serbs, citizens of the Republic of Croatia, and want to be a part of Croatian political corpus. By solving their housing provision, as well as by returning their property and reconstruction, the Republic or Croatia will show its preparedness for the full integration of the Serbs into the Croatian society.

Housing provisions should, to the extent possible, correct the injustice made to those who had to leave their houses against their will and convictions, and who could not realize their right in court.

All the issues mentioned above point out to that the returnees and refugees are slowly and with great difficulties integrated into the Croatian society. Good atmosphere and material conditions, to the extent possible, were provided by the Croatian governing party, with the support of the largest part of the opposition. Public and clear points of view of the Government on these issues are also supported by both responsible and pragmatic politics of Serbian minority leaders in Croatia.

Therefore it is necessary to continue the programmes for the return and reconstruction as fast as possible and to establish the normalization of relationships, particularly in areas of special state concern. The Government must insist on removing of obstacles and resistance of those who are, unfortunately, still present somewhere in the government authority bodies as well as in local areas.

For the complete normalization of relationships it is important to insure all the minority rights, because if they are not realized there could not be a full integration into the society: minority presence in representative bodies pursuant to the law, election rights with no restrictions, presence in public services, equality in employment, and other. Non-execution of legal regulations in these issues cannot just be a matter of good will, such behaviour and mistakes should be legally sanctioned.

III/ The problems of the Roma

In his work, more through field work than through written complaints, the Ombudsman encounters the matter of direct or indirect discrimination of the members of the Roma community. National programme for the Roma, and the Decade of including the Roma are programmes that anticipate necessary measures in order to remove obstacles for the improvement of the position of the Roma and prejudices that follow them. While fighting prejudices and stereotypes should be strengthened through systematical education and raising the citizens' level of consciousness, which is a long term process, points of view and behaviour of many officials in either state or local services must be urgently and substantially changed.

Programmes that include all the essential issues from pre-school education and primary education, status issues, health and social care to the urbanization of Roma settlements and stimulative measures of employment, can be efficient only with complete cooperation of the state and government bodies and local communities in financial but also in professional and personnel sense.

Without stronger government support, local communities, poor as they are, give up on solving the Roma issue, facing the dissatisfaction of the majority for whose needs there are also no resources. Maybe because of that, paradoxically, the majority of complaints about the relationship to the Roma and about discrimination are filed in those communities in which a lot has been done for the position of the Roma and in which the programmes and measures for the improvement of their conditions of life were started but are not yet finished.

Particularly important are programmes for the pre-school preparation for primary education, The appearance of segregation in some primary schools, like the cases in which under the pressure of prejudices of the majority professional and pedagogical criteria are neglected, should not happen again.

For long term creation of more equal conditions for the Roma children, together with pre-school education and teaching Croatian in all the bigger Roma communities, it is necessary to provide

resources but also larger authority (independence in evaluation and taking measures) to social services on the field. These services seem to be limited by formal and bureaucratic procedures which are in contrast to the nature of social work and do not have a possibility of a more selective choice of measures, which is necessary in order to stimulate or correct the behaviour wanted.

There are special female attorneys for children and the equality of sexes that protect the rights of the Roma children and women Roma. The need of special attorneys for these areas (in which, together with general tasks, there are also special tasks with specific measures of work) is highly appreciated and approved, but it is important to mention that the founding of new attorney's offices in areas that are covered by the Ombudsman would be neither rational nor useful.

IV/ The Ombudsman and courts

Even though the Ombudsman does not protect the rights of the citizens in legal procedures, a great number of citizens still contact him with the complaints about the work of courts, mostly because of the long duration of court procedures. Regardless of the constant emphasis on the Ombudsman's non-authority over these issues, the number of complaints does not decrease but even increase. This is an obvious indicator of the biggest problem of the Croatian justice, as well as of the general convictions of citizens that within the existing system (courts, State court committee, the Ministry of justice) they cannot solve their problems of long lasting procedures nor get the right answers to their complaints.

Even the latest information about the number of undecided cases and about the duration of procedures shows that all the measures, from changing the legal frame to controls within the system do not give the appropriate results. The improvement has not been made by the hasty change of the Constitutional law on the Constitutional court of the Republic of Croatia, by which the burden of solving the issue of long duration of court procedures is transferred to the Constitutional court exclusively, which does not mean the solution to a problem pro futuro, and the Constitutional court is unnecessarily burdened with the large number of issues out of which the majority would be more efficiently decided on in due time at lower instances.

Expectations that the court system would function well if the control of activities of courts and judges is established mostly of exclusively within the system itself did not prove to be justified. In Croatian court corpus there are not enough capability and strength for the necessary changes, and quite often the interests of quilds are stronger than those of the society. Therefore the total situation within the system is not judged critically enough, and without that there is no pressure for the change of the situation.

On the other hand, the Ministry of justice has not, at least not until now, been ready to take the necessary control, probably because it was afraid of objections (which is to an extent justified) that by this the independence of courts would be in jeopardy and that executive authority would rule over the judicial authority.

Facing similar problems many European (and non-European) countries authorized the parliamentary ombudsmen to protect the citizens' rights when they were jeopardized or violated by the work (or the lack of it) of the courts and judges. The authorities are different in different countries so they do not always include all sorts of courts. What they all have in common in majority of cases is the Ombudsman's right to intervene because of the long duration of procedures or because of the obvious abuse of authority. In such cases the usual Ombudsman's authority includes the right to an insight into the court records, the authority of warning, suggestion and recommendation to both courts and government bodies that pass regulations and measures related to this, but also suggestions of disciplinary procedures.

As far as the Republic of Croatia is concerned, the Ombudsman did not act in relation to courts, except in the way described in the report. However, regarding the specific quality of administrative jurisdiction and its close connection to administrative decisions in the bodies of authority, the necessity to redefine the relationship between the Ombudsman and the Administrative court was obvious in closer cooperation in particular cases which, in my opinion, has been giving good results lately.

Regarding the Administrative court it would be necessary to legally regulate the authorities of the Ombudsman so that he could realize to a full extent his role of the promoter of good administrative practice, and the need and possibility of participation of the Ombudsman as an independent institution in some forms of work control of the courts in general should also be taken into consideration. In this sense it would be good to study good and bad experiences of the others thoroughly.

V/ Evaluations and suggestions

The neglect and lack of efficient control mechanisms mentioned above in both administrative decisions and in court procedures cause chaos in which, in large number of cases, citizens cannot foresee when their case will be decided on, not even when it will start being processed, not to mention some order of priority in decisions according to public and known criteria. This state by its nature mostly affects the weaker ones, the ones not protected by power or money, because it favours bias and corruption of all kinds, from services to friends to well paid abuses to the damage of the others. We are becoming a competitive society in which the government is not able to insure the respect of rights and effective legal equality. If there are no rules and unbiased judges, the stronger and more powerful ones win even when they are not in the right.

Even though, as the result of war and war related political occurrences, there are still different divisions in society, from ethnic to regional or even according to different political parties, it seems that a new big division of Croatian society is being made or has already been made, the division that will very soon make all the other divisions unimportant, and that is the division into the poor and weak, and the rich and powerful, the division which has in one speech been announced as the division into the chosen and the doomed.

While there will always be the division into the rich and the poor, the division into the weak and powerful before the government administration and courts is inadmissible and lethal for the social morale and cohesion. Therefore it is urgent to introduce order and legal equality in administrative and court decisions, including free legal and other help to the weak and ignorant, but above all order, clear criteria and predictability in the certainty of terms and procedures.

In the process it is not the least important to emphasize the fact that today among the majority of the weak and poor are not only those who could not succeed in any society, but also a large number of people who once were successful and highly educated, deserving, honest people who lost their jobs and dignity in the fog and sidetracks of Croatian transition, and considering their age do not have a chance for a new beginning.

It is the obligation of the country to arrange the administration and courts in a way that they function in the same way for everybody, and that they do not divide people into the chosen and the doomed. Strict respect of material and procedural regulations as well as the control of the work of administrative officials and judges must make their often arbitrary behaviour that is often in favour of the stronger, impossible.

SUGGESTIONS FOR STRENGTHENING OF THE INSTITUTION

The institution of the Ombudsman was introduced into the legal system by the Constitution of the Republic of Croatia from 1990.

By the provision of that time of article 92 of the Constitution the Ombudsman is the authorized person of the Croatian parliament that protects constitutional and legal rights of the citizens in procedures before the government administration and bodies with public authority, elected by the Croatian parliament to the mandate of 8 years. Conditions for the election and the dismissal, domain and way of work of the Ombudsman and his/her deputies, is determined by law.

The Ombudsman's act was passed in the Croatian parliament on 25 September 1992, and on 30 April 1997 the Ombudsman passed Rules of procedure for the Ombudsman's activity .

By changing the Constitution in 2000 a provision was added to subsection 4, article 93 of the Constitution according to which the institution of the Ombudsman insures the protection of constitutional and legal rights of citizens in procedures run at the Ministry of defense, armed forces and security services; protection of rights at the local and regional government bodies; and protection of rights to local and regional government before the government authority bodies.

Even though out of the constitutional provision mentioned above new and big commitments and tasks arise, that ask for appropriate changes in structure, personnel, and methodology of work even at first glance, these changes did not occur not even after four years. There were no amendments to The Ombudsman's act nor to the Rules of procedures.

Despite a significant increase in the quantity of work and in the about 30% increase in the

annual number of complaints (2001 – 2004), at the Ombudsman's office work is delegated to 3 deputies, 6 counsellors, 6 other officials, which makes the total of 15 people, which is several times less than the number of the employed in such offices of other countries that have less or the same number of population. (Slovenia 33, Belgium 40, Finland 50, Denmark and Greece 80, Czech and Romania 90, and Netherlands 115)

In the budget for the year of 2005 the amount of 3.538.283,00 kn has been provided for the Ombudsman's work, of which 3.000.000,00 kn go to the employed in the office and only about 500.000 kn for other expenditure.

The comparison with the similar, and by the amount of work smaller institutions, speaks for itself about the treatment of the Ombudsman in the budget.

The comparison of the planned expenditure of similar institutions for the year of 2005:

	The Ombudsman's office	**Children's attorney**	**Equality of sexes attorney**
Business trips	75.000	140.000	99.162
Professional improvement of the employees	15.000	30.000	32.856
Office material and other material expenditure	50.000	90.000	72.212
Small inventory and car tyres	8.000	10.000	40.000
Advertising and informing services	2.300	60.000	59.034
Presentation	5.000	35.000	37.137
Intellectual and personal services	3.000	100.000	206.320

Not trying to find the reasons for such treatment (it is important to emphasize again that the Office was without the Ombudsman for the whole second half of the year), for this year's work the

total of 672.172,00 kn is missing, which includes the 6-month compensation for the salary of the non-elected deputy Ombudsman, 6-month salaries for two counsellors and one trainee that were approved to be admitted into the service last year, and appropriate functional and material expenditure.

The Ministry of finance was requested to provide these financial resources by the re-balance of the budget for this year.

Together with everything mentioned above, it is important to say that the Ombudsman does not have any resources provided in the budget that would cover his fieldwork and office days. The resources necessary for visiting the counties mentioned in the report were provided by the donation of the OESS Mission in Croatia, and in the same way the office got the necessary funds for computers and office equipment, and professional literature. At this moment the Ombudsman is using the last installment of the donation from July 2004 to the amount of 278.712,50 kn.

It is not necessary to state individually all the bodies and institutions that stressed the importance of strengthening the institution of the Ombudsman; it is enough to say that since 2001 there have been no discussions on the Ombudsman's report in which the Parliament clubs, committees, or even individual representatives did not support such propositions. In that sense we also point at the analyses, reports and suggestions that were delivered to the highest government authorities by the relevant international missions, institutions and associations, as well as independent experts.

Therefore it is my duty, on the occasion of the Activity report for the year 2004, to suggest the programme for personnel and material strengthening of the Omubdsman's office, so that, gradually and taking into account the possibilities of the budget for the period 2005 - 2008, minimum conditions for the performing of constitutional tasks of the institution would be provided.

The proposition of the programme starts from

- annual increase of the number of cases and citizens contacting the Office (15 – 20 %)
- the necessity for the founding of the department which would deal with new authorities from subsection 4 article 93 of the Constitution of the Republic of Croatia (protection of rights in relation to the MORH, armed forces and security service, protection of local government)
- enabling the Office to investigate and gain insight into the state of records right away
- the need of organizing office days or other ways of field work.

In the year 2005 it is necessary to provide, through the re-balance of the budget:

1) for the year 2005 the total of additional resources to the amount of 672.170,00 kn

The request for additional resources for salaries in the year 2005

The right to the compensation of salary of Marta Vidaković Mukić	218.382
Salaries for 2 counsellors	274.248
Salary for one trainee of the I class	59.540
Total	552.170

The request for additional resources for material costs for the year 2005

Business trips	20.000,00
Professional improvement of employees	10.000,00
Office material and other office expenditure	30.000,00
Small inventory and car tyres	10.000,00
Services of advertisements and informing	5.000,00
Presentation	25.000,00
Intellectual and personal services	20.000,00
T O T A L :	120.000,00

In the second half of the year the amendments to the Ombudsman's act should be prepared so that the rights and obligations determined by the change in the Constitution from the year 2000 should be elaborated.

In the preparation of the changes of the Act the need for the increase of the numbers of deputies from 3 to 5, and appointment of one deputy for armed forces and security services, and one for local self-government should be taken into consideration.

2) In the year 2006 a partial filling up of work posts for the tasks and work related to armed forces, security services, imprisoned persons and field work should be performed. That makes the total of 8 newly employed, as follows:

The year 2006 – additional resources for the salaries for the newly employed

1 deputy 291.175,80
3 counsellors 493.570,80
1 senior investigator 101.818,44
1 senior informatician 58.980,24

1 investigator	85.909,44
1 expert officer	49.667,52
T O T A L :	**1.081.122,24**

3) In 2007 6 more work posts should be filled for the jobs of local self-government protection and for field work, as follows:

The year 2007 – additional resources for salaries (in relation to the year 2006) for the newly employed

1 deputy	291.175,80
2 counsellors	329.047,20
1 senior investigator	101.818,44
1 investigator	85.909,44
1 administrative officer	49.667,52
T O T A L :	**857.618,40**

4) At the end of the year 2007 the Office should employ the total of 32 employees: the Ombudsman, 5 deputy ombudsmen, 13 counsellors, 2 senior investigators, 1 senior informatician, 2 investigators and 8 other employees for expert and general work.

5) The problem of the Ombudsman's premises is also known. For the needs of the Office, till the end of the year 2005 another 150 m2 of offices near the present Office in Gornji Grad should be provided promptly, and from the year 2006 new premises, with the surface of 500 – 600 m2, should be provided.

Altogether for the activities of the Office, together with the increased material costs, which include two personal vehicles for the field work, from 2008 7.500.000 – 8.000.000 kn should be provided.

CONTENTS