REPUBLIC OF LATVIA

OMBUDSMAN

Annual Report on the year 2011 by Ombudsman of the Republic of Latvia

Riga, 2012

Preamble by the Ombudsman 7

Protection of the Rights of children 10
What are the rights of children? 10
Priorities in the field of the rights of children 10

I. Children in state social care facilities (nursing homes) 11
1. The right of child to grow up in family 11
2. The right of child with special needs to grow up in family 13
3. Ensuring of the right of siblings to be not separated 14
4. Number of children accomodated at PSCCs and their right to qualitative care 15
5. Alternative forms of care 16
6. Social work with a family 18
7. Immediate steps to be taken to ensure the right of children to grow up in family or to ensure family-based care 19
7.1. Procedure for placement of a child into alternative care 19
7.2. Administration of child's property 20
7.3. Health care services 20
7.4. Reorganization of PSCCs 21
7.5. Organization of the work and staff of PSCCs 22

II. Securing of the rights of children at psycho-neurological hospitals 23
1. Treatment of children separately from adult patients 23
2. Internal regulations for patients 25
3. Restriction of physical mobility (fixation of children) 25
4. Toilets 26
5. The right to maintain contacts, communication possibilities, and social integration 27
6. Support to families with children (availability of social worker and psychologist) 28
7. Availability of outdoor activities 28
8. Smoking prohibition 28
9. Leisure time opportunities 29
10. The right of children to education 29
11. Involvement of orphans' courts and other institutions in handling of the issues 29

III. The right to free education 30

IV. Individual preventive work with children in municipalities 31
1. Introduction to the issue 31
2. Development of the regulation of preventive work 32
3. Legal regulation of preventive work 33
4. The role of municipal child institutions or specialist responsible for protection of the rights of children in the child right protection system 34
5. Description of the actual situation 35
5.1. Institutions responsible for individual preventive work with children 35
5.2. Initiation of preventive work 36
5.3. Informing of parents (guardians, foster parents) and pedagogues about social behavior adjustment programs for children belonging to risk groups 37
5.4. Financial impact of preventive work with children on the municipal budget 39

V. Actual problems in the field of the rights of children 40
1. Statistics and overall review 40
2. The right of orphans and children left without parental care to housing when they reach major age 43
3. Application of legal principles in the field of social rights 45
4. Duty of parents to respect the rights of a child 46
5. Infringement on the Internet 47
6. The right of child to grow up in family 47

Civil and political rights 49
What are civil and political rights? 49
Priorities in the fields of civil and political rights 49
I. Ensuring of the rights of individuals with mental health and mental development impairments 49
1. Compulsory accommodation of individials in psycho-neurological hospitals – ensuring of the right to fair court 50
2. Compliance of procedures for deprival of individuals of their legal capacity and scope of the rights of incapacitated individuals with human rights 51
3. Provision of the rights of individuals accommodated at Public Social Care Centers 52
4. The right of individuals with mental impairments to the protection of their data 53
II. Legal status and protection of detained foreigners and asylum-seekers 56
1. Rights of asylum-seekers and individuals who have obtained the status upon completion of asylum procedures tiesības 56
2. Monitoring of return by force process in accordance with the amenments made to the Immigration Law 58
III. Actual problems in the field of civil and political rights 59
1. The right to fair court 59
1.1. Reasonable deadlines 59
1.2. The right of individual to fair court while in custody 60
1.3. Access to court 61
2. Legal status of an individual 62

Social and economical rights 63
What are social and economical rights? 63
Priorities in the field of social and economical rights 63
I. Compliance with the human right principles in the process of stabilization of social insurance system 64
II. Commensurability of the rights of owners in compulsory lease relations 65
III. Assessment of quality control vehicle in health care 65
IV. Assessment of the steps taken by municipalities in providing assistance in housing matters 65
V. Social protection of the participants to and individuals injured as a result of the accident at Chernobyl Nuclear Power Plant 66
VI. Actual problems in the field of social and economical rights 67
1. The right to property 68

2. The right to social security 74
2.1. Resident income tax impoase on long service pension 74
2.2. Refusal to grant the status of low income family (person) to a holder of capital shares in a business company 75
2.3. Recovery of overpaid parent allowance from SISA 75
2.4. Maintenance of non-contribution social security system 76
2.5. Monitoring of public social care centers 77
3. The right to health protection 78
3.1. The right to reasonable assessment of the quality of health care service 79
3.2. Provision of technical aids to people with special needs 80
3.3. The right to health protection – distribution of legionellosis 80
4. The right to live in benevolent environment 82
5. The right to education – professional education 84
6. The right to housing 85

The area of criminal law 87
What is criminal law in the context with human rights? 87
Priorities in the area of criminal law 87

I. Protection of the rights of individuals kept in closed-type imprisonment facilities 87
1. Observation of the principle of good governance 88
2. Effectiveness of appealing against the decisions made within the framework of progressive liberty deprival system 90
3. Health care 91
4. Household conditions 91
4.1. Prison of Jelgava 92
4.2. “Transit” cells at Central Prison of Riga 92
4.3. Daugavpils branch of the Prison of Daugavgrīva 93
4.4. Prison of Šķirotava 94
4.5. Prison of Vecumnieki 94
5. Availability of information 95
6. Investigation institutions at prison facilities 96
7. Restrictions imposed on the rights of detained persons following the ruling of the first instance court 96
8. Re-socialization 97
9. Housing issue after release of prison 97

II. Protection of the rights of individuals during the pre-trial investigation 98
1. The right to finalization of pre-trial criminal proceedings within reasonable time limits 98
2. Attachment of property 101

III. Observation of the guarantees to protection of the rights of individuals in their communication with police 101
1.Visits to short-term detention facilities of the State Police 103

IV. Actual problems in the field of criminal law 104
1. The right of individual to security and liberty 104
2. The right of individual to fair court 105
3. Photo-radars 106
4. The right to property 109

Prevention of discrimination 111
What is discrimination? 111
Priorities in the field of prevention of discrimination 112
I. Minimizing of discrimination in the area of employment 112
II. Minimizing of hate crimes 114
III. Ensuring equal access to goods and services regardless of gender, racial or ethnical origin, or disability 116
IV. Promoting implementation of the UN Convention on the Rights of Persons with Disabilities 117
V. Actual problems in the field of prevention of discrimination 117
1. Promotion of preventing discrimination against Roma people 117
2. Legal regulation of partner relations 118
3. Principle of legal equality 121
4. Distribution of residents upon completion of resident medicinal studies 123

Area of good governance 125
What is good governance? 125
Priorities of good governance 125
I. Combating the non-compliance with the principle of legal reliance in public administration 125
1. Calculation of resident income tax 125
1.1. Assessment of the actions of State Revenue Service 125
1.2. Opinion issued to the Constitutional Court 126
2. Assessment of the actions of Rural Support Service 127
3. Application of differentiated rates for sales of electrical power 128
4. Assessment of the actions of Salaspils County Council 129
II. Information of society about their rights and about the principle of good governance 129

Information by the Ombudsman's Office 130
1. Structure and resources of the Office 130
1.1. Funding made available from the State budget and its application in 2011 131
1.2. Report by the Ombudsman on the achievement of budget program score in 2011 132
1.3. Structure of the Ombudsman's Office 133
2. Measures aimed at informing and educating society 133
2.1. Public awareness campaign "Human rights and good governance in everyday situations" 133
2.2. "Agressiveness Index" 135
2.3. Public discussions and lectures 136
2.4. Participation at other events 138
2.5. Research "Discrimination at working place" 139
2.6. Campaign "Alternative solutions in operation" 140
2.7. Educational and informative activities for children 140
3. Cooperation with NGOs 141
3.1. Advisory councils of the Ombudsman 142

3.2. Cooperation with NGO associations 144
4. Conference of the Ombudsman 146
5. International cooperation 147
6. Statistics of the Ombudsman's Office in 2011 149
7. Opinions issued by the Ombudsman's Office to the constitutional Court in 2011 151
Annexes 153
Annex 1. Opinion issued to the Constitutional Court in proceedings No 2010-64-01 Concerning the compliance of Section 16, Part One of the Identity Document Law with the first and second sentences of Section 98 of the Constitution 154
Annex 2. Opinion issued to the Constitutional Court in proceedings No 2010–72–01 Concerning the Compliance of the First Sentence of Section 78, Part Three of Civil Procedure Law with the First Sentence of Section 92 and Section 95 of Constitution of the Republic of Latvia". 159
Annex 3. Opinion Concerning the Efficiency of Appealing Against Rulings 164
Annex 4. Opinion issued to the Constitutional Court in proceedings No 2011-05-01 Concerning the Compliance of Section 39, Part One, Paragraph 6 of Public Procurement Law with Sections 91 and 105 of Constitution of the Republic of Latvia". 170
Annex 5. Opinion issued to the Constitutional Court in proceedings No 2011-14-03 Concerning the Compliance of Sub-Paragraph $3.^{1}5$ and Paragraph 11 of the Cabinet Regulations No 120 of 13 March 2001, and Paragraph 11 of the Cabinet Regulations No 972 of 25 August 2009 with Sections 91 and 106 of Constitution of the Republic of Latvia. 174

Dear reader,

The year 2011 has marked significant milestones: five years have passed since establishment of the institution of Ombudsman in Latvia, powers of the former Ombudsman have expired, and a new Ombudsman has been approved to the office.

I would like to thank my predecessor Romāns Apsītis for his decent and selfless work. His contribution during the previous years has established sound basis for the Ombudsman's Office to develop and set our goals aimed at strengthening of human rights and good governance in our country during the next three years.

I do realize that human rights may not be divided into more and less important, and that all of them are essential. Given, however, the real situation and resources of the Office, setting the goals and priorities is the only solution to enable not only reacting to the existing problems but also timely preventing of potential problems. Therefore, we have developed strategies for the years 2011 – 2013. The results of 2011 are reflected in this report according to the priorities set by us.

When I retrospect on the year served in the position of Ombudsman, I have to admit that the number of completed works is high; along with launched projects that, to my regret, have not brought the expected result yet. Assistance has been provided to the population in their individual matters, and solution of a number of issues important to general society has been launched or proceeded with. These include, for example the issue of foster families; clarification of free education as stipulated in the Constitution and assessment of its availability; investigation of tariff application procedure for public services; the issue of imposing resident income tax on sales of real estate conducted before 1 January 2010; and clarification of the different scope of rights granted to citizens and non-citizens of the Republic of Latvia, respectively. The addressed topics also include issues ambiguously perceived in society, such as living standards in prison facilities, legal regulation of partner relations, and other issues.

Having served my first year in the office, I would like to share some conclusions regarding compliance with human rights and the principle of good governance. The willingness of governmental and municipal authorities to listen to the Ombudsman's opinion and recommendations is continuously increasing. However, on a few occasions authorities refuse to consider the Ombudsman's recommendation stating among the main reasons of such refusal the fact that the Ombudsman's opinion is of merely recommending nature. Other excuses referred to most commonly include the phrase "within the limits of allocated budget", which means in fact that human rights are subordinated to the budget. The right approach should be just the other way round.

The practice pursued by policy-makers and officials of Latvia to proceed with preventing infringements of human rights and the principle of good governance no sooner than foreign experts or international organizations have pointed out to such infringements, instead of eliminating any shortcomings when first notified of them by

Latvian experts or competent authorities seems confusing. In my opinion, such approach is improper, irresponsive and disgraceful towards our country.

Prompt handling of issues whenever they emerge costs is much less expensive to the country. A notable example here is the number of awards unfavorable to Latvia rendered by the European Court of Human Rights, and the huge compensations payable from the state budget. Such amounts are still more increased by the costs of competent authorities and litigation costs of hearing still in Latvia, as well as the costs of representing the state at the European Court of Human Rights.

I would like to remind policy-makers, heads of governmental and municipal authorities and entrepreneurs, as well as each and every member of society that human rights and good governance mean the rights and obligations we are facing in our everyday life, rather than mystic notions or resounding slogans. Respecting of human rights and good governance is a barometer for measuring democracy, rule of law and development of a country. It does not mean jamming in political dimensions, conspiratorial theories of personal likes. We all have a common goal – respecting and guaranteeing legal interests of society. And it is my duty to see that human rights of each inhabitant and visitor of Latvia are protected and that the state power in Latvia is exercised in a legal and efficient way, in compliance with the principle of good governance.

I am certain that the works already initiated as well as future tasks are going to bring positive effect so that each and every inhabitant of Latvia can say they live in a democratic, law-based, developed country.

Very truly yours,

Juris Jansons, the Ombudsman

Ombudsman of the Republic of Latvia is an official elected by the Saeima to see that human rights are duly respected in Latvia and that the principle of good governance is complied with by public administration and municipalities.

In 2011, the Ombudsman's Office drafted the Ombudsman's Strategies for the years 2011 – 2013 setting the goals and priorities. The strategies were drafted to provide to inhabitants and other concerned parties a concentrated and easy-to-perceive understanding of the goals, objectives and key operational principles of the Ombudsman's Office.

The Ombudsman's Office has set three goals for the period from 2011 to 2013:

- The 1st goal: to increase understanding among society about the rights of individuals, the role of Ombudsman in the protection of rights, and to prevent any infringements of human rights and the principle of good governance.
- The 2nd goal: to increase understanding among those employed in state administration about the principles of good governance.
- The 3rd goal: to increase return on resources of the Ombudsman's office and to strengthen the authority of Ombudsman in the eyes of local as well as international society.

Key operation of the Ombudsman's Office in 2011 is structured in the following areas: the rights of children; civil and political rights; social and economical rights; criminal law; prevention of discrimination; and good governance.

Each of the above-listed areas of law enables the Ombudsman's Office to achieve the set goals, and therefore priorities are defined in each of them. The issues set as priorities include those that, in the Ombudsman's opinion, require urgent solution from the view of human rights or the principle of good governance. At the same time, setting of priorities facilitates mobilization of work and resources for timely addressing the issue in question before it becomes aggravated.

Along with the set priorities, the Ombudsman's Office is also handling the applications filed by members of society and solving the problems referred to in such applications.

We have reflected our contribution in the Ombudsman's report on the year 2011 in line with the set priority areas, along with information about actualities in the fields of law.

The Rights of Children

What are the rights of children?

The sphere of human rights also distinguishes between different vulnerable groups of persons subject to special protection and care on part of the State, given their status. The rights of children are treated as a separate group, mainly because of the fact that, according to the applicable legal regulation, children lack certain rights available to adults; on the other hand, children also have their specific rights related to their age, status in the family, etc.

The rights of child mean the body of fundamental rights and fundamental freedoms that must be provided to each and every child (a child means any person who has not reached the age of 18, except the persons declared of full age in accordance with the law, or those who have registered marriage before reaching the age of 18 years) without any discrimination whatsoever, and regardless of the race, nationality, gender, language, religious, political or any other convictions, or domicile, financial and health condition, birth or any other circumstances of the child or his/her parents, guardian, or family members.

Definition of the rights of child arises from the key concepts stipulated in the Universal Declaration of Human Rights. A special section of the Declaration regarding children stipulates that "motherhood and childhood are entitled to special care and assistance". While acknowledging equal entitlement of children to all freedoms expressed in the Declaration, the international community also acknowledges the need for additional assistance and support to children.

Harmonious development of personality requires living and bringing up of a child in the atmosphere of love, goodness and happiness, in family environment, among close, loving people. It is the task of adults to help the child to get prepared for independent life, to become a wholesome member of society, and to provide living conditions appropriate to physical as well as mental development of the child.

Priorities to which increased attention was paid in 2011 in the field of the right of children were targeted at socially vulnerable groups of children: children at public social care facilities (nursing homes) and children at psycho-neurological hospitals. Another two issues involving all children emerged in the course of work, and they were set as priorities: access to free education, and individual preventive work with children at municipalities.

I Children at public social care facilities (nursing homes)

The UN Convention on the Rights of Child, Articles 20, 23, 31

Constitution of the Republic of Latvia, Section 110

The Law on Protection of the Rights of Children, Section 16, Section 26 Part One, Section 27 Part Four, Section 44

Observation of the rights of young age orphans and children left without parental care at public social care centers has been set in 2011 among priorities in strategies of the Ombudsman of the Republic of Latvia for the years 2011 - 2013[1]. Case study has been conducted for implementation of the priority: analysis of the international as well as national legal regulations, international recommendations including those made to the state of Latvia, and identification of the number of facilities and the number of accommodated children.

[1] Available at: http://www.tiesibsargs.lv/lat/tiesibsargs/majas_lapas_jaunumi/?doc=664

Visits were undertaken to all public social care centers (hereinafter – PSCC) that provide social care and rehabilitation services to orphans and children left without parental care under the age of 2 years, and children with physical and mental development impairments under the age of 4 years: branches "Riga" and "Pļavnieki" of the PSCC "Riga", branch "Liepāja" of the PSCC "Kurzeme", and branch "Kalkūni" of the PSCC "Latgale. During such visits the officials of the Ombudsman's Office inspected the conditions at the above-listed facilities, the status of observation of the rights of children, and discussed the improvement possibilities with the staff of the facilities.

Analysis of the situation in its entirety has shown that the large number of children accommodated in care facilities is the key problem that indicates to failure on part of the State to take the necessary steps to ensure the right of each child to grow up in family.

1. The right of child to grow up in family

The United Nation (hereinafter – UN) Convention on the Rights of the Child (hereinafter – the Convention) and the Law on Protection of the Rights of Children stipulate that each child has inseparable right to grow up in family. In case of children who have no their own family, either temporarily or permanently, they are entitled to care that is the closest to the family-based environment – from a guardian or foster family. Children may only be placed in a child care facility if no family care can be provided to a child. The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already to "ensure that placement of a child in a child care facility is an exceptional measure that is only applied if family care is found inappropriate to the child in question" [2].

A care facility presents a number of disadvantages from the view of the rights of children and legal interests: no facility can compensate family-based environment that is the basis for efficient development of a child; no continuous presence of an adult care-taker can be ensured at a facility, and therefore the child has no access to contact and care appropriate to their needs. The UN World Report on Violence against children (2006)[3] notes that residential care seriously affects children, frequently with potentially irreversible consequences. According to studies, care conditions in early childhood (period from 0 to 3 years) have crucial effect on development of a child and impact on future prospects and success of the child. Residential care of infants has adverse impact on physical, mental and cognitive relation of children, and affects adversely their emotional stableness and safety, and preservation of culture and personal identity. According to studies, development of a young child is delayed by one month on every three month spent in a facility.[4]

Article 21 of the Guidelines for the alternative care of children[5] adopted on 18 December 2009 by resolution of UN General Assembly stipulates that use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests. Article 22 of the above-named document stipulates that alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings.

---

[2] UN Committee on the Rights of Children, final considerations of 28 June 2006: Latvia, paragraph 33, available at*:* http://www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc

[3] World report on violence against children, pieejams: http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf

[4] Available at: http://www.crin.org/docs/UNICEF_A%20call%20to%20action_cahier_web.pdf

[5] Guidelines for the alternative care of children, http://www.unicef.org/aids/files/UN_Guidelines_for_alternative_care_of_children.pdf

The UNICEF report "At Home or In a Home?" encourages governments to discontinue practice related to placement of children in residential facilities. The report notes that placement of young children under 3 years in residential facilities should be limited to a short term that does not exceed six months; it should be treated as last instance solution exclusively on the occasions when it is necessary and serves the best interests of the concerned child[6].

The PSCC branches at which inspections have been conducted provide accommodation to 467 customers. In total, 421 children were accommodated at the above-listed facilities during the visits, including 198 children under 2 years. The highest number of young children (under 2 years) was observed at PSCC "Riga" branches "Pļavnieki" – 93, and "Riga" – 72 children. Care and rehabilitation services were provided at PSCC "Kurzeme" branch "Liepāja" to 19 children under 2 years, and to 14 children at PSCC "Latgale" branch "Kalkūni". [7]

According to the information posted on the website of the State Inspectorate for Protection of the Rights of Children in August 2011, 27 foster families had expressed their willingness to undertake care of children from 0 to 2 years, thus enabling 34 children to grow up in family-based setting. In addition, 8 foster families offered care to additional 10 children over 1 year, and 30 foster families were willing to accommodate and care for children over 2 years, thus providing family-based care to 45 children.[8]

Information about the vacancies in foster families is available to orphans' courts competent to decide on providing out-of-family care to a child, subject to the principle that family-based care serves the best interests of the child. According to statistics, however, the right to the above-mentioned care is not provided to younger children.

When assessing the situation, it should also be taken into account that, according to Section 9.[1] of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Maintenance to children placed in foster families is partially provided by municipalities who pay subsistence allowance and allowance for provision of closing and soft staff. The different approach to funding of alternative care services is eventually among the reasons why orphans' courts in their capacity of municipal institutions occasionally decide on provision out-of-family care to a child guided by financial considerations and give preference to State-funded residential care.

Conclusions:

- According to the international child right standards, placement of younger children, i.e. children under 3 years of age, in residential facilities is treated as infringement of the rights of children. Therefore, if out-of-family care is selected, care to young children must be provided in a family-based environment.
- The large number of children accommodated at the PSCC branches demonstrates that out-of-family care system established in our country has problems related to access of family-based care services to younger children, and infringements of the right of children to grow up in family take place as a result thereof.
- It is crucial to ensure that orphans' courts develop understanding of the rights and needs of younger children to care in family-based environment, and to ensure compliance with the above-mentioned principle in practice.

[6] UNICEF Report, "At Home or In a Home?", http://www.ifco.info/news-and-blogs/latest-news/end-placing-children-under-three-years-in-institutions-a-call-to-action

[7] Data as of 19 August 2011.

[8] Available at: http://www.bti.gov.lv/lat/arpusgimenes_aprupe/?doc=2589&page=

- A decision made by orphans' court on placement of a child under 2 years of age in residential care may be influenced by financial considerations. It is therefore crucial to discuss the need for reviewing the funding of residential care services and to pro vide a uniform source of funding for provision of care services to children who have no physical or mental development impairments, regardless of their age. Costs of the above-mentioned services should be funded from the municipal budget, as it is presently prescribed by normative regulation in respect of children who have reached the age of 3 years.

2. The right of a child with special needs to grow up in family

According to the worldwide practice, the most common reasons in the countries of Central and Eastern Europe for placement of children in care facilities include physical and mental development impairments of children. Children with development impairments also represent a major part of the total number of children accommodated at PSCC branches. According to the information obtained from the staff of PSCC branches, people are not willing to take custody, provide foster care or adopt the said children because of their health condition; therefore, a number of children are continuously accommodated at state long-term social care and social rehabilitation facilities until they reach major age, and even longer. Many of the children with physical and mental development impairments are left without parental care. Some children with development and health conditions are placed in PSCC upon their parents' application because providing family-based care is not possible for different reasons.

Article 23 of the UN Convention stipulates that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Manual on practical implementation of the Convention on the rights of children points out that emphasis is made in Article 23 on "active participation in the community" and "possibly efficient social integration", which means, in the light of Article 2 of the Convention, that placement of children with disabilities in residential care facilities should be minimized, and that children should have the right to grow up in family-based environment without any discrimination[9].

The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already to "take steps to develop and implement alternatives to residential care of children with disabilities, for example, local rehabilitation programs and home care, as well as to arrange understanding development campaigns aimed at family-based care and fostering of the rights of children with disabilities.

UN Committee on the Rights of the Child in their General Comments No 9 on the Rights of Children with Disabilities[10] and in European Declaration on Children and Young People with Intellectual Disabilities and their Families[11] encourages the States to switch from residential care services that have adverse impact on the health and development of children to high quality support and alternative care in community. Alternative services including care by relatives or care in foster families and adoption must be arranged to motivate people who consciously seek possibilities to care for such people, and who are sensitive to special needs of the children and willing to provide benefit to children, to undertake care of the children.

---

[9] Hodgina R., Ņūvels P. Konvencijas par bērna tiesībām ieviešanas praksē rokasgrāmata: UNICEF, 2002.- p.p. 652, 335.

[10] General Comment Nr.9, The rights of children with disabilities, Committee on the Rights of the Child, http://daccess-ods.un.org/TMP/6372007.13157654.html

[11] European Declaration on Children and Young People with Intellectual Disabilities and their Families, http://www.euro.who.int/__data/assets/pdf_file/0015/121263/e94506.pdf

Conclusions:

- The large number of children with physical and moral development impairments accommodated at PSCC demonstrates that placement of such children in child care facilities is frequently preferred in practice. Such practice persists due to lack of alternatives.
- Development and health conditions prevent children from access to family-based care services, and this contradicts with the principle of discrimination prohibition.
- Sufficient support should be provided to the families caring for children with special needs, and availability of alternative care services should be promoted in order to minimize placement of children with special needs at care facilities and to support removal of children from such facilities. Possibility should be considered to fix higher amount of remuneration to the guardians and foster families caring for children with physical and moral development impairments, since the health and development status of such children must not prevent them from availability of family-based care.

3. Ensuring the right of siblings to stay together

Article 18 of the UN Guidelines on Alternative Care stipulates that siblings with existing bonds should not be separated by placements in alternative care. Section 27, Part Four, Paragraph 1 of the Law on Protection of the Rights of Children also protects the right of children with existing family bonds not to be separated by placements in out-of-family care, unless in special occasions when it serves the best interests of the children.

According to the information obtained during interviews with the PSCC staff, the above-stated principle is not complied with in practice. According to Section 9.[1] of the Law on Social Services and Social Aid, orphans and children under 2 years left without parental care and accommodated by residential facilities are dependent on the State. Therefore, orphans and children left without parental care only under 2 years of age have social care and social rehabilitation services available from PSCC branches. If a child's sibling has reached the age of 3 years and no guardian or foster family can be found for the children, care of the siblings is provided by another child care facility funded by the municipality. In case of siblings with minor age difference (1-2 years), it is possible in practice that the municipality makes an agreement with PSCC on care of the children to ensure the right of siblings to grow up together; such occasions, however, present exceptions from the common practice.

Conclusion:

The different procedure applicable to funding of residential care services, depending on the child's age, facilitates infringements of the right of siblings to be not separated in the occasions when no care by guardian or foster family is available to children placed in out-of-family care. Therefore, a question arises about whether or not it is appropriate to review the procedure for funding of residential care services (see also the section regarding the right of child to grow up in family).

4. Number of Children at PSCC and their Right to Qualitative Care

The UN Committee on the Rights of the Child, based on conducted research, has repeatedly pointed out that small home-type child care facilities often demonstrate better results of child care. Large number of accommodated children adversely affects the quality of care services and poses risk to wholesome development of children. Child care facilities are unable to compensate efficiently the lack of family-based environment; children accommodated at

facilities are subject to the principle of impersonality and strict regime; and shortage of staff results in limited access of children to care appropriate to their individual needs. Also, children may experience difficulties in finding a contact who helps to instill confidence and safety in children due to personnel turnover. Manual on practical implementation of the Convention on the rights of children points out that "children accommodated in facilities are subject to the risk of delayed development; their communication abilities are impaired, and they experience emotional deficit, insufficient attachment to adults, passivity and lack of confidence. Serious deviations can be observed in the intellectual and motivation field of psychology in children at primary school age, as well as trend to inadequate behavior"[12].

It was established during the visits conducted by PSCC that each facility can provide accommodation to about 100 children, and "Kalkūni" branch of PSCC "Latgale" can accommodate 160. Children live in groups of 10-12 in each. Two employees are involved with each group of children on day-to-day basis: a social worker who is parenting children and teaching skills to them, and a caretaker. At nighttime, only 1 caretaker is available at the group. Assessment of such situation against the international standards of the rights of children shows that the large number of children accommodated at PSCC branches does not serve the interests of the children. Taking into consideration the number of caretakers assigned to each group, the age and health condition of children, the quality of care is also questionable, namely, there is doubt whether the children always have care available as appropriate to their needs.

According to the UN Guidelines for Alternative Care of Children,[13] the countries where large residential facilities remain, alternative forms and deinstitutionalization strategies should be developed aimed at progressive elimination of residential care facilities. Article 23 of the above-named premises stipulates that states should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care, and should evaluate the existing facilities against these standards.

Conclusions:

- The large number of children accommodated at each PSCC branch has adverse effect on the quality of care. The number of staff assigned to the groups is also insufficient to ensure that children have care available as appropriate to their needs. It is therefore necessary to review the requirements stipulated in regulatory acts in respect of social care and social rehabilitation facilities.
- **The country should have developed deinstitutionalization strategy** and adequate action plan with clearly set goals and objectives for each period in order to ensure progressive elimination of the large residential facilities.

5. Alternative care forms

Alternative care forms should be available to younger children in order to reduce the number of children accommodated at PSCC. The Law on Protection of the Rights of Children stipulates that in case of a child placed in residential facility care of such child may be

[12] Hodgina R., Ņūvels P. Konvencijas par bērna tiesībām ieviešanas praksē rokasgrāmata: UNICEF, 2002.- 652 lpp., 284.lpp.

[13] Adopted on 18 December 2009 by resolution of the UN General Assembly, Guidelines for the alternative care of children, http://www.crin.org/docs/Guidelines-English.pdf

provided by guardian or foster family in the environment that is the closest to family-based setting.

Analysis of information regarding the number of younger children accommodated at PSCC branches and statistic data regarding foster families leads to conclusion that the number of foster families capable of and willing to provide care to very young children is insufficient. There may be several reasons of it.

Care, parenting and supervising of small children needs much more time and efforts. Care of infants requires continuous 24h involvement of the caretaker, and the caretaker's mode of life is often changed radically. On certain occasions, the willingness to take care of small children may be affected by availability of health care services, because children must be periodically examined by family physician and consulted by other specialists.

The potential conditions that affect the willingness of foster families to take care of younger children, as well as quality of care, is lack of skills in care of small children (especially infants). Observations of the staff of PSCC branches also show that foster families frequently lack knowledge of how to care for infants.

Care of small children also involves notably higher costs (diapers, formulae, prams, clothing, etc.). Neither the foster family nor the guardian, unless he/she is the child's grandparent, has the duty to support the child on their own cost; therefore, financial support is important in fostering the availability of alternative care services.

According to Section 3, Part One of the Law on State Social Allowances, the costs related to guardianship are fully covered from the state budged: remuneration for performance of the duties of guardian makes 38 lats per month, regardless of the number of children in charge, and allowance for support of a child makes 32 lats per month. The guardian is entitled to have means of subsistence paid by parents of the child; if this is not possible, subsistence is paid by the state instead. The amount of subsistence paid by the subsistence guarantee fund is 30 lats per month in case of children under 7 years[14]. Given that each of the parents has the duty to pay subsistence, the minimum amount of subsistence for support of a child is 60 lats per month. In case of deceased parent, the child is entitled to survivor's pension the minimum amount is presently fixed at 29.25 lats; in case of individual with inherent disability – 48.75 lats. If a child is eligible to survivor's pension or state social security allowance to survivor, or subsistence from the subsistence guarantee fund, or family state allowance, the allowance for support of the child is reduced proportionally. At present, when the minimum living wage basket per person has exceeded 170 lats per month,[15] the amount of allowance is not sufficient to cover the actual costs for support of the child.

Foster family also has no obligation to support a child placed in the family on their own account. Remuneration paid by the state for performance of the duties of foster family is 80 lats per month, regardless of the number of children placed in the family[16]. The child support allowance is paid to foster family by the respective municipality, and according to Article 43, Paragraph 1 of the Cabinet Regulations on Foster Families No 1036 of 19 December 2006, the amount of such allowance may not be less than 27 lats per month. In practice, most of the municipalities provide higher allowances, yet the amount differs radically: in Viļāni, for example, it is 50 lats per month, in Jelgava – 3 lats per day, and in Olaine – in the amount of minimum wages. The allocated amount on some occasions is not sufficient to cover all costs related to child subsistence.

[14] Article 4 of the Transitional Provisions of the Law on Subsistence Guarantee Fund

[15] Data of Central Statistics Department, http://www.csb.gov.lv/statistikas-temas/iedzivotaju-ienemumi-galvenie-raditaji-30268.html

[16] Article 2 of the Cabinet Regulations No 1549 of 22.12.2009 Concerning the Procedure for Allocation and Payment of Remuneration for Performance of the Duties of Foster Family

Adequate social guarantees also should be provided to motivate people to undertake provision of care services. An employed person who is willing to take care of an infant should have the possibility to use child care leave or unpaid leave with the right to resume the previous employment.

Section 156, Part One of the Labor Law stipulates that the employer has the duty to grant child care leave applied for by employee due to the birth or adoption of child. Further, Section 153, Part One of the Labor Law provides for the right to request and have granted unpaid leave in case of employee in whose care and supervision the adoptive child is placed by decision of orphans' court prior to approval of adoption by court. On other occasions, unpaid leave may be granted at the employer's discretion without obligation to grant the leave, that is, "the employer may also grant leave upon the employee's application on other occasions". In addition, Section 43 of the Law on Remuneration to the Government and Municipal Officials and Employees stipulates: "Unpaid leave without preserving rations may be granted to an official (employee) who applies for it and whose position (service, employment) regime permits so."

In practice, due to the above-described regulation, there form situations in which the guardian or a member of foster family may be prevented from effective care of children for reasons independent on them, since the employer may refuse unpaid leave, and thus the person may not be entitled to parental allowance stipulated in the Law on Maternity and Sickness Insurance. Taking into account the above-stated, corresponding amendments should be made to the regulatory acts so that a member of foster family and a guardian can enjoy the same rights as parents/adoptive parents of a child.

Conclusions:

- Appropriate policy should be implemented to promote availability of alternative care services, so that adequate funding and social guarantees are available to people who are willing to take care of children.
- Financial remuneration paid by the state for performance of the duties of guardian/foster family is incommensurate with the involved tasks, in particular concerning the individuals caring for younger children. Therefore, the issue should be discussed concerning the need to differentiate in regulatory acts the amount of remuneration for performance of the duties of foster family and guardian, respectively, depending on the age of children, so that higher remuneration is provided to the caretakers caring for younger children.
- Regulatory acts should be amended to increase the minimum amount of child subsistence so that it confirms with the actual costs of supporting a child.
- Regulatory norms concerning the provision of social guarantees should be improved to ensure that conditions of a member of foster family and to guardian are equal to those of parents/adoptive parents of a child, including amendments to the Labor Law and the Law on Remuneration of Public and Municipal Officials and Employees, to enable them to use child care leave or unpaid leave.[17]
- Education of foster families provided pursuant to the Cabinet Regulations on Foster Families No 1036 of 19 December 2006 includes no extended education on care of young children (especially infants). Therefore, the need for development of a special additional

[17] In the given matter, the Ombudsman has addressed letter No 6-8/722 to the Ministry of Welfare within the scope of the verification proceedings in question for issuing opinion on legal regulation.

education course on care of young children should be considered for the foster families intending to take care of younger children.

6. Social Work with the Family

Preventive social work should be pursued with the families of risk groups in order to minimize the possibility that young children are placed in residential care. According to observations, the lack or knowledge and skills required to take care of and parent children frequently leads to the failure to provide proper care to children, and consequently the parents are deprived of the right to care of their children. Provision of family assistant service should be therefore encouraged to provide support and training to parents in caring and parenting of children, as well as development of their social skills. Such service is currently available in a few municipalities only (in Riga and in the county of Babīte, for example), and therefore the need for and availability of such service in each and every municipality should be promoted.

Preventive measures in working with a family can eventually include the education of prospective mothers and new parents on care of a newborn child: care, nursing, emotional needs and other matters. Such education is presently organized by maternity hospitals and non-governmental organizations on a fee-based, voluntary basis. An example of good practice is provision of mandatory free education on child care to the parents from social risk groups.

In the situations where separation of a child from his/her family serves the best interests of the child, placement of the child in residential care should be of short-term nature, while intensive work is performed with the biological family to ensure that the child can later return to the family of his parents. Section 4, Part Five of the Law on Social Services and Social Aid stipulates that during the period of accommodation of an orphan or child left without parental care at a long-term social care and social rehabilitation facility, the municipal social service and orphans' court shall cooperate with the staff of the relevant facility to foster returning of the child into family, to maintain contact between the child and the parents or, if this is not possible, to seek possibilities of providing care of the child by another family.

Practice shows that social work with families is insufficient, and the number of children who return to their families is extremely small. According to the reports made by PSCC branches on provision of long-term social care and social rehabilitation services in 2010, only 45 of 226 children have left the facility for reunion with the family of their parents. According to the information obtained from the staff of PSCC branches, parents on most occasions lack motivation to parent their children, and social workers often can find no solution of this problem. No adequate preventive work involving the risk families with children takes place due to shortage of social workers and lack of financial resources in municipalities.

Conclusions:

- Social, health, educational and other services to risk families should be ensured as well as timely access to such services.
- The need for improvement of normative regulations concerning the required number of specialists in municipalities, as well as concerning further education of social workers on the above-mentioned issues should be discussed.

7. Urgent measures to be taken for securing of the right of children to grow up in family or to enjoy care in family-settings.

Taking into consideration the fact that Governmental Declaration of the intended actions by the Cabinet under the management of Valdis Dombrovskis also provides for improvement of social service provision system by means of support to effective, transparent and customer-oriented social care, including competent social care tailored to each group of customers, as well as the fact that development and implementation of the government policy in the field of protection of the rights of children falls into competence of more than one Ministry, the Ombudsman has drawn the attention of the Government in November 2011 to the above-mentioned urgent measures to be taken for securing of the right of children to grow up in family or, failing that, to enjoy care in family-settings.

Having inspected the conditions at PSCC branches during our visits, and having discussed observation of the rights of children with the staff of facilities, it was concluded that a number of measures should be taken to improve the conditions, and the responsible authorities have already started seeking their solution:

7.1. Procedure for Placement of a Child in Alternative Care

According to the information obtained from the staff of PSCC branches, the workers who have been responsible for the child summarize information about the child's development, health condition and special needs, and present such information to the guardian/foster family prior to placement of the child in alternative family-based care, in order to preserve succession of care. The above-mentioned information in written form is also submitted to the orphans' court. The guardian/foster family also have the possibility to meet the child before removal from the residential facility, in order to establish emotional contact with the child.

The staff of PSCC branches informed that in practice, the procedure for placement of a child with foster family was different. There are foster families that express very high interest about the child and seek repeated meetings with the staff to discuss the matters related to child care, as well as with the child to establish emotional contact with him/her prior to placement of the child with the family. On the other hand, there are foster families that express no interest about the child who is removed from residential facility and taken to the foster family by representative of orphans court or social worker. In the latter case it is possible that the foster family lacks versatile information about the actual situation and needs of the child, since such information is available from the staff of PSCC branches during meetings with them. As a result, the foster family may make inconsiderate judgment of their ability to take care for particular child, and there is risk on some occasions that the child may return again to the facility. Moreover, sudden, unexpected removal of a child from his/her usual environment may cause adverse emotional experience to the child.

Conclusions:

- Whenever alternative care is selected for a child, all parties involved in decision-making should have detailed information about the child, and their personal opinion should be based on such information. Placement of a child in alternative care should take place in circumstances that are emotionally favorable to the child. Therefore, foster families and guardians should meet the staff of residential facility prior to removal of the child from the institution in order to collect detailed information about the child and to establish emotional contact with the child.

- Orphans' courts should develop understanding of the above-described issue, and amendments should be introduced to the Cabinet Regulations on Foster Families No 1036 of 19 December 2006 concerning the procedure for placement of a child with foster family.[18]

7.2. Management of the Child's Property

During the visits to PSCCs, the staff of the branches has highlighted the issue of management of the children's property. Children accommodated in residential facilities may have savings the application of which by the guardian – manager of long-term social care and social rehabilitation institution – is subject to approval by the orphans' court. In practice, the staff of PSCC branches has experienced refusals by orphans' courts to application of the children's assets. On certain occasions, the funds owned by child are not put in use at all throughout their lives. According to the information obtained from the employees of PSCC branches, the orphans' courts motivate their refusals by the fact that children accommodated in care facilities receive full support from the State, and that therefore the State has to provide the children with everything they need.

Social care and social rehabilitation services are provided to the children accommodated in residential facility; the services provided by the state, however, constitute the minimum necessary to meet the fundamental needs of the child. The child's living standards can be improved and joy can be added to his/her life by toys, games and various events in the child's life, yet their provision is not always available from the budget assets of the facility. The right to participate at plays and entertainment events appropriate to the child's age and maturity are the rights of children stipulated in the UN Convention and the Law on Protection of the Rights of Children. Therefore, authorizing the guardian to apply part of the child's assets when it is necessary to improve quality of the child's life, for example, to buy some personal item or to participate at certain activities that may add favorable experience, would serve the best interests of the child.

Conclusions:

- Notwithstanding that the children accommodated in PSCC receive full support from the State the guardian should be authorized by orphans' court to apply part of the child's assets to improve quality of the child's life.
- The orphans' court should carefully assess the relevant circumstances and the need for use of the child's funds prior to making decision, because the child's assets **may not be applied to ensure provision of care and rehabilitation services.**
- Orphans' courts should develop understanding of the above-described issue.[19]

7.3. Health Care Services

According to Section 1, Paragraph 6 of the Law on Social Services and Social Assistance, continuous social care and social rehabilitation facilities provide accommodation, full care and social rehabilitation to orphans and children left without parental care. Sub-article 2.11 of the Cabinet Regulations concerning the Requirements to Providers of Social Services No 291

[18] The Ministry of Welfare has drafted Cabinet Regulations „Amendments to the Cabinet Regulations on Foster families No 1036 of 19 December 2006 (Reg. No. TA – 2670).

[19] The Ombudsman has asked the SIRC to issue opinion on the methodical guidance provided by orphans' court in the matter of management of children's property.

of 3 June 2003 (hereinafter – the Regulations) stipulates that provider of social services shall ensure access to the first aid to the customer. Article 18 of the Regulations stipulates that child care facility shall ensure registration of each child with the family attending physician and health care appropriate to the child's needs. It may be therefore concluded that, according to the normative regulation, the PSCC has to provide access to health care services to their customers.

Article 11 of the Regulations stipulates that work with the children accommodated in child care facilities is conducted by social workers, social pedagogues, social caretakers, nurses registered with the register of practicioner nurses, and caretakers. Manager of the child care institution is entitled to outsource other specialists for provision of social care and social rehabilitation services. The normative regulation contains no list of specialists the manager of child care facility is entitled to outsource; the regulation provides, however, that such specialists may be involved for provision of social care and social rehabilitation services.

According to the information provided by managers of PSCC branches, children in all branches are registered with attending family physician and they have health care services available, pursuant to the requirements of regulatory acts. In practice, however, registration with attending family physician is ineffective, since the physician is not always available to children at required time. Taking into account the young age of children and the fact that the children accommodated in PSCC include those with severe functional impairments, occasionally subject to regular supervision by doctors, medicinal professionals are engaged by facilities for work with children. In some facilities full-time medicine professionals are employed, while other facilities outsource the appropriate specialists on contractual basis. According to the information provided to the representatives of the Ombudsman's Office, Pediatrists are employed on full-time basis by the PSCC "Riga" branches "Riga" and "Pļavnieki", for example, while PSCC "Kurzeme" branch "Liepāja" is outsourcing a Psychiatrist on contractual basis.

Conclusions:

- Notwithstanding that medical treatment is not the purpose of social care and rehabilitation facilities, continuous availability of medicine professionals, such as pediatrist, psychiatrist or neurologist, serves the best interests of the child. At the same time, quality assurance of treatment services is of equal importance.
- Treatment services are provided to the children at PSCC facilities, yet the center or its branch is not recorded in the Register of Treatment Institutions, and therefore the facility may not be subject to the control procedures applicable to treatment institutions in terms of the quality of service and the storage of records.
- Normative regulations governing the health care provided by PSCC are subject to improvement. [20]

7.4. Reorganization of PSCC

Reorganization of PSCCs carried out on 1 January 2010 served a number of goals including more efficient application of financial assets. Three of PSCC branches informed during the interviews conducted with the staff of PSCCs that they have experienced no positive changes from the reconstruction. Following the reconstruction, the above-mentioned branches experienced lack of funds and the need to save on the account of other costs; this had adverse

[20] The Ombudsman has raised the given topic with the Ministry of Welfare and also with the Government.

effect on the quality of provided care. The PSCC "Riga" branch "Riga", for example, has pointed out that the facility lackd funds for procurement of medicinal preparations already now, and preliminary estimations show that lack of funds for food may be expected by the end of the year.

Only the employees of PSCC "Latgale" branch "Kaklūni" admit that the facility has experienced a number of positive changes following the reorganization. Several residential premises and classrooms have been re-decorated; special curricula have been developed for children who receive in-situ education because of their health conditions; appropriate employees have been hired, and a number of other changes have taken place, as well as appropriate funding has been received to ensure the provision of services.

The listed causes of insufficient financial support to residential facilities for children include lack of knowledge in the matters related to child care specifics. Taking into account the fact that in the course of reorganization PSCC hosted facilities designed to provide services to children as well as to adults, the assessment of needs if frequently based on the same standard, without paying attention to the fact that the goals and objectives of care and rehabilitation are different because of the age and health condition of the customers. It was eventually the reason why the management of PSCC "Riga" proposed to decrease the number of social caretakers in the branches "Riga" and "Pļavnieki", starting from 1 June, and to substitute them by less qualified caretakers. Since the branch managers and the Ombudsman objected that the intended changes may have adverse effect on quality of the provided service, the changes were not implemented.

Conclusions:

- Impairment of the quality of care and rehabilitation services due to lack of funding is impermissible.
- When considering any issue that concerns the PSCC branches in which children are accommodated, including the issue of distribution of funds between the PSCC branches, possible changes in the number of staff, eventual reorganization or any other issues, the needs of children should be carefully assessed and compliance should be ensured with the priority of protection of the interests of children enshrined in the UN Convention which stipulates that the utmost care should be exercised to ensure that any actions taken in respect of children serve the best interests of the child.[21]

7.5. Organization of Work and the Staff of PSCC

The urgent issues related to the operation of branches were also discussed with managers of PSCC branches during the visits.

According to the information provided by them, high labor turnover is observed among caretakers in almost all branches. The main reason is the caretakers' remuneration which is insufficient and incommensurate with their job duties. 8 hours' training provided to caretakers is also treated as insufficient since performance of the caretakers' job duties requires additional knowledge in the field of neonate care: nursing, nutrition, emotional needs, development and other aspects.

[21] The draft law „Amendments to the Law on Protection of the Rights of children" drafted by the Ministry of Welfare (Reg. No. TA-2580) envisages that Section 20 of the Law on Protection of the Rights of Children would stipulate that heads of residential care facilities, social workers and social rehabilitation personnel shall require special knowledge in the field of protection of the rights of children.

Managers of PSCC branches have pointed out to shortage of certain specialists: for example, the PSCC "Kurzeme" branch "Liepāja" lacks social caretakers because no specialists with appropriate education are available in the region of Kurzeme; the PSCC "Latgale" branch "Kalkūni" seeks the possibility to outsource a neurologist because no such specialist is available in the county of Daugavpils. Given the high number of children with functional impairments accommodated in the above-named branch, at least one additional speech therapist is also required.

Conclusions:

- Additional measures should be envisaged in support of the staff to eliminate regular turnover of caretakers at PSCC branches.
- The need to provide appropriate training to caretakers and continued improvement of their qualification should be discussed in order to ensure higher quality of care.
- The need to fix competitive remuneration and social guarantees to the staff should be discussed to enable involvement of specialists in certain regions. Other governmental and municipal authorities may be also involved in handling of the said issue.[22]

II Securing of the Rights of Children at Psycho-Neurological Hospitals

Articles 3, 23, 31 of the UN Convention on the Rights of the Child

Articles 3, 6, 47, 48, 68, 72, 73 of the Law on Protection of the Rights of Children

Securing of the rights of children accommodated in psycho-neurological hospitals was among the priorities of the Ombudsman in 2011. Pursuant to the authority stipulated in Section 13, Paragraph 3 of the Ombudsman Law to visit closed-type facilities at any time without special authorization, to move freely on the territory of the visited facility, and to visit all premises and meet vis-à-vis the individuals accommodated in closed-type facilities, representatives of the Ombudsman's Office visited in 2911 all 6 psycho-neurological hospitals eligible to accommodate children: "VSIA „Bērnu psihoneiroloģiskā slimnīca „Ainaži"", VSIA „Daugavpils psihoneiroloģiskā slimnīca", VSIA „Ģintermuiža", VSIA „Bērnu klīniskā universitātes slimnīca" in Gaiļezers, VSIA „Piejūras slimnīca", and VSIA „Rīgas psihiatrijas un narkoloģijas centrs".

The UN Committee on the Rights of the Child has recommended to the state of Latvia by the most recent recommendations issued to Latvia in 2006 "to ensure **full protection of the rights of children** committed to institutional care for mental illness, including access to family members and the establishment of an independent complaints process."[23]

Ombudsman of the Republic of Latvia and employees of the Ombudsman's Office inspected during their visits to hospitals the situation regarding the observation of rights of the children accommodated in the hospitals and discussed the possibilities to improve the situation.

Having assessed the situation identified at the hospitals against the stipulations of legal acts, the Ombudsman's recommendations (see below) were issued to the hospitals encouraging to

[22] The Ombudsman has raised the given topic with the Ministry of Welfare and also with the Government.

[23] Available at: http://www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_**crc**.doc, 11.lpp.

present their visions on the specific issues related to observation of the rights of children at the institutions in question.

All hospitals were visited repeatedly in December 2011 and January 2012 to assess the measures taken by them towards improvement of the situation in the field of the rights of children, including implementation of the Ombudsman's recommendations.

The recommendations made by the Ombudsman serve the purpose of drawing attention to the infringements of the rights of children identified by Ombudsman of the Republic of Latvia and by representatives of the Ombudsman; s Office during their visits to the hospitals, without distinction of any specific hospital. It is appropriate to note that not all infringements have been identified at all hospitals. Ombudsman of the Republic of Latvia intends to report to the Ministry of Health of the Republic of Latvia on the systematic shortcomings in regulatory acts or their application identified during the inspection visits by the officials of the Ombudsman's Office.

According to Section 72, Part One of the Law on Protection of the Rights of Children, manager of the health care facility accommodating children is responsible for protection of health and life of the child and for ensuring that the child is protected, that qualified services are made available, and that other rights of the child are duly observed. Taking into account the fact that, according to Section 72, Part Six of the Law on Protection of the Rights of Children, the staff is also responsible for observation of the rights of children, the Ombudsman encouraged management of the hospitals to inform the staff of hospitals about the issued recommendations.

1. Treatment of Children Separately from Adults

According to Section 3, Part One of the Law on Protection of the Rights of Children, a child is a person who has not attained 18 years of age, excepting such persons for whom according to law, majority takes effect earlier, that is, persons, who have been declared to be of the age of majority or have entered into marriage before attaining 18 years of age. Part Two of the said Section stipulates that the State shall ensure the rights and freedoms of all children without any discrimination – irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national, ethnic or social origin, place of residence in the State, property or health status, birth or other circumstances of the child, or of his or her parents, guardians, or family members.

According to Article 3 of the UN Convention of the Rights of the Child and Section 6, Part Two of the Law on Protection of the Rights of Children, any actions taken in respect of a child, regardless of whether taken by governmental or municipal authorities, non-governmental institutions or other natural or legal entities, or by courts and other law enforcement authorities, should serve the priority of protecting the rights and interests of the child.

It was identified during the visits to hospitals that some children are accommodated in hospital wards together with adults because of their health condition that entails behavioral changes. According to the information provided by medicine professionals, the grounds for accommodation of children in an adult ward included the children's age and anti-social behavior (aggressiveness towards other people, etc.) thus preventing threat to security of younger children and the staff.

Hospital administration points out that separate wards for adolescent patients are provided in adult departments, as seen also from signboards on the entrance to the adult wards. The children accommodated here use the common premises (dining-room, TV-room, classroom, etc.) thus interacting with the adult patients on regular basis.

Also, different approaches are observed, from one hospital department to another, in terms of the number of meals and availability of psychologist; children have 5 meals and a psychologist available, while adolescents accommodated in adult wards are treated as adults: they have 4 meals, and psychologist is only available to them on exceptional basis.

The children accommodated in adult wards have no possibility of solitude in case of need, because of the large number of patients in the adult wards.

Inspection of the books, games and other educational material available to children shows that the range of available material is restricted in the ward designed for male adults; this leads to suspect that the right of children to development trough playing games and the right to information in a language that the child understands is not properly ensured.

The right of such children to special protection guaranteed by the State is also restricted on particular occasions. According to the obtained information, adolescent smoking is also tolerated. The given situation contradicts with the international human right standards, and it is impermissible due to special status of a child.

Children present a particularly vulnerable group of persons; development of their personalities is still taking place, and therefore children are more acceptable to influence by persons with negative behavioral trends. Accommodation of children in the wards designed for accommodation of adults who are not their relatives may pose threat to the safety and future development of children.

Moreover, accommodation of children in adult wards should not be supported even if such solution facilitates protection of the rights of other children.

Hospital management should assess the situation and take appropriate steps to ensure protection of all rights accommodated in the hospital.

It was identified during the visits to hospitals in December 2011 and January 2012 that the practice of referral of adolescents to adult wards continued. The Ombudsman had been informed before those only 15-17 years old children were referred to adult wards on exceptional occasions. Employees of the Ombudsman's Office established, however, during the inspection visits that decisions on accommodation of teenagers in adult wards were made on regular basis. The above-described practice was also applied to younger children. A 13 years old girl was accommodated in the adult ward of hospital during the inspection visit conducted by employees of the Ombudsman's Office.

2. Internal Regulations for Patients

Section 68, Part One of the Law on Protection of the Rights of Children stipulates that child care institutions shall ensure the rights of the child within the scope of their competence as determined in their articles of association or by-laws. Part Two of the said Section stipulates that the maintenance of order in these institutions shall be ensured by internal procedural regulations that comply with the requirements of law and do not infringe upon the dignity of children.

Visits to hospitals conducted in the first half of 2011 revealed that some hospitals have not established internal regulations (hereinafter also referred to as - Regulations) available to the children as well as to their parents (legal representatives). Representatives of the Ombudsman were informed about the daily regimen of department, which in terms contents may not be equated to internal regulations. This gives raise to doubt whether the children referred to hospital and their legal representatives have sufficient information available about the applicable procedures and the vehicles for protection of the customers' rights in case of

eventual breaches of the rights of patients (such as the visiting procedure, handling of complaints, etc.).

Easily comprehensible regulations established by hospital would facilitate clarification of the rights of children and their parents (legal representatives). Involvement of children in drafting of such regulations, listening to and taking into consideration their consideration is substantial to the practicable extent.

Further, the Regulations should describe the procedure to be followed at the hospital, and the procedure for complaining by children or their legal representatives if they believe that infringement of the child's rights is taking place at hospital. Though the information collected during visits show that no complaints have been ever filed by legal representatives of children, the hospital has to ensure that proper vehicles are put in place for protection of the individuals' rights and to facilitate availability of such vehicles.

The Regulations should treat children as a separate group with specific needs, taking into consideration the age and development level of children. The Regulations should specify, for example, the person who signs documents upon admission of the child (whether it is the legal representative or the child). The Regulations should also stipulate that children and their legal representatives have to be informed about their rights in a language and manner that the child is able to understand.

It was identified during the visits to hospitals in December 2011 and January 2012 that a number of hospitals have established new internal regulations for patients or updated the earlier established regulations. Officials of the Ombudsman's Office concluded, however, upon discussion of the application of such regulations, that certain employees of hospitals unfortunately lack understanding of the need for and effectiveness of such regulations, and no distinction is made between description of daily regimen and internal regulations for patients, without perceiving the difference in their contents.

3. Restriction of physical mobility (fixation of children)

According to the information provided by hospitals during the visits, restriction of physical mobility (fixation) is applied to children on certain occasions, subject to executing of appropriate statement inserted in the inpatient's medicinal record. Some hospitals pointed out to application of alternative means for calming down a child, instead of fixation.

During the visits to hospitals conducted in the first half of 2011, representatives of the Ombudsman's Office in reviewed methodical recommendations established in the hospitals and concluded that restriction of physical mobility was governed by similar instruments (hereinafter – Recommendations) in all hospitals. It was also identified that such recommendations contain no distinguishing approach to children as a separate group subject to special treatment; therefore, it is questionable whether or not the rights guaranteed to children are fully observed upon the application of Recommendations to children.

Drafting and implementation of a separate document to govern the procedure for restriction of child mobility ensures awareness among all staff on the actions to be taken in the relevant situation, thus minimizing the potential infringements of the rights of children. Parents (legal representatives) of the children are also aware of the procedure for restriction of the child's mobility, and they can efficiently perform their duties of legal representatives and note any breaches of the applicable procedure, if appropriate. Therefore, not only protection of the rights of children is ensured but also improvement of the quality of work of the hospital staff.

It is important to emphasize that drafting of regulations for restriction of child mobility does not necessarily mean application of the relevant methods at the hospital. It is just the other

way round: drafting of quality regulations and awareness of the staff facilitates knowledge of the methods and measures to be taken in order to minimize the need to apply mobility restriction to children. The particular methods are not currently included in the Recommendations, and therefore the hospitals have been encouraged to describe in their respective Recommendations the methods that can be used prior to deciding on application of technical facilities to restrict mobility of patients, and to include appropriate environmental factors as means for calming a child as a patient.

Hospitals are also aware of their duty to notify parents (legal representatives) of the child whenever mobility restrictions are applied. Details of notification to the child's parents (legal representatives) have to be registered in the dossier. If the above-mentioned individuals are not notified, the doubt may arise whether all relevant information regarding treatment of the child is explained to representative of the child, to enable timely response to potential infringement of the rights of the child. It should be emphasized that restriction of child mobility must not be applied as a type of punishment, for example, for a breach committed by the child.

Whenever restriction of physical mobility is applied, it is important to note that, pursuant to Section 21 of the Law on Protection of the Rights of child, any restrictions of the rights of child are only permissible if they serve the purpose of the child's security and protection, provided that permissibility of the respective restrictions is stipulated in the law, and provided that such restrictions are aimed at protection of national security, public order, morality of population, protection of their health, and protection of the rights and freedoms of other individuals. In addition, a child has the right to have the grounds of restriction of their rights properly explained.

According to the information collected during the visits to hospitals in December 2011 and January 2012, all hospitals apply nationally developed and approved regulations regarding restriction of physical mobility. One of the visited hospitals has drafted appropriate regulations for restriction of child mobility; however the draft is subject to improvement.

4. Toilets

According to the international standards of human rights and the principles established by the UN for protection of individuals with mental illness and improvement of mental health, human treatment of all individuals with mental illness or those treated as such has to be ensured as well as respect of the inherent dignity of human being, with particular attention being paid to the protection of children[24].

Any situation where the child has no possibility to undisturbed relieve without continuous, direct presence of other patients should be treated as infringement of the child's right to privacy. If door to toilet may not be closed because of the child's health condition, the hospitals are encouraged to seek other solutions, such as a light switching on outside the toilet door, a corresponding sign hanged on the door-handle, etc.

It was identified during the visits to hospitals conducted in December 2011 and January 2012 that no uniform practice for ensuring privacy is established in the hospital toilets. The practice of lockable toiled door that may be unlocked by the hospital staff from outside deserves appreciation.

[24] Principles for improvement of the protection of persons with mental illness and the improvement of mental health care of. Adopted by the UN General Assembly by resolution 46/119 of 17 December 1991. *http://www.un.org/documents/ga/res/46/a46r119.htm*

5. The right to maintain contacts, communication possibilities, and social integration

According to the information at disposal of the Ombudsman, communication of the institutionalized children with their relatives basically takes place in form of telecommunications, and such practice is not sufficient, given the possible forms of communication.

Taking into account the frequently limited resources available to parents (legal representatives) of children that prevent daily visiting of children, recommendation is made to the hospitals to promote communication by children by means of the latest technologies (e-mail, "Skype" software, etc.), provided that safety of children in the internet environment is protected (www.drossinternets.lv). It is therefore possible to facilitate communication of children with their relatives and the outside world, and to accelerate social integration of children when they are discharged from hospital. Moreover, if the hospital has access to web, no additional fee is charged for sending an e-mail or communication on "Skype" (correspondence, video call).

Regarding the meeting of children with their parents and other persons, it was observed during the visits to hospitals that conditions for meeting of children with their relatives at hospitals are inappropriate – in the lobby at entrance to the hospital department. Hospitals should provide a separate room where visitors can meet the child, in order to ensure protection of the child's as well as the parents' (legal representatives') right to privacy, and to ensure that the hospital staff can monitor the course of visit and interfere where appropriate. To ensure protection of the individuals' right to privacy and at the same time to enable the hospital staff to monitor the visit and to interfere if appropriate, the room may be arranged in such a way that observation of persons in the room is possible without direct presence of the hospital staff. The involved parties have to be aware of monitoring.

Information was obtained during the visits to hospitals in December 2011 and January 2012 that arrangement of appropriate meeting rooms is currently impossible in a number of hospitals because of the limited funds. Yet the fact that some hospitals provide possibility to children to communicate with their parents (legal representatives) and relatives by means of internet deserves appreciation. The approach practiced by certain hospitals to prohibit visits by friends in general should also be discussed, though such practice is only applied if there are grounds to suspect that health or life of the concerned child may be threatened.

6. Support to families with children (availability of social worker and psychologist)

Introduction with the hospital staff revealed that notable work aimed at improvement of observation of the rights of children was conducted by social workers and psychologists. The above-referred specialists were not available in all hospitals at the time of visits in the first half of 2011; however the hospital staff confirmed the importance of their work and the need for involvement of such specialists in handling daily situations.

Availability of psychologist not only to children but also to their parents (legal representatives) can facilitate the parents' and legal representatives' understanding about the special needs of the child, thus enabling the child to receive support and assistance from their close people to maximize development of the child's skills. Based on the assessed need, the hospitals should ensure availability of the above-stated specialists, and information about their consulting hours should be displayed so that is clearly visible to the visitors.

According to the information obtained during the visits to hospitals in December 2011 and January 2012, services of psychologist are not funded from the state budget unless such

services are related to diagnostics. The hospitals, however, provide consulting by psychologists within the scope of their resources, given the need for it.

Implementation of support program for parents (legal representatives) launched in November by VSIA "Daugavpils psihoneiroloģiskā slimnīca" deserves appreciation, whereas consulting by psychologist is available not only to children but also to their parents (legal representatives), if necessary.

7. Availability of Outdoor Activities

According to the information obtained by representatives of the Ombudsman's Office during the visits to hospitals in the first half of 2011, some hospitals do not provide regular possibility for children to enjoy fresh air. It was pointed out that the reasons of such situation include lack of personnel at the hospital departments.

Regular outdoor activities are crucial to development of a child, and therefore such right may only be restricted on exceptional basis, for example, if outdoor activities may lead to impairment of the child's health condition. Eventual attempts by children to escape from hospital may not be treated as sufficient grounds to prevent children from enjoying fresh air.

Hospitals should take the appropriate steps to ensure that children have regular outdoor activities available to them, for example, to review the work load of the existing personnel, or to adapt the territory of hospital to fit such purpose, and to consider other alternatives.

According to the information provided during the visits to hospitals in December 2011 and January 2012, children have regular possibilities to enjoy fresh air; interviews with the children accommodated in hospitals, however, make to question the correspondence of certain information provided by the hospital with the actual situation.

8. Smoking Prohibition

Visits to hospitals and assessment of the conditions provided for accommodation of children in the first half of 2011 lead to doubt whether the stipulations of Sections 47 and 48 of the Law on Protection of the Rights of Children are complied with by certain hospitals.

According to Section 47, Part One of the Law on Protection of the Rights of Children, The obligation of state institutions, local governments, and physical and legal persons is to protect a child from negative influences in social surroundings. Section 48 of the above-named Law strictly stipulates that a child shall be protected from smoking and the influence of smoking. Negative attitude towards smoking should be instilled in a child.

According to Section 48 of the Law on Protection of the Rights of Children, for inducing a child to smoke, persons at fault shall be held liable as prescribed by law. Supply of tobacco articles to a child is also treated as inducing a child to smoke.

The issue was repeatedly discussed during the visits to hospitals in December 2011 and January 2012.

9. Leisure Time Opportunities

According to Article 31 of the UN Convention on the Rights of the Child, States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. Also, States Parties shall respect and promote the right of the child to participate fully in cultural

and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

It has been established during the visits to hospitals that hospitals have established and equipped separate playrooms to ensure protection of the above-mentioned right. Children also have the possibility to read books and watch TV.

It is essential to follow up to ensure that contents of the games, books and TV broadcasts available to children (including in DVD and other format) is unoffending and appropriate to the children's age and perceptive peculiarities.

10. The Right of Children to Education

Article 14 of the Cabinet Regulations No 253 of 4 April 2006 Concerning the Procedure for Organizing Education of Long-Term Accommodation Patients Outside Educational Establishments stipulates that: "If, according to the opinion of attending physician, an individual subject to education is expected to stay in hospital two weeks or longer, education shall be organized at the hospital." According to the above-quoted Regulations, education is organized in accordance with the overall (type of) curriculum adapted to the individual needs of each child. Overall education is organized on the following levels: preschool education; elementary education; secondary education.

According to the information obtained during the visits to hospitals, the average length of a child's stay in hospital is 28 weeks. Hospital management is recommended to assess the individual needs of each accommodated child and to ensure the possibility to pursue the respective level of education as appropriate, including secondary education.

11. Involvement of Orphans' Courts and other Institutions in Handling of the Issues

When performing their duties, hospital staff may become aware of eventual infringements of the rights of children outside the hospital. According to Section 73 of the Law on Protection of the Rights of Children, the involved individual has the duty to notify the police, orphans' court or other authority responsible for protection of the rights of children on the same day of any violence towards a child, or any infringement of or other threat to the rights of child.

The present practice of hospitals to involve in handling of the potential infringements of the right of children – for example, to call the child care facility and to make recommendations for elimination of infringement, deserves appreciation. Yet it is not sufficient. Hospitals are encouraged to use telephone communication to ensure sooner and more effective response, yet the relevant recommendations should be also issued in writing. Compliance with the procedure stipulated in Section 73 of the Law on Protection of the Rights of Children by application to the competent authority has to be ensured whenever infringement of the rights of children is identified. If, however, the competent authority to which the hospital has applied refuses or fails to take steps for elimination of infringement of the rights of children, the hospital is responsible for notifying superior authority about such failure.

Repeated infringements of the rights of children may only be prevented by strict response to them.

III The Right to Free Education

Sections 91, 112 of the Constitution of the Republic of Latvia

Article 26 of the UN Declaration of Human Rights

Articles 13, 14 of the UN International Covenant on Economic, Social and Cultural Rights

Article 28 of the UN Convention on the Rights of the Child

Section 112 of the Constitution of the Republic of Latvia (hereinafter – the Constitution) provides the right to education to each and every individual. The State shall ensure that everyone may acquire primary and secondary education free of charge. Primary education shall be compulsory.

Section 11 of the Law on Protection of the Rights of Children stipulates, on its turn, that the State shall ensure that all children have equal rights and opportunities to acquire education commensurate to their ability.

The right to education is also enshrined in a number of international instruments binding upon Latvia: The United Nations (hereinafter – UN) Universal Declaration of Human Rights (Article 26), the UN International Covenant on Economic, Social and Cultural Rights (Sections 13 and 14), and the UN Convention on the Rights of the Child (Section 28).

According to the stipulations of Section 11 of the Ombudsman Law, the Ombudsman, having familiarized with the information published in mass media and provided by parents and non-governmental institutions, has concluded that the actual situation in our country in the field of access to education does not meet the requirements of regulatory acts. For example, parents have to spend their own funds on text-books, exercise-books and other teaching aids for mandatory education. Such situation contradicts with the guaranteed right to free elementary education and secondary education stipulated in Section 112 of the Constitution.

In the Ombudsman's opinion, the norms stipulated in the Constitution of the Republic of Latvia must not be merely declarative; the state is responsible for providing the scope of rights it has guaranteed. The Ombudsman has therefore launched work on reviewing the content of free education guaranteed by Section 112 of the Constitution. The measures involved include identification of actual and legal situation, assessment of the collected information and drafting specific proposals (the Ombudsman's recommendations) aimed at improvement of situation in the field of provision of human rights.

To ensure comprehensive involvement of society, the Ombudsman has established an advisory council to handle availability of education with participation of the representatives of parents, pedagogues, school children and non-governmental organizations as well as experts. The council is composed of the following members: Gunta Kraģe (Board Member, Establishment "Fund VIENS OTRAM"), Inete Ielīte (Board Chairwoman, Latvian Child Forum), Vaira Vucāne (Vice-President, Latvian Children's Fund), Aivars Borovkovs (Board Chairman, Latvian Association of Lawyers), Andrejs Mūrnieks (Board Chairman, Latvian Pedagogic Council (LDP)), Jēkabs Juražs (President, Riga Student Council), Kārlis Boldiševics (Board Chairman, Latvian Parents' Association "Parents for Education, Cooperation, Growth" (VISI)), Marija Golubeva (Researcher, Social Political Center "Providus"), Rūta Dimanta (Board Chairwoman, Foundation "Fonds "Ziedot"").

The advisory council has held a number of meetings[25] to identify the situation and to draft proposals to the Ombudsman for improvement of the situation.

[25] The first meeting of the Advisory Council was held on 19 August 2011

Specialists of the Ombudsman's Office in the field of the rights of children have requested detailed information from the Ministry of Education and Science to ensure proper research of the issue. Information about the situation in the field of education availability has also been requested from foreign authorities with the responsibilities similar to that of Ombudsman's Office.

IV Individual Preventive Work with Children in Municipalities

Initially, preventive work with children in municipalities was not included in the Ombudsman's strategies for the years 2011 – 2013. The issue emerged in September 2011 when handling an application for socially unacceptable behavior of children at interest education facility.

The Ombudsman's Office conducted research of situation in preventive work with children in 2011: study of legal regulation, international recommendations including those addressed to the State of Latvia, and identification of the actual situation in all 119 municipalities of Latvia to assess the compliance of such situation with the legal regulations. The Ombudsman's strategy has been supplemented with the above-described issue, and work in this field shall be continued in 2012.

1. Introduction to the Issue

Assessment of the existing situation, both in general society and in the education system of Latvia, leads to conclusion that the number of socially excluded children[26] is high and they present a significant risk group. The conducted studies indicate to increased number of children with learning problems, behavioral and emotional disturbances at schools. There are such children in almost all forms of comprehensive educational schools and vocational schools.[27]

Analysis of effectiveness of various preventive programs shows that behavioral problems are among the risks to expulsion of a teenager from school. The authors[28] distinguish between the following groups of behavioral problems: 1) criminal – delinquency that takes the form of theft, violence, punishable aggressiveness; 2) abuse of alcohol and other substances; 3) absence from lessons and from school, drop-outs; 4) antisocial, aggressive, insurgent behavior, disrespect of authorities, indignity towards others.

The UN Committee on the Rights of the Child has pointed out in their most recent recommendations issued to Latvia that the Committee is concerned at reported rates of non-

[26] No definition of social exclusion is provided in the regulatory acts of Latvia, and therefore definition of the European Union is applied which stipulates that „social exclusion means inability of individuals or groups of individuals to integrate in society because of poverty, insufficient education, unemployment, discrimination, or other conditions. a socially excluded individual has no access to services and goods, and they are prevented from exercising their rights and taking opportunities by such obstacles as inaccessible environment, social prejudices, emotional and physical violence, etc.. *(Ministry of Welfare of the Republic of Latvia, Social Inclusion, 2011*).

[27] Study "Socio-psychological portray of young people subject to the risk of social exclusion" under the EIF project "Development and implementation of programs for establishment of support system to young people subject to the risk of social exclusion", p.p. 1.

[28] Wilson, D. B., Gottfredson, D. C.& Najaka, S. S. (2001). School-based prevention of problem behaviors: A meta-analysis. Journal of Quantitative Criminology, 17, 247–272.

attendance from schools as a result of, inter alia, voluntary truancy, the lack of parental interest in education, and bullying in school.[29]

Behavioral and emotional disturbances belong to the group that requires special psychological as well s social assistance. These children are dependent on measures aimed at fostering behavioral and emotional sphere including the managerial functions and promotion of attention. If a child has no access to the required support, their behavior may pose threat to themselves and lead to infringement of the rights of other individuals including children. This also causes problems to their parents and teachers, since lack of success in education and interaction with other people frequently lead a child to loss of motivation to learn, while teachers are no more willing to facilitate their education.

Lack of timely support from parents misleads children to assume that their behavior is acceptable, and this can gradually lead to commitment of offences.

European Economic and Social Committee (hereinafter – the EESC) has also pointed out to personality and behavioral disorders as grounds to commitment of offences by children: "Personality and behavior disorders, either in association with or independently of the factor outlined in the previous point. These usually conspire with other social or environmental factors to make young people act impulsively or unthinkingly, uninfluenced by socially accepted standards of behavior."[30]

Since the behavioral and emotional disorders that traditionally emerge in childhood and adolescence years are included in the International Classifier of Diseases (ICD-10), referral to a child to psycho-neurological hospital is seen as the ultimate means in case of a child whose behavior poses threat to himself/herself or other people. This is a short-term solution that does not meet the principle of the best interests of child, since medicinal assistance alone does not eliminate future problems.

Pedagogues and parents may notice behavioral problems in children quite early and quite well, yet on most occasions the child does not receive the required timely assistance. Parents can hardly accept the fact that behavioral disorders may stem from psychical health, neurological or other causes including parenting mistakes. Parents feel unsecure, and eventually they are even afraid to seek advice of neurologist, psycho-therapist or psychiatrist. Teachers, on their turn, do not identify themselves as subjects entrusted with protection of the right of children and do not understand their duty to respond to the very first signs of behavioral, emotional or learning disorders.

Immediate consulting by specialist would be required in each occasion in order to identify the underlying disorders of behavioral problems and to help the child.

EESC has expressed the position that application of preventive measures today means not only seeking the possibilities of social rehabilitation but also preventing adult criminality in future[31]. It may be therefore concluded that preventive work with children who have behavioral and emotional disorders is important for society in general: „Inclusion and

[29] UN Committee for the Rights of the Child, final considerations, 28 June 2006, Latvia, par. 50; available at*:* http://www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc

[30] Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union, 2006/C 110/13, available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:110:0075:0082:LV:PDF – 2.1.7

[31] See above – 1.2

minimizing of social exclusion is not a task "we" have to do for "them". It is a process of importance to each and every member of society."[32]

2. Development of the Regulation of Preventive Work

Preventive work with children who had committed illegal offences was the competence of police until 2000. It was stipulated in Section 58, Part One of the Law on Protection of the Rights of Children that: "Preventive work with juvenile offenders shall be conducted by police in collaboration with the municipality, institutions for protection of the rights of children, and public organizations". Social service, on its turn, was responsible for preventive work with the children who had not committed any offences yet: "If a child is rambling, begging or taking other actions that may lead to criminal actions, (..) social service of the respective municipality shall develop program for social correction of his/her behavior and assistance in collaboration with the child's parents and authorities/institutions responsible for protection of the rights of children."[33]

New wording of Section 58 of the Law on Protection of the Rights of Children was adopted on 9 March 2000, and the new wording which is presently applicable had the effect of conceptual alteration of the organization of preventive work and delegation of such function to municipalities (without reference to any specific institution any more).

In practice, State Police inspectors for juvenile delinquency are still playing the key role in preventive work with children: preventive records, handling of preventive dossiers and performance of individual preventive work with the same juvenile groups[34] in respect of which municipalities are responsible for preventive work. Depending on the need and practice established in the field of cooperation inspectors for juvenile delinquency decide on involvement of governmental, municipal and other institutions in the drafting of specific programs and on cooperation with such institutions. The above-stated is also confirmed by statistics:

State Police officials who perform their job duties in the field of preventing juvenile delinquency have entered 1473 preventive records of minor individuals in 2006, 1511 in 2007; 1402 in 2008, 1281 in 2009 (1815 minors in total were registered by the end of year)[35], 900 in 2010 (1115 minors in total were registered by the end of year), and 308 in six months of 2011 (636 at the end of reporting period)[36]. Therefore, a notable number of children who have committed offences of various severity is monitored by the State Police officials every year, however, according to the conclusion drawn in "Program for preventing child delinquency and protection of children against criminal offences for the years 2009 – 2011", as a result of limited resources, the taken preventive measures not always exclude commitment of new offences.[37]

The State Police is entitled to make preventive record of children listed in Section 58, Part Two, Paragraphs 1 – 6 of the Law on Protection of the Rights of Children at their own

---

[32] Tūna A. Iekļaujoša skola iekļaujošā sabiedrībā, project „Vienādas iespējas visiem jeb kā mazināt sociālo atstumtību jauniešu vidū", 2006.

[33] Wording effective as of 22.07.1998. Published - Ziņotājs, 04.08.98. No.15 (L.V., No. 199/200). Available at: http://pro.nais.lv/naiser/vtext.cfm?Key=0103011998061932773973

[34] Section 58, Part Two, Paragraphs 1-6 of the Law on Protection of the Rights of Children.

[35] Overview of juvenile delinquency and road traffic situation in 12 months of 2009, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=12286

[36] Overview of juvenile delinquency, injured children and road traffic and prevention situation in 6 months of 2011, available at: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018

[37] Program for preventing child delinquency and protection of children against criminal offences for the years 2009.–2011, p.p. 4. Available at: http://polsis.mk.gov.lv/view.do?id=3144

initiative, however on exceptional basis, since the said function has to be performed by social service or other municipal institution.

It may be therefore concluded that, though even the number of children preventively recorded by the State Police has experiences slight decrease in recent years, preventive work with children does not meet the requirements stipulated in Section 58 of the Law on Protection of the Rights of Children, and, as a result thereof, the rights of children are not properly protected; moreover, resources of the State budget are continuously spent on performance of the functions of municipalities. If the number of children preventively recorded by the State Police is reduced, effectiveness of individual preventive work would be improved.

3. Legal Regulation of Preventive Work

According to Section 15, Paragraph 23 of the Law on Municipalities, autonomous functions of municipality include protection of the rights of children on their respective administrative territory.

Section 58, Part One of the Law on Protection of the Rights of Children stipulates: "Work with children for the prevention of violations of law shall be carried out by municipalities in collaboration with the parents of children, educational institutions, the State police, public organizations and other institutions." It clearly follows from the above-quoted legal norm that municipalities are competent to conduct preventive work with children.

According to Section 58, Part Two of the Law on Protection of the Rights of Children, municipalities shall establish a prevention file and formulate a social behavior correction and social assistance program for each child who has committed a criminal offence or taken any action that may lead to criminal offence. Therefore, municipalities have the duty to take preventive municipal record of each child from risk group and to develop a program appropriate to such child. The program developed by municipality may provide, depending on the opinion of executive official of the concerned municipality, for involvement of police, because the municipality is competent to develop the program and therefore to select cooperation partners.

It follows from international recommendations that community-based preventive work has to be used and contact of young people with the law enforcement system has to be eliminated insofar practicable: "Preventive and intervention-based measures must be designed to ensure the social integration of all minors and young people, principally through the family, the community, peer groups, schools, vocational training and the labor market."[38]

Risk factors overlap on most occasions, and therefore complex approach to preventive programs is required, with involvement of various specialists, such as psychologists, social pedagogues, medicinal professionals: "(..) educational treatment should preferably be provided using resources or institutions belonging to the same social environment as the minors concerned, with the aim of equipping them with educational skills or requirements the lack of which caused them to come into conflict with the criminal law in the first place. These minors must be subject to thorough examination by specialists in a range of fields in order to identify educational gaps and determine how to provide them with skills which can reduce the

[38] Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union, 2006/C 110/13, available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:110:0075:0082:LV:PDF – 2.3

risk of re-offending. Similarly, work needs to be done with the families, to ensure their cooperation and commitment in the process of educating and re-socializing these minors."[39]

4. The role of Municipal Child Institutions or Specialist Responsible for Protection of the Rights of Children in the Child Right Protection System

Internationally recognized experts in the field of protection of the rights of children emphasize that four system components have to be established in each developed State for effective functioning of the system for protection of the rights of children, namely:

- a governmental institution;
- an inter-institutional commission;
- an ombudsman for the rights of children;
- municipal specialists in the field of the rights of children (with functions similar to those of the ombudsman for the rights of children, yet performed by specialists in the field of protection of the rights of children on administrative territory of their respective municipalities)[40].

According to the opinion of international experts, quality and efficiency of the work of municipal institutions (municipal specialist) for protection of the rights of children is closely related to independence, including financial independence, of the institution (specialist) on the supervised institutions. If a specialist for protection of the right of children is subordinated to some municipal authority, performance of his/her functions is jeopardized. **To ensure effective performance of functions, the optimum form of subordination of such specialist is direct subordination to the council chairperson.**

To ensure proper performance of the municipal function stipulated in Section 15. Paragraph 23 of the Law on Municipalities, namely, protection of the rights of children on the administrative territory in question, and to exercise the competence of municipality in protection of the rights of children as stipulated in Section 66 of the Law on Protection of the Rights of Children, each municipality should have an institution, inter-institutional commission or specialist for protection of the rights of children who is competent to ensure implementation of municipal functions stipulated in regulatory acts in the field of protection of the rights of children, including preventive work with children.

5. Description of the Actual Situation

5.1. Institutions Responsible for Individual Preventive Work with Children

Summarizing the information obtained from 119 municipalities of Latvia regarding the institutions or specialists entrusted in the concerned municipalities with the right to develop social adjustment programs for children leads to conclusion that the applicable practice is various and highly different.

In one of the studied municipalities, individual preventive work is coordinated by **specialist for protection of the rights of children**, in other – the first deputy of the municipality chairperson. In three municipalities, **municipal police** is competent to handle preventive work with children, and in other three such competence is vested in **county educational establishments**. Schools have established inter-professional teams composed of teachers,

[39] See above – 4.2.1

[40] Report of Peter Newell, Child Rights' Expert, during the annual meeting of the member states of European Child Ombudsmen Network in 2004.

school administration, psychologists and other specialists as appropriate. Schools collaborate with the municipal social service and orphans court, as well as municipal police.

In seven municipalities, development of social adjustment programs **is not delegated to any institution, and no development of programs is taking place at all**. Municipalities may be divided into three groups by the reasons they state as grounds to omission of the above-mentioned function:

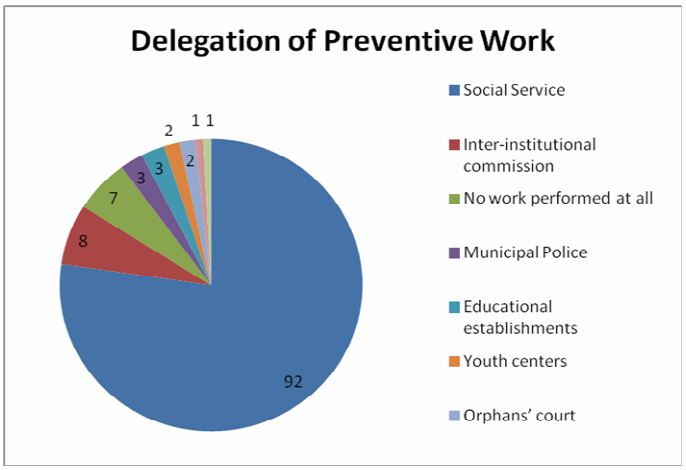
1. Municipalities that lack information about children with behavioral disorders. At the same time, they point out to specialists available on the county level to perform preventive work: "The task could be performed by social worker for work with families that have children, and psychologist, who would, cooperating with the orphans' court, educational establishments, municipal police and the State Probation Service, develop social adjustment programs. No social adjustment and social assistance programs have been developed because we have received no information until present about any children who have committed criminal offences or actions that may lead to criminal offences"[41]. As mentioned above, studies show that there are children with learning difficulties, behavioral and emotional disorders in almost each form, and therefore the arguments listed by municipalities regarding the lack of such children on the whole territory of their county should be taken with a grain of salt.

2. Municipalities where no preventive work is performed due to lack of appropriate specialists – a single social worker for the whole county: "I am left alone, there is no social service manager since April, and no psychologist available in our county. What can I do with no assistance available, just talk."[42]

3. Municipalities who have children with behavioral disorders and who have specialists available to perform the relevant function, yet no political support to preventive work is provided by head of the municipality: the proposal to establish an inter-institutional commission has been declined without even voting; alternatively, the management has promised to thing of allocating funds when drafting budget for the next year.

Eight municipalities have vested preventive work in to the competence of **inter-institutional commissions**.

In most of municipalities – 92 of 119 – development of social adjustment programs is vested into competence of social service. The executive in charge of them on most occasions is the social pedagogue employed by social service who cooperates with all schools and population of the county.



[41] Head of Social Service of County G regarding the institution entrusted with development of programs.
[42] Social worker of County B.

5.2. Initiation of Preventive Work

In most municipalities, preventive work is initiated by the State Police – that is, social adjustment program is developed no sooner than the State Police reports on criminal offence committed by a child and requests social adjustment program to be developed for such child. Copies of the developed programs are forwarded to the State Police, and control over their implementation is exercised by social service and State Police. In some municipalities, preventive work is initiated even later, when ruling is rendered by court or information notified by Probation Service. The fact that individual municipalities arrange preventive work without scheduling work with the children whose behavior may lead to criminal offence is expressly illustrated by title of the order on establishing an inter-institutional commission: "On organizing preventive work with juvenile offenders".[43] According to the specialists themselves, it means handling of consequences, rather than causes.

At the same time there are certain municipalities who have bodies competent to develop such program, yet no child in the whole county is recorded in preventive file (including a county with population of 10'007). The concerned municipalities state they have had no need for development of such programs. Such approach confirms the fact established by the State Police from year to year that "Unfortunately, certain municipalities conduct no preventive work with children and develop no social adjustment and social assistance programs provided for in Section 58 of the Law on Protection of the Rights of Children; therefore the State Police happens to be the sole institution that conducts preventive work with juvenile offenders."[44]

There are only a few municipalities who have timely initiated preventive work, i.e., before a child commits any criminal offence. This is true in case of municipalities where preventive work is performed by educational establishments, and in particular in case of the very few municipalities where importance of such work is properly understood. For example, in one municipality preventive work is performed by two educational establishments, and they have 58 children recorded on file (in a county with population of 8781). Social service of some other county (with population of 11'339) there are 334 children recorded on file[45], who are subjects of social work, and there is a client dossier filed for each child as well as social behavior adjustment program developed for each of them.

5.3. Informing of Parents (Guardians, Foster Parents) and Pedagogues about Social Behavior Adjustment Programs for Children Belonging to Risk Groups

According to the national as well as international legal norms, the parents are primarily responsible for upbringing their children. Article 18, Part One of the United Nations Convention on the Rights of the Child stipulates: "(..) Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern."

Section 24, Part Two of the Law on Protection of the Rights of Children stipulates that the obligation of the parents is to prepare the child for an independent life in society, as much as possible respecting his/her individuality, taking into consideration his/her abilities and inclinations.

---

[43] Information provided by municipality A regarding the institution/official entrusted with development of programs.

[44] Overview of juvenile delinquency, road traffic and preventive situation in 6 months of the year 2011, available at:: http://www.vp.gov.lv/?id=305&topid=305&said=305&docid=13018

[45] The county has population of about 11300 and preventive work is conducted by social workers of social service for work with families, and by social pedagogues who cooperate with all educational establishments of the county.

Practice shows that parents not always manage to perform their duty successfully. If parents lack knowledge and skills in parenting a child, it is the duty of municipality to provide assistance to them. Provision of such assistance is stipulated in Section 26 of the Law on Protection of the Rights of Children which provides that, depending on the age of a child, a municipality shall offer help to the family, especially poor families, in the child's upbringing and education, and provide other services aimed at development of the child.

Based on the competence of municipalities stipulated in the law in the field of protection of the rights of children, the parents (guardians, foster family) must have easy access to information (for example, Internet site of the council; at the educational establishment, or social service) regarding assistance available if problems arise in upbringing of a child: the child's behavior becomes socially unacceptable and fails to comply with the stipulation of Section 23 of the Law on Protection of the Rights of Children which provides that a child has the obligation to observe the accepted rules of behavior within society; to treat with care the surrounding environment, and a child may not offend against the rights and legal interests of other children and adults.

Summarizing of the information provided by municipalities leads to conclusion that no municipalities pursue preventive work with children at the initiative of parents, since this is not treated as assistance to parents on part of municipality in upbringing their children.

Normally, parents learn about preventive recording of their child no sooner than the child is already recorded on file at the initiative of some institution (traditionally it is the State Police). Notification takes place by home study of the family or calling them to the concerned institution for interview, together with the child. The only difference is that some municipalities inform parents with an already established program while others involve them in development of such program. Involvement of parents, however, is most frequently related to the need to notify parents or to collect information, rather than involvement of parents as cooperation partners: "As a rule, development of such program is notified to the school as well as to parents, because complete information about the child is required for development of adjustment program."[46] Some municipalities involve children and their parents in developing the programs, and both children and parents have their own tasks in such programs.

Only two municipalities pointed out that causes of the criminal offences committed by children are most frequently related to economical and social factors, and that program for both children and parents is developed in order to handle the issues inherent with juvenile delinquency. One of the above-mentioned municipalities also pointed out that their social service was conducting work with children and families from other municipalities who have not declared their residence in the given county yet actually reside on the administrative territory of that county. The number of children recorded on preventive file by social service of the said municipality was 82 children as at the time of study[47].

Educational process comprises teaching and upbringing, and the duty of pedagogues in the educational process is formation of the trainees' attitude towards themselves, other people, work, nature, culture, society and the State, and to bring up honest, decent people.[48] An educational establishment is entitled to implement educational programs aimed at social adjustment, however it has no duty to provide social adjustment of the child's behavior. Given that a number of schools have no supporting staff (psychologist, social pedagogue, assistant teacher) at all or such staff if insufficient, pedagogues also have to be aware of where they can seek assistance if problems emerge in educational work and cooperation with parents brings

[46] Municipality of county K about how pedagogues are informed about the programs
[47] Data as of 25 November 2011
[48] Section 51, Part One, Paragraph 2 of the Education Law.

no desired result. According to the summarized practice, when social adjustment of children's behavior is required, educational establishments abstain from applying for help to the respective service. Just like parents, educational establishments learn about preventive record of children post factum: "Written information addressed to social pedagogue and psychologist is forwarded to the concerned school."[49] In some municipalities, educational establishments may receive no information at all about the program developed for certain child, because any information is only forwarded to the school if the program envisages involvement of educational establishment: "Teachers are informed if involvement of educational establishment is expected."[50]

In some municipalities, the institution responsible for the field of education reports to the prevention authority on the non-attending children. "The number of children changes, it forms from the number of police notices and information about rambling school-children provided by educational establishments." [51]

It should be kept in mind that non-attendance is only one cause that can lead to illegitimate action. If, for example, a child breaches the accepted rules of behavior within society or offends against the rights and legal interests of other children and adults, no social adjustment of behavior is initiated by the school (except the two municipalities where educational establishments themselves perform such function).

As an exception, two municipalities have pointed out that initial information about the children from families subject to risk of inability to provide for the children's basic needs is obtained by prevention bodies from educational and pre-school establishments. Whenever information is received about families which are unable to provide for sufficient development and upbringing of a child and which need assistance, social work is pursued on case-to-case basis.[52] It may be therefore considered that in some municipalities preventive work is initiated by educational, including pre-school establishments; this is, however, an exception from the general practice.

5.4. Financial Impact of Preventive Work with Children on the Municipal Budget

The municipalities in which no or insufficient preventive work is performed, point out to lack of appropriate specialists among excuses to their omission; such lack is related, on the turn, to lack of funds for hiring of the specialists in question.

The UN Committee on the Rights of the Child has encouraged the state of Latvia by the most recent recommendations issued to Latvia in 2006 already that the State party take immediate steps to allocate appropriate financial and human resources:

(a) To ensure that all children from all areas of the country, without distinction, including children in pretrial custody and detention, have equal access to quality education, including human rights education:

- To strengthen measures aimed at decreasing drop-out and repetition rates in primary and secondary education in all regions;
- To prevent bullying among children at school;

[49] Head of social service of county B about how are parents and pedagogues informed about the programs.
[50] Municipality of county S about how are parents and pedagogues informed about the programs.
[51] Head of social service of county A about the number of children recorded on preventive file.
[52] One of them is also one of the two municipalities in Latvia where development of rehabilitation plan for family or children is taking place.

- To inform parents of the importance of education, and where appropriate, to provide incentives to families to encourage children to attend school;
- To improve the standard of living, the disciplinary treatment, and the quality of education for children attending schools in rural and remote areas, and to reduce disparities in allocated resources and facilities.[53]

Preventive work if pursued timely, i.e., when the first signs of behavioral and emotional disorders are noticed, eventually even at pre-school age, and in professional manner can prevent a number of future problems. If parents and educational establishment are unable to manage properly the duty of upbringing, achievement of the goals of protection of the rights of children directly depend on the effectiveness of preventive work:

1) Formation and instilling value guidance in a child appropriate to the interests of society;

2) Guidance of a child to employment as the sole morally acceptable source for gaining means of income and welfare;

3) Guidance of a child to family as the key unit of society and the key value of society and individual;

4) Guidance of a child to healthy lifestyle as an objective precondition to survival of the nation.[54]

It depends on the child's motivation to pursue education, prevention or treatment of addiction, and to master social skills, whether or not the child would be prepared for unassisted life in society, and whether the child would grow into prospective tax-payer or a socially excluded individual unable to exercise his/her rights and take opportunities, thus becoming a recipient of social assistance and social services.

Remuneration paid to specialists for timely development and implementation of social behavior adjustment program for each child in the county whose behavior may eventually lead to criminal offence is incommensurable to resources the municipality would spent in future on each socially excluded inhabitant of the county, paying in form of social allowances, social work and provided housing for the consequences of unsuccessful preventive work.

Conclusions:

1. Notwithstanding the identical normative regulations and similar conditions of child behavior, the practice used municipalities is highly different.
2. Managers of municipalities and vast majority of specialists lack understanding of the importance of preventive work with children, and effectiveness of such work directly depends on the specialists' competence and willingness to work. The responsible body notes that: "Unfortunately, development of programs and filing of records alone is of little help there".
3. No adequate funding is allocated to preventive work with children. In some municipalities, social worker is the sole specialist who conducts preventive work with children in addition to other job duties.
4. Some municipalities do not fulfill at all the duty stipulated by law to develop social behavior adjustment programs for children.

[53] UN Committee for the Rights of the Child: Final Considerations, 28 June 2006: Latvia, par. 51, available at*:* http://www.lm.gov.lv/upload/berns_gimene/bernu_tiesibas/lv_crc.doc
[54] Section 4 of the Law on Protection of the Rights of Children.

5. Most of municipalities do not fill the duty stipulated by law to provide assistance to a child whose behavior raises concern that it might | lead to criminal offence" in future. Adjustment of children's social behavior is initiated with delay, when the child has already committed an offence and recorded on file with the State Police.
6. Formally, according to the letter of the law, delegation the function of preventive work to municipal police meets the requirements stipulated in Section 58, Part One of the Law on Protection of the Rights of Children: "Preventive work with minor lawbreakers shall be performed by municipalities (..)". Given that municipal police is a municipal institution, the preventive work may be seen as performed by the municipality. It should be taken into consideration, however, that operation of municipal police, just like operation of the State Police, is governed by the Law on Police, and Section 1 of the said Law stipulates that "Police is an armed, militarized governmental or municipal institution (..)". Therefore, competence of the involved police officials in the work with children is highly important, including the applied methods, approaches and treatment.
7. Parents have the right to select educational establishment for their children in any municipality appropriate to them, and therefore not all children residing in the county attend the educational establishments of the same county. If preventive work is delegated to an entity related to the field of education, it extends only to the children attending schools in the county, rather than all children residing in the county. Delegation of this function to educational establishments therefore means that preventive work is improperly performed.
8. None of the municipalities in Latvia treats preventive work with children as a component of family support system.
9. Preventive work with children is not treated as support system to educational establishments.
10. Failure to allocate funds for preventive work with children means lack of foresight that may result in notably higher consumption of financial resources in future (social allowances and social work, provision of dwelling, etc.)
11. Good practice means that development of program takes place with involvement of both the child and parents, and a specialist in the respective field is attracted to each task of the program: for example, psychologist, social pedagogue, class-mistress, teacher of the syllabic discipline, orphans' court, municipal police officer, or other specialist appropriate to the goals of the program. Development of program is also aimed at the family.
12. An established support system for children with learning difficulties, behavioral and emotional disorders, and for their parents, including available services of specialist (social pedagogue, psychologist, psychotherapist, speech therapist, etc.) in a county presents an exception from the common practice.

V Topical Problems in the Field of the Rights of Children

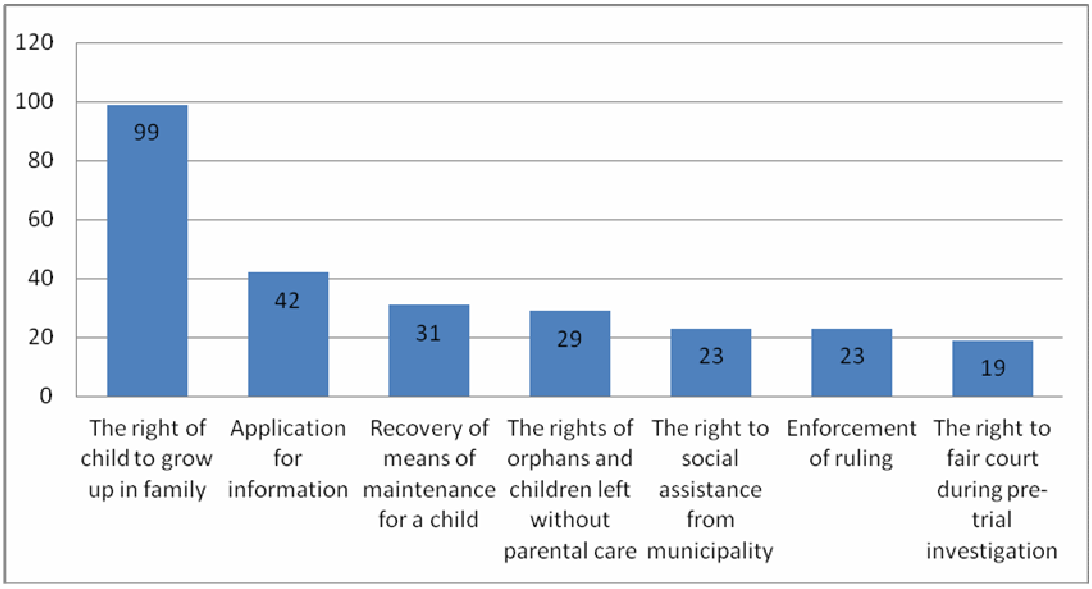
1. Statistics and Overall Review

No office of ombudsman in the field of the rights of children is established in Latvia, and therefore the relevant functions are performed by the Ombudsman of the Republic of Latvia.

Lawyers of the Ombudsman's Office who work in the field of child rights are only handling the issues related to the rights of children.

515 applications concerning the matters of child rights have been filed with the Ombudsman's Office in 2011 including applications for eventual infringements of the rights of children. 116 of the above applications are filed in written form and 399 – in verbal form.[55] Verification of 61 matters has been initiated after examination of the application, including five verification proceedings for establishing circumstances of the case at the Ombudsman's initiative.

The largest number of filed applications (99) refers to **the right of a child to grow up in family** (for example, for exercising of access rights; the right to be not separated from parents without reasonable grounds; for restoring of the right of care, etc.). On 42 occasions, individuals have applied to the Ombudsman's Office for **information about the rights of a child** and advice on how to proceed in specific legal situation. 31 applications are related to **recovery of the means of maintenance** for a child (for example, for recovery of maintenance while the marriage is not dissolved; for the right to apply to court for issuing a preliminary order; the amount of subsistence and altering thereof; litigation costs; enforcement of judgment, etc.)



Comparison of the statistics of application to the previous year shows that the right of a child to grow up in family and recovery of the means of maintenance remain actual topics. The number of applications concerning infringement of the rights of orphans and children left without parental care has increased more than three times (8 applications in 2010 against 29 applications in 2011). The number of applications for information has decreased to times: 96 applications in the previous year against 42 applications in the reporting period.

Monitoring visits were made in 2011 to all State social care centers that provide social care and rehabilitation services to orphans and children under 2 years left without parental care, and to children under 4 years with physical and mental development impairments, as well as to all 6 psycho-neurological hospitals qualified to accommodate children (please see the respective section for detailed information about the monitoring visits). The Ombudsman has issued a number of relevant opinions in 2011 in the field of the rights of children, for example, on video surveillance at schools, concluding that **safety of the child is the only**

[55] For the number of applications filed by topics, please see the enclosed „Statistics of the Ombudsman's Office in the field of the rights of children".

legitimate purpose for video surveillance of children in separate school premises, where mutual violence of children is likely to occur and where continuous, direct presence of the staff can not be provided for objective reasons.

Review of verification cases by the Ombudsman has facilitated elimination of shortcomings in legal acts: having established, for example, that the Civil Procedure Law contains no provisions regarding prohibition to take a child away from the State in proceedings for establishing of the child's affiliation, and lack of regulations can render adjudication of such cases difficult of even impossible, the Ombudsman has applied to the Ministry of Justice. The Ministry is going to consider forwarding of the above-described issue for discussing at the regular task force formed for handling of amendments to the Civil Procedure Law.

Child Rights Specialists of the Ombudsman's Office participated in 2011 in drafting of a number of regulatory acts and amendments thereto; for example, they were included in task force of the Ministry of Welfare for drafting amendments to regulatory acts in order to improve legal regulation of the institutional care of children; they continued work as part of the task force under the guidance of the Head of Information Center of the Ministry of Interior for drafting of regulatory norms aimed at establishing information system to support minor individuals, and thus to ensure notable improvement of inter-institutional cooperation in the field of protection of the rights of children.

Representative of the Ombudsman's Office continues to perform the task of Special Guardian in administrative proceedings instituted in 2010 to ensure representation of a child's interests before administrative court, including at the joint meeting of Administrative Department of the Supreme Court Senate of the Republic of Latvia[56].

The Ombudsman continued in 2011 to promote awareness among society about the rights of children and the vehicles for protection of such rights. Lectures were organized for young people who were preparing to pursue independent life after residential care; lectures for social pedagogues, officials of orphans' court, principals and managers of day centers' lectures for the 1st year students of Law Faculty of the University of Latvia on the rights of children as a part of study course on human rights. Several educational classes were arranged for children in the form of interactive play. Children and adolescents were introduced during the classes with information about the Ombudsman and Ombudsman's Office, and their fields of operation, and they gained new and strengthened the existing knowledge regarding the rights of children by means of development-aimed exercises.

Child right specialists of the Ombudsman's Office participated at a number of informative events, for example, public discussion "Protection of the rights of children and adolescents in medicine, advertising industry and educational system. Are there any other interests and values offered to children, apart from sex?" within the framework of the Lawyers' Days; the event organized by the Council of Riga School Children "Under a single roof" dedicated to the annual Day of Knowledge; mobile tour "Day of civic involvement" of the Volunteer Work Year organized by the European Commission at the Latvian Museum of Railway History.

On the International Child Protection Day the Ombudsman, in cooperation with the Law Faculty of Riga Stradina University, arranged the conference "The rights of children and their provision"[57]. Discussion on the topic "The needs and rights of a child to adequate alternative

[56] For more details of the given proceedings please see sub-section 3 „The duty of parents to observe the rights of the child".

[57] Cf. http://www.tiesibsargs.lv/lat/tiesibsargs/jaunumi/?doc=298&underline=un+to+nodro%C5%A1in%C4%81jums

care in family-based setting" was arranged in cooperation with the Alternative Child Care Alliance".[58]

Two students who conducted research of legal regulation governing the involvement opportunities of children in Latvia were engaged by the Ombudsman's Office in the second half of 2011 within the framework of cooperation with Legal Practice and Assistance Center of the Law Faculty of the University of Latvia. Deliverables of the students' performance were used by the staff of the Ombudsman's Office to identify compliance of the actual situation with the legal regulations and to draft recommendations for improvement of the situation.

Child right specialists of the Ombudsman's Office participated at several inter-institutional meetings and discussions, for example: expert task force formed by the foundation "Centrs Dardedze" on protection of younger children against violence; discussion arranged by the State Inspectorate for Protection of the Rights of the Child regarding the right of medicinal professionals to disclose information about treatment of a child and regarding the provision of security of a child at educational establishments.

The Ombudsman proactively cooperated in 2011 with non-governmental organizations operating in the field of protection of the rights of children through involvement of non-governmental organizations in discussing the strategy, through joint arrangement of informative events and joint work in advisory council, as well as through collaboration in the identification and handling various problems.

A child right specialist of the Ombudsman's Office participated on 1st – 2nd June 2011 in the Seminar for Ombudsmen of the Baltic States held in Estonia and presented a report on the role of Ombudsman in supervision of the work conducted by municipalities in the field of the rights of children. The Ombudsman and a child right specialist of the Ombudsman's Office participated in September 2011 in the annual meeting of European Ombudsmen Network for Children held in Poland where exercising of the rights of children in residential care were the key topics. Child right specialists of the Ombudsman's Office participate in the seminar conducted by the Judicial Chancellor of Estonia on the role of national institutions for human rights in the protection and development of the rights of children in residential care, and they also had a meeting with the representative of the World Children's Fund from Sweden, representatives of the US Embassy and European Commission for Preventing Torture, inhuman/humbling treatment or punishment, who are notified on regular basis about the matters regarding the rights of children, in particular regarding the protection of the rights of children in closed-type facilities.

2. The Right of Orphans and Children Left without Parental Care to Housing when they Reach Major Age

Regulatory acts provide for a number of social guarantees to orphans and children left without parental care when they reach major age and discontinue receipt of residential care. Such guarantees include assistance by municipalities in handling the housing issue. Major part of the applications concerning infringements of the rights of orphans and children left without parental care have been filed in 2011 in relation to provision of housing when children reach major age, and the actions taken by guardian in relation to management of the child's property – real estate.

According to Section 14, Part One, Paragraph 3 of the Law on Assistance in Handling the Housing Matters, municipality has to put orphans and children left without parental care on

[58] Cf. http://www.tiesibsargs.lv/lat/tiesibsargs/jaunumi/?doc=353

file when residential care and upbringing of a child by care and educational establishment, or by guardian/foster family is discontinued, or when the child has completed education at an educational establishment unless the child can use the residential premises occupied earlier in accordance with the applicable procedure.

Review of the verification proceedings identified that, whenever the above-described norm is applied in practice, municipalities frequently assess the possibility for the child to use previously occupied residential premises solely from legal aspect without taking into account the actual circumstances. Negative decision made by municipality in such occasion may lead to unreasonable restriction of the right to housing of an orphan or a child left without parental care.

In verification proceedings No 2011-169-18AA, for example, Riga City Council substantiated their refusal to put the applicant on file as a recipient of assistance from municipality by the fact that, according to decision of the municipal commission for tenancy of residential premises, the applicant and her father had the right to use an apartment, and the applicant had not been deprived of such right. The applicant, however, pointed out that she could not reach agreement with her father who was deprived of the right of care in respect of her on occupying the above-mentioned residential premises because her relations with her father were not good and their cohabitation in one apartment was impossible. The reasons for deprival of the applicant's father of his right of care for his daughter included physical violence on his part towards the applicant. During the period when the applicant was places in residential care her father had demonstrated no willingness to return the applicant into the family and demonstrated no interest about her. When residential care discontinued the applicant received no support from her parent, and she had to seek accommodation in a night shelter for some time when she had left the child care facility until she found the possibility to lease residential premises owned by a third party.

It follows from the practice of administrative courts in handling similar matters that, whenever deciding on providing assistance in handling housing matters or on refusal to provide such assistance by municipality, the possibility to use the earlier occupied residential premises should not be considered solely from the legal aspect, and if no legal obstacles are identified for the person to use the earlier occupied residential premises when residential care is completed, actual circumstances should also considered. Administrative Department of the Supreme Court Senate has pointed out in its award rendered on 28 October 2010 in proceedings No A42662409 SKA-466/2010[59] that: „[..] Section 14, Part One, Paragraph 3 of the Law on Assistance in Handling the Housing Matters, should be interpreted so that the possibility to use previously occupied residential premises should only be considered to exist if the child after discontinuation of residential care can and is willing to agree with the tenant of the residential premises used before placement in residential care, and provided that other family members of the tenant accept such agreement, or if the residential premises are vacant".

According to judicial practice, unfavorable social and emotional conditions or those degrading dignity; risk of jeopardy to health and personal inviolability; unwillingness of the child or the tenant/their family members to reach agreement on possibility for the child to accommodate in previously occupied premises are among the actual circumstances the existence of which gives raise to obligation of the concerned municipality to provide assistance to a child in handling housing matter when residential care is discontinued.

[59] Cf. http://www.tiesas.lv/files/AL/2010/10_2010/28_10_2010/AL_2810_AT_SKA-0466-2010.pdf , par. 13

It was identified in the above-mentioned verification proceedings that the municipality had no grounds to refuse registration of the applicant as a recipient of assistance in housing matter, since the conclusion made by the municipality that the applicant could cohabitate with the individual who has caused bodily injuries to the applicant in her childhood years may not be considered a reasonable interpretation of legal norm. Municipality of Riga city was encouraged to pass reasonable decision on this matter; however the Ombudsman's recommendation was not taken into consideration. The applicant applied for elimination of infringement of her rights to the Administrative District Court, and the court obligated the municipality to pass an administrative deed in favor of the applicant. Proceedings of the given matter are pending because the municipality has filed an appellate complaint.

The child's guardian has the duty to ensure that the child has legal as well as actual possibility of accommodation in the previously occupied premises. Further, pursuant to Section 331 of the Civil Law, orphans' court has to supervise the actions of guardian and to take all steps that serve the best interests of the child. The best interests of a child are served by possibility to return after discontinuation of residential care to the dwelling that is not encumbered with indebtedness and that ensures favorable social and psycho-emotional conditions. If a child owns a flat, the guardian has the duty to see that such flat is preserved as the child's property. Orphans' court has to follow up and ensure that all relevant payments are made in respect of the flat: management costs, utility payments, real estate tax, etc. In case of doubt regarding payment of the costs related to maintenance of the flat, the required institution has to be requested from the competent institutions.

Reviewing of verification proceedings helped to establish that the above issue is not always duly taken into account by guardian of a child and by orphans' court; as a result, when reaching major age, the child faces the need to handle his/her housing mater with no assistance because of legal or actual obstacles to accommodation in the earlier occupied residential premises. Settlement of such issue is often time-consuming, and the child has to wait until the municipality provides accommodation in the order of registration, or to seek legal assistance in order to appeal against the refusal by municipality to register application for assistance in housing matter.

For example, it was established in verification proceedings No 2011-236-23D that guardian of the child failed to take the necessary actions to preserve the right of the minor to tenancy of residential premises when the child's mother had passed away. It was just the other way round: by decision of municipality the residential premises in which the child was accommodated prior to placement into residential care was leased out to the child's guardian who was later discharged from guardianship by ruling of orphans' court because she was unable to ensure efficient care to the child. Since the premises had been granted for tenancy to the ex-guardian before a long time and there were no documents available from the municipality regarding the legal grounds of such tenancy, the Ombudsman had no possibility to assess legitimacy of the decision passed by the municipality. Also, the orphans' court has no information at their disposal regarding the grounds of failure to preserve for the child the right to occupy the residential premises, and this leads to conclusion that orphans' court had failed to exercise proper control over the guardian's actions, thus failing to comply with the principle that the best interests of the child have to be served.

3. Application of legal principles in the field of social rights

Improper application of legal norms was identified in one of the reviewed verification proceedings, where municipality had passed decision by which the right of a family to dwelling was groundlessly restricted.

A family of five people including children was registered by municipality of Riga city in 2004 as recipients of assistance in housing matter. According to the mandatory regulations of the municipality which were applicable at the time when the family was registered, the municipality had to offer a flat of 3 or more rooms to family of 5 people. To apply for tenancy in a municipal flat corresponding with the above-mentioned criteria it was sufficient according to the legal norms to establish the fact that registered recipients of assistance, namely the family, resided in a house that was denationalized or returned to the lawful owners, and that the family had been occupying the residential premises prior to restitution of ownership, and also to prove that no other premises in Riga, Jūrmala of Riga Region were used or owned by such family.

When deciding on leasing the residential premises to the above-mentioned family in 2011, the municipality decided to offer to that family a flat of two rooms with amenities. Such decision of the municipality was substantiated by the applicable legal norm – Article 102 of the mandatory regulations No 80 of 15 June 2010 Concerning the Procedure for Registration and Providing Assistance in Handling Housing Matters; according to that norm, children of the family were not taken into account when considering the tenancy proposal, since their residence was declared in the flat occupied by the family after 31.03.2004, and their previous residence was not a part of denationalized building estate.

It follows from practice of administrative courts that, when handling an application for issuing a favorable administrative deed, the applicable legal norms are normally assessed; such principle is, however, subject to exceptions. Administrative Department of the Supreme Court Senate has pointed out that: "Such exclusions refer, for example, to the benefits stipulated in social rights. Change of legal situation (amending or withdrawal of a legal norm) in the field of social rights does not affect the rights vested in the individual at the time he/she applies to the competent body for such benefits" [60].

Taking into account the above-stated principle and the fact that legal regulation applicable at the time of registration of the family did not prevent children of that family to apply for municipal assistance in handling their housing matter, the municipality had the obligation, when proposing accommodation in 2011, to take into account all members of the family and to propose to them a flat of three or more rooms.

The Ombudsman applied to the Municipality of Riga City with a motivated request to re-consider proposing of a flat with three of four rooms to the family concerned, however no reconciliation was reached in this matter.

The family appealed against decision of municipality to the Administrative District Court, and the latter granted application of the family in its entirety. Proceedings are still pending, though, because of the appellate complaint filed by the Municipality of Riga City.

4. Obligation of Parents to Respect the Rights of a Child

Like in previous year, applications were received from separated parents regarding abuse on part of the parent cohabitating with the child in infringement of the rights of the child and the other parent.

Abuse of the right of custody most often takes the form of providing no information about the child, failure to provide for the child's right to maintain personal relations and direct contact with the other parent; unilateral decisions in respect of the child, thus preventing the other

[60] Award rendered by Administrative Department of Supreme Court Senate on 8 November 2007 in proceedings No SKA-0430, par. 14.

parent from exercising the right of custody and to make decisions on matters relevant to the child; exerting adverse influence on the child's relations with the other parent, etc.

Abuse of rights is among the grounds stipulated in Section 203, Paragraph 3 of the Civil Law for deprival of a parent of his/her right to care for the child: "Care of the child rights shall be removed from parents if an Orphan's court recognizes that a parent abuses his/her rights or fails to ensure care and supervision of the child." Analogous regulation is also stipulated in Section 22, Part One, Paragraph 3 of the Law on Orphans' Courts: "Orphans' court shall decide on deprival of a parent of the right of care for child where the parent abuses his/her rights or fails to ensure care and supervision of the child." If this is the case, the other parent is entrusted with care for the child.

It may be observed in practice that application of Section 203, Paragraph 3 of the Civil Law only takes place in the part regarding failure to ensure care and supervision of a child, while in the part regarding abuse of rights it is applied only within the scope of the right of care. The Ombudsman has drawn attention to this issue in his report in 2010 already[61].

Administrative department of the Supreme Court Senate of the Republic of Latvia has resolved in their award of 10 October 2011[62] the issue of interpretation of the above-mentioned norms of law. A representative of the Ombudsman's Office was joined to proceedings in the status of special guardian.

The Senate has concluded that the term "their rights" referred to in Section 203, Part One, Paragraph 3 of the Civil Law and in Section 22, Part One, Paragraph 3 of the Law on Orphans' Courts extends to all and any rights of parents: the right of custody, including the right of care, and the right to access.

Subject to the interpretation approved by the Senate, the above-mentioned circumstances may constitute grounds for deprival of abusive parent of the right of care in respect of a child. Therefore, when handling an application regarding eventual abusive actions on part of the other parent, the orphans' court has to assess whether or not the alleged facts concerning the other parent's actions should be qualified as abuse of parental rights, or probably such actions result from lack of knowledge, lack of understanding of the role of parent, or delusion. Orphan's court also has to assess whether or not deprival of the right of care is appropriate in the specific situation, that is, whether or not it would serve the best interests of the child concerned. Orphans' court has to assess actual circumstances of the matter and pass decision on deprival or refusal to deprive [a parent] of the right of care.

Application of such vehicle would eventually reduce the number of situations where the parent cohabitation with the child infringes the rights of the other parent and of the child.

5. Abusing in the Internet environment

Infringement of children on the Internet has become an urgent topic during the reporting period. Operation of the vehicle established in out country for protection of rights was checked within the framework of verification proceedings.

An application was filed with the Ombudsman for electronically received letters injurious to the esteem and dignity of a child. Father of the child had concurrently applied to the State Police, and therefore the Ombudsman asked the police to provide information about the facts identified and decisions made.

[61] Ombudsman's Report 2010, p.p.92.., available at: http://www.tiesibsargs.lv/lat/publikacijas/gada_zinojumi/?doc=654

[62] Available at: http://www.tiesas.lv/files/AL/2011/10_2011/10_10_2011/AL_1010_AT_SKA-0523-2011.pdf

When information about eventual infringement of the rights of children on the Internet was received by the State Police, the latter instituted departmental investigation and established that injurious mail had been sent to the child by another child under the age of fourteen years, therefore, the offender the is nut a subject to administrative liability. Materials of inspection were forwarded to the administrative commission of the municipality for application of compulsory means of educational nature. Parents of the offender have been called to administrative account pursuant to Section 173, Part One of the Administrative Offence Code of Latvia for negligence of their duty to take care of the child. Orphans' court and social service were informed about the incident to prevent commitment of any other offences by the child and to conduct preventive work with the parents and the offender.

The Ombudsman informed the applicant that, regardless of administrative proceedings, the applicant is entitled to have the issue settled in accordance with civil procedure. The right of injured party to financial compensation arises from Section 1635, Parts One and Two, and Section 2352.[1], Part Three of the Civil Law.

Since the injured individual is of minor age, the applicant is entitled to file an application with court in accordance with the procedure prescribed by Civil Procedure Law for compensation of the caused moral damage by parents of the offender, and materials of inspection conducted by the State Police may serve there as evidence to substantiation of the claim.

The State has the duty to establish a vehicle for protection of the rights of individual in case of infringement, and for preventing of infringement. In the given occasion the vehicle established for protection of rights is found to operate effectively: the police has identified the offender, and administrative commission of the municipality has passed decision on application of compulsory educational means; conducting of preventive work with the offender and his parents is ordered, and the right to judicial recovery of compensation for the moral damage caused to the child has been explained to parents of the injured child.

6. The Right of Child to Grow up in Family

Several applications have been filed in 2011 concerning the actions of orphans' court and eventually unsubstantiated decisions. Review of verification proceedings identified that on some occasions breaches of the principle of good governance by orphans' court have resulted in infringement of the rights of parents.

It was established, for example, in verification proceedings No 2011-244-5A that Orphans' Court of Iecava County, when deciding on deprival of a mother of her right to care in respect of a child, had not ensured compliance with the principle of impartial investigation and with the regulatory acts that govern the activities of orphans' courts and obligate orphans' court to assess the involved risks prior to deciding on deprival of parents of their right to care for child. Decision was passed by orphans' court on the basis of applications of the individuals concerned with the proceedings, without verifying the actual circumstances. Actions of the Orphans' Court of Iecava County in the given proceedings had also been assessed by the State Inspectorate for Protection of the Rights of Children, and the Inspectorate established that the orphans' court had failed to ensure compliance with the principle of protection of the best interests of child; moreover it had committed a number of significant shortcomings. Decision of the Orphans' Court of Iecava County was repealed by ruling of Administrative District court, and municipality was ordered to compensate the moral damage caused to mother of the child. Taking into consideration the circumstances of verification proceedings, the Ombudsman applied to the municipality with the request to be kept informed about any future actions in order to ensure legitimacy in the activities of orphans' court.

It was established in verification proceedings No 2011-197-23B, when reviewing the actions of the Orphans' Court of Skrunda County that involved removal of a child from family and placement into crise center, that mother of the child was deprived of her right of care for child by unilateral decision on the child's removal passed by the orphans' court when more than a month had passed from placement of the child in crisis center, and the mother was therefore prevented from exercising her right to determine the residence of her child. The reason for placement of the child in crisis center was the need to conduct psychological examination of the child because of the suspect of emotional violence experienced by the child in family.

According to the UN Convention for the Rights of the Child and the Law on Protection of the Rights of Children, deprival of parents of their right of care for children and removal of a child from family are treated as ultimate means that may only be applied if such separation is considered necessary to ensure that the best interests of the child are observed. Therefore, if the orphans' court had no sufficient grounds to remove the child from family, moreover once it was established that the family acknowledged the existing problems and agreed to cooperate, the orphans' court had to select other means for conducting psychological examination of the child, for example, to propose consulting of the child by psychologist to the parents, rather than take so drastic measure as removal of child from family.

Actions of the orphans' court as well as of social service were assessed in the above-described proceedings since future decision of the orphans' court on restoring the mother's right to care for the child was directly dependent on favorable opinion of social service. Insufficient cooperation was established in the exchange of information between the two above-mentioned institutions. This, as well as the mother's insufficient cooperation with social service prevented implementation of rehabilitation plan by the social service and discouraged effective social work with the family. The Ombudsman noted the identified shortcomings to the orphans' court and social service in the opinion on finalization of the verification proceedings, and he proposed to prevent re-occurrence of such shortcomings in similar situations.

Civil and Political Rights

What are civil and political rights?
Civil and political rights basically focus on obligation of the state to ensure noninterference and respecting of the freedoms of individuals as personalities and members of society. Such freedoms cover really wide range of human rights: the right to life; the right of individual to liberty and security; prohibition of torture and cruel treatment; the right to elect and to be elected; the matters related to legal status of an individual, that is, the matters of citizenship, asylum and migration; the right to fair court; freedom of speech and expression; freedom of meeting; freedom of association; the right to privacy and family life; freedom of thoughts, beliefs and religion; and the right to perform public service.

"Civil" rights are possessed by each and every individual in modern society, while "political" rights are most often attributable only to citizens. Therefore, the notions "political rights" and "civil rights" are not always identical by their nature.[63]

The following rights guaranteed by Constitution of the Republic of Latvia may be treated as civil and political rights:

- "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited." (Section 100)
- "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service." (Section 101)
- "Everyone has the right to form and join associations, political parties and other public organizations." (Section 102)
- "The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets." (Section 103)
- "Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language." (Section 104)[64]

Priorities in the area of civil and political rights:
1. Protection of the rights of persons with mental health disabilities and development impairments.
2. Legal status and protection of detained aliens and asylum-seekers.

I. Protection of the Rights of Persons with Mental Health Disabilities and Development Impairments

Protection of the rights of persons with mental health disabilities has been set among priorities in the Ombudsman's Strategies since such persons belong to one of the most vulnerable social groups facing infringement of their rights on daily basis, while their possibilities to protect their own rights are limited. The Office has been focusing in 2011 on a number of issues related to the provision of such rights.

---

[63] Mits M. *Tiesību katalogs*. //Cilvēktiesības pasaulē un Latvijā. / red. I. Ziemele. – Riga: SIA "Izglītības soļi", 2000, p.p. 84 -85.
[64] Satfecka L. Mēs demokrātijā. / 2nd edition. – Riga: "Sabiedrība par atklātību – Delna", 2010, p.p. 7-13, also available at: http://www.scribd.com/doc/58626238/Rokasgr%C4%81mata-M%C4%93s-demokr%C4%81tij%C4%81-II-edition

1. Compulsory accommodation of individuals in psycho-neurological hospitals – ensuring the right to fair court

As regards compulsory accommodation in psycho-neurological hospitals, amendments to the Law on Medical Treatment are effective in Latvia since 2007 to the effect that a court ruling is required to refer a person for treatment to a psycho-neurological hospital on compulsory basis. Notwithstanding that the normative regulation substantially corresponds with the norms of human rights, compliance of its practical application with the requirements of human rights is however not always ensured. 3 inspection visits to psycho-neurological hospitals have been conducted in 2011 to identify the existing situation, and law suits pending with the courts of Liepāja, Daugavpils, and Riga concerning the psychiatric treatment without obtaining the consent of patients have been summarized and reviewed. The total number of reviewed cases is 54 (in 2010 and 2011).

Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHR) stipulating that everyone has the right to fair court also provides, inter alia, that everyone has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. The above right also derives from Section 92 of the Constitution which sitpulates that everyone has the right to fair court. European Court of Human Rights has interpreted the stipulations contained in Article 6 of ECPHR so that: "The State is responsible for providing a defense counsel and ensuring adequate defense. The rights guaranteed by the Convention are practical and effective, rather than theoretical or illusory."[65] European Court of Human Rights has further emphasized that mental diseases can not serve as grounds to ignoring the right of individual to fair court: "...though even mental condition may pose certain restrictions as regards exercising of the right to fair court, it may not, however, serve as excuse to deny such right as guaranteed in Article 6.(1) of ECPHR."[66]

Article 5 of the UN Convention on the Rights of Persons with Disabilities (hereinafter – the UN Convention) prohibits discrimination, while Article 2, Paragraph 3 of the UN Convention explains that "discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 13 of the UN Convention provides for ensuring "effective access to justice for persons with disabilities on an equal basis with others".

Section 68, Part Seven of the Law on Medical Treatment provides for appointing a defense counsel for protection of the interests of patient. Where a person points out at legal proceedings to unwillingness to be accommodated and receive medical treatment at psycho-neurological hospital on compulsory basis, yet the defense counsel appointed and remunerated by the State declares at the court meeting that, in their opinion, there are grounds for compulsory referral of the person for treatment, an infringement of the right to fair court may be established since in substance no defense counsel prescribed by law is provided at legal proceedings.

Problems have also been identified in this context in concerning the role of prosecutor in handling the matters in question, since prosecutors on most occasions see no sense of their

[65] Award made by European Court of Human Rights in *Belgian linguistic*, Paragraph 31
[66] Award made by European Court of Human Rights in *Winterwerp v. Netherlands*, Paragraph 75

participation at such matters. As a result, prosecutors most commonly raise no objections to the effect that a State-appointed defense counsel infringes the rights of person during the proceedings through failure to ensure protection of the person's interests or even acts in contradiction with the client's interests.

The Ombudsman has hold a meeting with the Bar Association of Latvia. The meeting was held for discussing the said matter and to agree on potential actions to ensure observation of persons' rights to fair court in future. Agreement was reached on organizing training seminars and lectures for attorneys-at-law. The Bar Association also informed that in future no attorneys would be appointed to render legal assistance in such matters unless they have undergone appropriate training. A training seminar for senior attorneys-at-law was held in the premises of Ombudsman's Office on 27 September 2011. The seminar was conducted by the staff of Ombudsman's office with participation of a Psychiatry expert.

2. Compliance of Procedures for Deprival of Individuals of their Legal Caparity and Scope of the Rights of Incapacitated Individuals with Human Rights

As concluded already by the Ombudsman in the previous years, the regulatory norms in Latvia governing the deprival of legal capacity fail to comply with the requirements of human rights; the same has been acknowledged by Constitutional Court in their award on 27 December 2010. Proactive involvement in discussion of new norms regulating legal incapacitation took place at the Ministry of Justice. The Ministry of Justice has drafted voluminous amendments to the Civil Law and Civil Procedure Law. Since drafting of the amendments had been suspended, the Ombudsman had a meeting with the Minister of Justice on 13 June 2011 to discuss this issue, and consequently regular work on drafting the amendments was resumed.

The draft laws were approved by the Saeima in the 1st reading on 8 December 2011. The Ombudsman actively supported advancing of the draft laws since they were generally aimed at notable improving the situation in the field of human rights, compared to the existing regulation in the field of restricting legal capacity. The Ombudsman also pointed out, however, to shortcomings in draft laws concerning the matters of human rights, as well as proposed specific amendments to the draft law. He pointed out to the Saeima, for example, that failure to address the issue of supporting the entities capable of providing assistance to persons with mental impairments without restricting legal capacity of such persons, and the failure to provide no alternatives to restriction of legal capacity were the most significant shortcomings of the draft laws. He also pointed out to the Saeima to the failure to mention the need to provide funding to guardians in summaries of the draft laws. If no funding is provided to guardians, it might be extremely difficult to find persons willing to assume the duties of guardian in case of individuals with no close relatives; whilst the draft laws provide for extending the functions of guardian, orphans' courts report on problems in finding guardians even with the present scope of functions. The possibilities to ensure qualitative performance by guardians of their duties would be therefore highly limited. The Ombudsman has drawn attention of the responsible Saeima committee to the need to provide for mandatory funding from the state budger to allowances for performance of the duties of guardians; otherwise it would be hardly possible to believe that human rights of people with limited legal capacity would be guaranteed in practice.

It was also pointed out to the Saeima in relation to approval of the above-mentioned draft laws that enforcement of the Constitutional Court award No 2010-38-01 was among the key reasons for drafting amendments to the Civil Law and Civil Procedure Law. It may be concluded, however, that enforcement of the Constitutional Court award would not be

achieved by 1 January 2012 because of delay in drafting the laws. In addition, according to the Constitutional Court award, "the State has the duty not only to introduce corresponding amendments in material and procedural norms but also to establish financial and institutional provision for successful operation of such system; to ensure training of judges and other entities entrusted with the application of legal norms; and to take other steps as appropriate". The Ombudsman proposed that the Saeima should develop specific procedures to ensure non-recurrence of the above-mentioned situation and to seek timely and qualitative enforcement of Constitutional court awards, ensuring appropriate parliamentary control over similar occasions by the Saeima. It was further pointed out that both the Government and the Saeima had been aware for several years already prior to rendering of the Constitutional Court award No 2010-38-01 of the fact that the existing normative regulation in Civil Law as well as in Civil Procedure Law governing the deprival and restitution of legal capacity presents substantial infringement of human rights. The Ombudsman's opinion on the need to change the system and to amend the respective sections of Civil Law and Civil Procedure Law was forwarded to the Ministry of Justice on 14 October 2008, and Saeima was also notified of the Ombudsman's report made in 2008.

3. Provision of the Rights of Individuals Accommodated at Public Social Care Centers

Issue of the rights of individuals accommodated at public social care centers has gained particular urgency in 2011. A number of complaints have been received at the Ombudsman's Office from customers of such centers regarding the placement procedures as well as the treatment applied to them and other matters. Inspection proceedings were aimed at addressing 2 issues: 1) situation of individuals with mental health impairments accommodated at social care centers; and 2) duty of the State to establish and develop society-based services as alternative to institutional care. To investigate the situation, officials of Ombudsman's Office also conducted monitoring visits to public social care centers (hereinafter – PSCC) where they identified a number of substantial problems. Information obtained during the inspections indicates to a number of substantial problems related to social rehabilitation provided by PSCCs as well as to the health care available to clients at social care centers:

- In general, the services provided by such centers are perceived by the PSCC staff as care services that are not aimed at social re-integration of the persons accommodated there;
- The proportion of transitions to alternative forms of care or returning to unassisted life is very low against the number of PSCC clients;
- Receipt of alternative care trends to decrease;
- Social rehabilitation services provided by care centers on most occasions fail to achieve the goal of social rehabilitation: returning of social status and integration in society;
- Medicinal records of the clients show that care centers provide treatment, i.e., secondary health care (psychiatric care) though PSCCs are not intended to perform such function. Also, records made and kept at institutions contain sensitive data of clients, and such records may be classified ad medicinal records by their contents. There is no legal substantiation to performance of the above-mentioned treatment functions and to keeping medicinal data of clients, since a PSCC is neither a registered health care center nor a medicinal practice; consequently, the institution is not subject to the control mechanism applicable to health care institution, either by quality of services, or by record keeping. A PSCC has no unified, regulated medicinal record-keeping; it is non-transparent and difficult to control.
- Clients are taking large doses of medicines; occurrence of polypragmasia is frequently observed, and on most occasions medicinal products replace alternative methods of care.
- Clients lack information about the applied therapis and possible side effects, and on some occasions they have no possibility to select alternatives to therapy.

The Ombudsman also commented on a number of problems in normative regulations that prevent the individuals accommodated in PSCCs from exercising their rights. Ministry of Welfare, for example, was encouraged to support the following amendments in Section 28, Part Three of the Law on Social Services and Social Aid: to exclude the requirement for obtaining from municipality a certification of provided housing upon discharge of public social care center as a mandatory criterion, and to impose instead a duty on municipalities to provide housing to an individual who has no residence. If the said norm remains unaltered in the present wording, it presents significant breach by Latvia of its obligations in the area of human rights, including the UN Convention on the rights of persons with disabilities. If the law is applied in the present wording, persons who have no residence they can retur to, or who obtain no certification of the existence of such residence from municipality, are virtually deprived of their liberty without valid court ruling, and it means gross infringement of human rights. According to the applicable procedure, where an incapacitated person is referred to a PSCC his/her consent is not required; consent of the guardian is sufficient (the guardian executes agreement with the PSCC). Consent of the guardian is also required for a person to leave the PSCC; if the guardian finds that the person has to remain in PSCC, the person's preference to leave is subject to no further discussion. The guardian may decide on referral and accommodation of a person at social care institution against the person's own preferences, while in fact it is believed that the person has been referred to and is accommodated at PSCC at his/her own will. Such normative regulation and its application contradicts with human rights and leads to the situation where a person accommodated in facility is virtually deprived of liberty. Restriction of right to liberty also includes forced care of persons with mental impairments, since the person is subject to continuous care and control, and has no choice to leave at his/her free will.[67] The fact a person lacks legal capacity *de jure* does not exclude the need for consent *de facto*.[68]

Further, Article 14 of the UN Convention on the Rights of Persons with Disabilities stipulates that existence of a disability shall in no case justify a deprivation of liberty. Article 19 of the Convention stipulates that States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community including by ensuring that: Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangements.

4. The Right of Individuals with Mental Impairments to Protection of their Data

Opinion was issued in March 2011 to the Ministry of Health on the Cabinet Regulations No 746 of 15 September 2008 Concerning the Procedures for Establishing, Supplementing, and Keeping of the Register of Patients with Specific Diseases, where Appendix 4 to the said Regulations prescribes collecting information about the patients with psychical disturbances; in contradiction with Section 96 of the Constitution since human rights of individuals with mental health impairments are groundlessly restricted.

Section 96 of Constitution of the Republic of Latvia as well as Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) stipulates that "everyone has the right to inviolability of private life".

[67] Award made by ECHR in Ashingdane v. UK , 28.05.1985, para 42.
[68] Award made by ECHR in Shtukaturov v. Russia, 27.03.2008, para 106.

Constitutional Court has construed the right to privacy guaranted by Section 96 of the Constitution pointing out that "such rights involve a number of aspects. They protect physical as well as mental integrity of individuals, their name and identity, and personal data. The right to privacy means that invidduals are entitled to their private space, to pursue their own selections, and to develop and improve their personalities according to their natures and preferences, subject to minimized intervence on part of the State or other individuals."[69] Moreover, though even Article 8 of the Convention imposes a duty on the State first of all to abstain from intervence in private and family life of an individual, the State, apart from that negative duty, also has a positive duty to take the steps necessary to guarante such rights.[70]

Ensuring protection of information concerning private life, and inparticular the information related to an individual's health condition, on national level is essential to enable the State to guarantee the right to privacy enshrined in Article 8 of the Convention to each and every individual.[71] It is important to note that the UN Convention on the Rights of Persons with Disabilities is binding upon Latvia, and that Article 22, Part Two of the Convention stipulates that "States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others."

Cabinet Regulations No 746 of 15 September 2008 Concerning the Procedures for Establishing, Supplementing, and Keeping of the Register of Patients with Specific Diseases (hereinafter – the Regulations) prescribe the procedures for establishing, supplementing and maintenance of public information system (hereinafter – the Register). Paragraph 3 of the Regulations prescribes that Center of Health Economics (hereinafter – te Center) shall be entrusted with adminstration and keeping of the Register. Paragraph 5 of the Regulations stipulates that inpatient and outpatient medicine professional practices (hereinafter – medicinal treatment institutions) shall provide the information necessary for establishing, supplementing and maintenance of the Register to the Center. The Center shall ensure operation of the Register and make agreements with data operators on the processing and protection of personal data.

Medicinal treatment institutions shall ensure online entering and updating of the information to be included in the Register in accordance with the forms prescribed in annexs to the Regulations. According to the form specified in Annex 4 to the Regulations, medicinal treatment institutions shall fill in medicinal records regarding the patients with psychical and behavioral impairments, specifying highly detailed information about private life of each patient, including their health condition.

Paragraph 7.4.1 of the Regulations stipulates that the Center shall compile on annual basis summaries of information about patients with psychical and behavioral impairments, specifying the number of patients who have received treatment at outpatient psycho-neurological centers, outpatient and inpatient hospital wards, and the patients in whom organic psychical impairments (including symptomatic), temper (affective) impairments, neurotic, stress-related and somato-form impairments as well as adult personality-related and behavioral impairments have been identified for the first time. According to Paragraph 7.6.4 of the Regulations, the number of patients with identified psychical and behavioral impairments (neurotic impairments, reaction to heavy stress, and adaptation impairments) shall be summarized. Paragraph 10 of the said Regulations stipulates that "identification

[69] Award made by Constitutional Court on 26 January 2005in proceedings No 2004-17-01, Paragraph 10.
[70] Award made by Constitutional Court on 23 April 2009 in proceedings No 2008-42-01, Paragraph 10.
[71] Микеле де Сальвиа. Прецеденты Европейского суда по правам человека. Санкт-Петербург: Юридический центр Пресс, 2004, стр. 551.

information of patients (name, surname, personal number, declared and actual residence of patient) shall be kept in data processing system in coded form separately from any other information contained in the Register. The link in data processing system between identification information of patients and other information contained in the Register shall be coded. Identification of a particular patient is available to the Center and to the person authorized by personal data operator to enter and update the information specified in Paragraph 6 of the Regulations". Paragraph 11 of the said Regulations stipulates that "Information contained in the Register shall be kept in electronic form, subject to protection of the data of natural entities in accordance with the procedures prescribed by the Law on Protection of Data of Natural Entities and by the Law on Medical Treatment. The information contained in the Register shall be classified information subject to limited access."

Processing of personal data[72] in datu bases such as the register of patients with specific diseases entails restriction of the right to inviolability of privacy guaranteed by Section 96 of the Constitution and Article 8 of the Convention. Section 116 of the Constitution stipulates that the right of persons to privacy may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Moreover, to ensure that such restrictions are justifiable, they have to be necessary in a democratic society, and the means have to be commensurable with the goal to be achieved. Commensurable restriction has to achieve the particular goal; to be adequate for achievement of the particular goal; and commensurable with the eventual loss incurred by the individual. Therefore, the public benefit gained from restriction imposed on an individual has to be real and exceed the latter.

It has been established that restriction of the rights is prescribed by law and that there are strictly regulated procedures applicable to entering and processing information about patients with specific diseases in the Register. It has further been concluded that establishing of the Register is aimed at ensuring the protection of public health and preventive work; such aim is considered legitime according to Section 116 of the Constitution. Assessment of the restriction, however, did not prove compliance with the third criterion – necessity in democratic society.

Ombudsman's Office does not question the need for collecting statistical information about individuals with specific diseases, including persons with psychical and behavioral impairments, since the goal set for collecting such information serves the best interests of the whole population and therefore enables development of public policy in the area of health care with higher quality. Having, however, assessed the need for including in the Register identification data about patients with psychical and behavioral impairments and the need for collecting information about such patients in such details prescibed by Annex 4 to the Regulations, Ombudsman's Office finds that collecting identification data about such persons and the involved scope of data to be incommensurable. In the given occasion, more attention should be paid to certain international instruments (Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care; the Madrid Declaration, etc.) which stipulate that particular confidentiality should be observed in relation to persons with mental health impairments to ensure the that the patient trusts the psychiatrist to the required extent, given the specifics of the area of psychiatry.

European Court of Human Rights (ECHR) jas repeatedly pointed out in their practice that protection of personal, in particular medicinal data is fundamental to enable individuals to

[72] The term "Personal data processing" extends to all and any actions taken in respect of personal data including the use, making available, transfer and disclosure of such data.

exercise their rights to privacy and inviolability of family life guaranteed by Article 8 of the Convention. Confidential treatment of data about the person's health condition is a principle of utmost importance in the legal systems of all State Parties to the Convention. It is essential not only for respecting the privacy of patients but also for preserving their trust in medical professions and in health protection in general. National laws have to contain adequate legal guarantees to prevent dissemination or disclosure of data about health condition of a person in such a manner that would contradict with the guarantees contained in Article 8 of the Conventiom.[73]

It should be also pointed out that the said Regulations contain no clear formulation of the purpose of collecting such extremely large amount of data about patients with psychical impairments. The goals specified in Paragraph 4 of the Regulations essentially cover the functions performed by the Register, and the main function is summarizing of statistical information. It should be further pointed out that, pursuant to Section 4, Part Two of National Statistics Law, Cabinet Regulations No 10 have already been adopted on 6 January 2009 concerning the national statistic reports in the area of health care, and paragraph 2.4 of the said Regulations prescribes that the Center shall summarize statistic reports on psychiatric diseases and the contingent of persons with psychical diseases for submitting to medicinal treatment institutions in accordance with Annex 4 to the Regulations. Therefore, summarizing of information for the purposes of statistics is ensured in accordance with such Regulations.

To decide on commensurability of the imposed restrictions, it has to be assessed whether or not the legislator has selected possibly considerate means, that is, whether or not the goal may be achieved by other means that impose less restrictions on the fundamental rights.

In the given occasion, statistic information about persons with psychical and behavioral impairments may be obtained if medicinal treatment institutions submit unidentified information to the Center in accordance with the Cabinet Regulations No 10 concerning the national statistic reports in the area of health care.

If collecting of information includes identification data of persons, such information is, of course, more accurate. It should be taken into account, however, that statistics can never be absolutely accurate, and one should bear it in mind. In the present situation, for example, where the collected information includes identification data of persons, certain psychiatrists who respect their patients' request to abstain from forwarding their data may select to provide no information at all about such patients to the Register. Given that, it is hardly possible to determine the most accurate statistic information: whether it is information about non-identified patients or about identified ones.

In the opinion of Ombudsman's Office, benefit to society in the given occasion does not exceed the damage caused to an individual, because such collecting and processing of data in general may reduce the patients' trust in medicinal staff and medicinal treatment institutions; as a result, people fail to apply for assistance in due time, and the threat posed to society thereby increases. It should be emphasized that achievement of the set goal is possible in a manner that is more considerate towards an individual: statistical information may be collected without pooling it into a unified Register designed to summarize sensitive information about patients with psychical and behavioral impairments thus enabling their identification.

[73] G. Feldhūne, A. Kučs, V. Skujeniece. Cilvēktiesību rokasgrāmata tiesnešiem. LU Cilvēktiesību institūts, 2004, p.p. 56.

Ministry of Health informed upon receipt of the Ombudsman's opinion that it had appointed task force for assessing the possibilities to change the existing regulation.

II. Legal Status and Protection of Detained Foreigners and Asylym-Seekers

The number of applications filed with the Ombudsman's Office concerning the status of aliens and stateless persons, as well as the rights of asylum-seekers and refugees has increased, compared to the previous year. Applications of asylum-seekers and the persons who have obtained the status in course of asylum procedure should be subdivided into separate category.

1) **The rights of asylum-seekers and the persons who have obtained the status in course of asylum procedure**

The highest number of complaints has been received from asylum-seekers and the persons who have obtained the status in course of asylum procedure; the prevailing issues in such complaints include social security, residence and education.

Reduced funding available to the Office has prevented more detailed review of social protection of the above-listed persons and discrimination in labor market; it follows, however, from the information at disposal of Ombudsman's Office that the State is experiencing certain problems in this area. Where the State assumes responsibility for an individual who applies for asylum and grants to such individual a residence permit, subject to pagarināt[74], the State should also ensure all preconditions to more effective and expedient implementation of integration realizācijai[75]. It is important to ensure that the persons who have obtained alternative status have access to range of social support and services that is wider than currently provided for by the Law on Social Services and Social Support.

If the possibility to learn language is not available to an individual, the access of such individual to vacancies in labor market is problematic. If the State provides no assistance to the holders of alternative status due to lack of funds and no support to free language classes, the access of such persons to labor market is impaired, and such persons present a long-term burden on the social support system.
At present, holders of alternative status who have not learned the national language and have found no employment receive aid from the State during the first nine months; future support is available in accordance with the Law on Social Services and Social Support.

Complaints filed by the persons who have obtained alternative status indicate to shortcomings in the State integration policy, and in case of extended status the income of such persons reduces to such extent that they are insufficient to cover even the primary needs and expenditures[76]. The Ombudsman is going to proceed with completing investigation of the above-described issues.

Events in 2011 that deserve mentioning and demonstrate notabe improvements in accommodation of detained foreigners including asylum-seekers include opening of the new

[74] Other than persons to whom the status of refugee is granted, because such persons have regular residence permits and their social protection is equated to that of citizens and non-citizens.
[75] Integration should include free access to the official language classes to enable persons to gain communication skills. Language knowledge would, on the turn, enable such persons to enter the labor market, and it is crucial because such persons cause no burden to the social system any more.
[76] Section 3, Part One Prim, and Section 35, Part One of the Law on Social Services and Social Aid.

Center of Accommodation of Detained Foreigners “Daugavpils” (hereinafter – the Center) last summer. Visit to the said Center identified notable improvements in living conditions and provision, compared to the previous accommodation – Center for Accommodation of Detained Foreigners “Olaine” which is already closed.

Given that the center has been relocated to another region of Latvia, and acknowledging the shortcomings in training of regional judges and their awareness of criteria to be considered upon detention of immigrants and asylum-seekers, and pursuing the objective of informing judges about the applicable asylum procedure, the Ombudsman, in cooperation with the Court Administration, arranged a seminar on 20 May 2011 for the judges of Daugavpils City Court and Rēzekne Court House of Administrative District Court on the topics of asylum procedure and detention of asylum-seekers.

2 monitoring visits have been conducted within the scope of this priority to the centers for accommodation of asylum-seekers and detained foreigners. In the Center for Accommodation of Asylum-Seekers “Mucenieki”, for example, annual inspection was conducted for the purpose of, first, to identify whether or not the relevant utility services (heating, hot and cold water supply) are made available to inhabitants of the Center in the circumstances of reduced funding and, second. to identify the possibilities to learn Latvian language and to gain additional professional skills available to the asylum-seekers accommodated in the Center. The range of inspected matters also included the question whether or not children accommodated in the center attend schools and kindergartens.

The visit resulted in conclusion that reduced funding has made no effect on the volume of utility services made available at the Center for Accommodation of Asylum-Seekers “Mucenieki” and that heating of residential premises is provided to the persons accommodated there as well as supply of hot and cold water. It was also concluded that attention paid to sooner involvement of asylum-seekers in the integration process nis still insufficient on national level, because provision of the key need – learning of the national language at the Center – is mainly based on voluntary work.

Regarding education of the children of school age accommodated at the Center “Mucenieki” as holders of alternative status at comprehensive schools it has been identified that access to education is duly provided to children of asylum-seekers and minor children – holders of alternative status, however difficulties are observed in preparing children for teaching in national language; namely, a separate, intensive cycle of classes is missing to prepare children for work at classroom.

Since the above-described issue may affect not only the above-mentioned group of persons but also children of immigrants to enter and remain to live in the Republic in Latvia, this issue should also be addressed within the proposed reforms of education system.

2. Monitoring of compulsory returning procedure in accordance with the amendments to the Immigration Law

According to amendments to the Immigration Law of 16 June 2011, the Ombudsman has been entrusted with the function of monitoring compulsory returning. The said amendments are based on the European Parliament and Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. The said Directive obligates the State to appoint an independent institution for monitoring the procedure of compulsory returning.

At present, the priority task of the Ombudsman's Office in performance of this function is development of monitoring system and performance guidelines; issuing proposals for amendments if any shortcomings are identified; and involvement of non-governmental organizations in performance of the function within the nearest couple of years after approbation of the developed system

According to the Law, in monitoring compulsory returning, the Ombudsman shall:

- Visit the accommodations of foreigners subject to compulsory returning to assess their accommodation and living conditions, and to ensure medicinal aid and satisfaction of other needs;
- Interview the foreigners to identify their awareness of the procedure of compulsory returning, and of their rights and possibilities to exercise them,
- Monitor returning of personal effects seized upon detention of person, transportation from the center for accommodation of detained persons to the point of departure; pick-off and registration of luggage. Also, according to the above-mentioned amendments, the Ombudsman may participated at the actual implementation of compulsory returning in order to assess observation of human rights of the foreigner subject to compulsory returning.

Starting from June 2011, representatives of Ombudsman's Office, in response to decisions on compulsory return received from OCMA and State Border Guard, have interviewed 12 persons subject to compulsory return and conducted study of their accommodation conditions, reported on breaches identified during the monitoring. So, inspection visit to the Center on 18 October 2011 revealed that no heat supply was provided and tenants of the Center were accommodated in cold, non-heated premises (complaints of persons subject to returning had been filed in respect of that). In reply to the Ombudsman's inquiry, Ministry of Interior informed the Ombudsman on 27 October 2011 that heat supply to the center had been connected on 24 October 2011.

The conducted monitoring of compulsory return procedure also revealed problems related to lack of appropriate premises for accommodation of persons subject to compulsory return in Riga, where returning procedure is arranged via the International Airport "Riga". It was established that persons had to spend up to 7 days in detention cell of the State Border Guard Headquarters, without possibility to have shower. A number of complaints were heard during the interviews regarding food (both quantity and quality), possibility to contact relatives, non-heated premises, and continuous lighting in the cell.

To ensure effective performance of the entrusted new functions and to develop a viable mechanism for compulsory returning, Ombudsman's Office has applied for funding of the project from European Return Fund since no additional funding has been allocated to Ombudsman's Office upon amending the law.

III. Actual problems in the field of civil and political rights

Apart from priorities set in the field of civil and political rights, daily work of legal advisers in 2011 included handing of the matters related to fair court and protection of legal status of persons. The In total, 375 written applications have been received in 2011 in the field of civil and political rights, 39 inspection proceedings have been instituted, and institution of inspection proceedings has been declined on 131 occasions; 74 inspection proceedings have been completed.

1. The Right to Fair Court

A notable number of applications had been received from imprisoned individuals in previous years already concerning their right to fair court; in 2011, however, the number of such applications has increased still more. Having reviewed the contents of such application, they turn out to involve various aspects of fair court: access of a person to court; the right to defense by an attorney selected by the individual; the right to participate and express the opinion at legal proceedings, and others. The key problem, however, emerging from the received application is related to the right of person to hearing in fair court within reasonable period of time. In relation thereto, the Ombudsman has issued opinions on identified breaches in a number of inspection proceedings.

1.1. Reasonable deadlines

The first sentence of Section 92 of Constitution of the Republic of Latvia stipulates that everyone has the right to defend his or her rights and lawful interests in a fair court. The right to fair court also includes hearing of a case within reasonable period of time. Finalization of proceedings within reasonable period depends on scope of the case and its legal complicatedness, the number of procedural steps, attitude of the involved parties to fulfillment of obligations, and other objective circumstances of the case.

Article 6, Part One of European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHR) stipulates that everyone has the right to hearing at fail trial including the right to timely hearing, that is, hearing within reasonable time. The purpose of such norm is "to protect all parties to proceedings [..] from excessive procedural delays"[77], to prevent excessively long legal uncertainty, and in general to preserve trust in the effectiveness and reliability of judicial system[78].

In a number of inspection proceedings the Ombudsman, assessing the actions taken by court, has certainly acknowledged the fact that court in Latvia are overloaded and that there exist a number of various obstacles related to staffing and financial support to full effectiveness of their work. At the same time, the Ombudsman emphasizes that European Court of Human Rights has declined in their practice the arguments referred to by governments to the effect that lack of human resources or general bureaucratic obstacles may not be treated as sufficient excuse of inability to ensure timely hearing of a case[79]; Section 6, Paragraph 1 of the ECPHR imposes a duty on the states to organize their judicial systems in such a manner to enable courts to meet the requirements of this section[80].

Notwithstanding that conducting of inspection proceedings ocasionally lead to conclusion that hearing deadlines are delayed through the fault of parties to proceedings, the Ombudsman has also established usubstantiated actions on part of the court in a number of occasions, and he has pointed out in his opinions that, where hearing of a case is postponed through the fault of the court, the hearing should be adjourned to a possibly soon date, rather than several months, or even half a year or a year, as it has been the case in certain proceedings.

---

[77] See the Award made by European Court of Human Rights in *Stögműller v. Austria*, (1969).

[78] Award made by European Court of Human Rights in on 28 July 1999 in *Bottazzi v. Italy*, application No 34884/97.

[79] Award made by European Commission for Human Rights on 26 October 1984 in *De Cubber v. Belgium*, et als.

[80] See, inter alia, the Award made by European Court of Human Rights on 26 February 1993 in *Salesi v. Italy*, Paragraph 4, and the in *Bottazzi v. Italy* mentioned above.

For example, person A applied to the Ombudsman; criminal proceedings against them had been instituted in autumn 2005, the charge was brough in autumn 2006, and legal proceedings were instituted later in the same year. The case in its merits had not been tried by the first instance court by spring 2011. The hearing was scheduled to late summer 2011, yet the court dismissed hearing without providing no information or reasons thereof to the person on trial. Delay of the given case was established during the inspection proceedings on part of the person on trial as well as on part of the court, and the Ombudsman pointed out to that in his opinion. When the opinion was issued, the court appointed the hearing date within the nearest month, and the case was tried in its merits and the award was rendered by the end of 2011 already.

Notwithstanding that, according to the ECPHR practice, the State is not responsible for delays occurring in legal proceedings through the actions of the involved parties,[81] the Ombudsman has pointed out in his opinion to the need to review the applicable regulation and the existing court practice, so that parties to proceedings would be prevented from exercising their procedural rights in a manner that leads to intentional delay of legal proceedings.

1.2. The right of individual to fair court while in custody

The Ombudsman has identified a problem on a number of occasions related to the deadlines for hearing of criminal cases, with particular attention being paid to individuals kept in custody pending criminal proceedings.

Thre are two key issues present on such occasions:
1) lengthy periods of adjudication;
2) scope of rights available to person while in custody.

The Ombudsman has already pointed out to the actual nature of lengthy periods of adjudication; the draft law on Amendments to Criminal Proceedings also indicates to seeking solutions to the existing situation. The amendments envisage a number of changes to the existing system in order to accelerate hearing of criminal proceedings. The new draft law provides for more frequent reviewing of the need for continued custody when the first instance court has rendered their judgment. Enactment of the above-mentioned amendments to Criminal Procedure are scheduled to 1 July 2012.

As regards the second above-mentioned issue, it should be pointed out that the Ombudsman has applied to the Ministry of Justice in 2007 already pointing out to the need to increase the scope of rights available to persons kept in custody when the first instance court has already rendered their judgment. The Ombudsman has pointed out to the need to review normative regulation regarding the scope of rights available to persons kept in custody after announcement of the verdict by the first instance court, and to bring the scope of their rights in line with these available to convicted persons.

For example, a person in respect of whom the first instance court has brought the verdict of guilty and an appelate complaint has been filed against the verdict, retains the status of prson in custody and, according to the Penalty Enforcement Code, such person has no right to extended visits; they are not subject to progressive enforcement of penalty applicable to convicted persons aimed at penalty enforcement regime that corresponds with the convicted person’s behavior and degree of re-socialization to ensure enforcement of penalty and

[81] See, for example, the Award made by ECHR in *König v.FRG* A 27 para 103 (1978).

optimum social re-integration of the convicted person when serving of the sentence is completed.

Information received at the Ombudsman's Office shows that, given the existing excessive load on courts in Latvia, on a number of occasions persons keep the status of custody for years, mainly awaiting for hearing of their case by appellate and cassation instance courts.

Competent institutions have started seeking potential solutions to the above-described problem 2011 (and they will continue it also the next year), and representatives of Ombudsman's Office are also taking part in the relevant discussions.

Amendments to the Criminal Law of 21 October 2010 (enacted on 1 January 2011) include introduction of a new norm – Section 49.[1] that prescribes the ways how the adjudicating court can indemnify individuals against the damage caused to them through the failure to observe the right to finalization of criminal proceedings within reasonable period of time. Section 49.[1], Part One of the Criminal law prescribes: "If the court establishes failure to observe an individual's right to finalization of criminal proceedings within reasonable period of time, it may: 1) take such fact into account when deciding on penatly and mitigate the penalty; 2) apply penalty below the minimum limit prescribed by law for the criminal offence in question; or 3) impose another penalty whish is less severe than that prescribed by law for the criminal offence in question".

The Ombudsman has drawn the attention of appliants to the above-quoted norm in his opinions; limited resources, however, have prevented from conducting study of how often the above norm has been applied by courts, and whether or not introduction of such norm has achieved the intended goal.

1.3. Access to Court

The arlier discussed issue of access to court and the right of individual to apply to governmental and municipal authorities has become actual again in 2011 as well as the obstacles to exercising such right due to lack of knowledge of the official language.

The Ombudsman has established within the scope of inspection proceedings that, in case of persons in custody, their access to court beyond criminal procedure is practically restricted because of thir poor knowledge of the official language. A number of imprisoned persons have restricted communication with their relatives as well as limited financial possibilities; therefore, they can not seek translation of an application or complaint. Legal assistance provided by the state according to the law is limited or, in case of application to administrative court and Constitutional Court, it is not available at all. In practice we can see that Legal Aid Administration is also not available to such persons due to lack of language knowledge.

The Ombudsman applied to the Ministry of Justice for addressing the above issue and asked to assess the possible practical access to court in civil and administrative matters in compliance with the requirements of the State Language Law, and assistance in drafting constitutional complaints to the prisoners who are objectively unable to draft documents for court in the official language. The proposed potential solutions included, for example, availability of interpreter at prison facilities, extended classes of the official language, and standard application templates (forms) made available at prison facilities, at least initially, as well as an official capable of providing brief advice. Another proposed solution was supplementing the criteria prescribed in the Law on State-Provided Legal Assistance; it was

emphasized that such solutions, though involving financial investments, are relevant to secure the right to fair court guaranteed to persons by the Constitution.

In general, Ministry of Justice has supported the need to consider availability of interpreter at prison facilities and arrangement of extended official language classes; they have pointed out, however, that such measures would involve the need for additional funding from state budget that is not currently available. Ministry of Justice has further pointed out that they would cooperate with Prison Administration to seek solutions that are not subject to additional financial contribution (including the drafting of application (complaint) form authorized by the prison facility in question and approved by the relevant decision of Prison Administration, as well as language classes, etc). Ministry of Justice see no grounds for supplementing the criteria prescribed in the Law on State-Provided Legal Assistance regarding the application to the Constitutional Court and in other areas. The Ombudsman has also applied to parliamentary commissions for addressing the above issue, however no progress has been achieved until present.

2. Legal Status of an Individual

Apart from priorities set in the strategies, the issue of granting and deprival of citizenship is also actual.

The Ombudsman pointed out in the Annual Report 2010 to double citizenship as an issue that should be focused on in the nearest future on political level since persons who migrate abroad and reside there for certain period of time may apply for naturalization in such foreign country, and therefore in certain conditions this the number of citizens of the Republic of Latvia may trend to decrease, or a notable the number of latent holders of double citizenship may happen. The State should decide in the nearest future on addressing such global trend. Formulations of the Citizenship Law have remained unchanged for more than thirteen years already[82]. At present, when proposals have been made to the Saeima for amendments to the citizenship Law, including also eventual amendments related to the issue of double citizenship in case of certain group of countries, political discussion of the regulation prescribed by Section 3.[1] of the citizenship Law would be appropriate, including Part Five of the said Section[83]. In the Ombudsman's opinion, the vision of how would the State address the issue of decreasing the number of non-citizens should be formulated on political level. The number of holders of such status should be decreased by means of normative regulation in possibly short time.

Applications received from population in 2011, both oral and written, mark another trend related to the regulation of citizenship status in our country: the persons seek to denounce their citizenship of the Republic of Latvia and to acquire the status of non-citizen. No legal reaction is available to such trend which could be rather described as emotional protest to the present situation in our country since, according to the normative regulation, an individual who has been a citizen of any country may not apply for the status of non-citizen[84].

Inspection proceedings related to deprival of a person who had been a citizen of the Republic of Latvia and who was deprived of her citizenship and obtained instead the status of stateless

[82] The most recent amendments to the Citizenship Law were made on 22 June 1998 and enacted on 10 November 1998.

[83] Section 3.[1] of Citizenship Law regulates the citizenship of children born in Latvia after 21 August 1991 to stateless persons or non-citizens.

[84] Section 1, Part One, Paragraphs 2, 3 of the Law on the Status of Ex-USSR Citizens who have no Citizenship of Latvia or any other Country.

prson was finalized at the Ombudsman's Office in 2011 by issuing opinion in respect thereof. The OCMA deciding further on the matter of residence permit refused issuing of permanent residence permit to the individual. It should be noted that the Ombudsman addressed in 2010 already the issue of depriving the individual in question of her citizenship of the Republic of Latvia, and established that the individual had been deprived of her citizenship without due regard to commensurability. When OCMA of the Ministry of Interior had finally decided on refusing permanent residence permit to the individual in question, the Ombudsman issued opinion on the given issue and, pursuant to Section 13 of the Ombudsman Law, applied to administrative district court for defense of the said individual's interests and objected against the said refusal claiming that permanent residence permit should be granted to the individual, beigng a former citizen of the Republic of Latvia and a national of Latvia who had the closest relation to the State of Latvia, and who was continuously residing in this country without leaving.

Social and Economical Rights

What are social and economical rights?
Social and economical rights present the group of human rights to be exercised within the resources available to the State, subject to provision of the minimum standard of rights. The State has to take proactive steps and to invest the required funds in the protection of such rights to ensure that. Social and economical rights include the right to property; the right to dwelling; the right to social security; the right to health protection; the right to live in benevolent environment; the right to education; the right to employment.

The following rights guaranteed by Constitution of the Republic of Latvia are treated as social and economical rights:

- "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation." (Section 105)
- "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labor is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labor." (Section 106.)
- "Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation." (Section 107)
- "Employed persons have the right to a collective labor agreement, and the right to strike. The State shall protect the freedom of trade unions." (Section 108)
- "Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law." (Section 109)
- "The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence." (Section 110)
- "The State shall protect human health and guarantee a basic level of medical assistance for everyone." (Section 111)
- "Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory." (Section 112)[85].

Priorities in the Field of Social and Economical Rights:
1. Observation of the human right principles in the process of stabilization of social insurance system.

2. Ensuring commensurable rights of owners in compulsory lease relations.

3. Assessment of the vehicle designed to control the quality of health care.

4. Assessment of the actions taken by municipalities in handling housing matters.

5. Assessment of the transitional provisions of the law on social protection of the individuals injured as a result of the accident at Chernobyl Nuclear Power Plant with the Constitution.

[85] Stafecka L. Mēs demokrātijā / 2. izdevums. – Rīga: "Sabiedrība par atklātību – Delna", 2010, p.p. 7-13, also available at http://www.scribd.com/doc/58626238/Rokasgr%C4%81mata-M%C4%93s-demokr%C4%81tij%C4%81-II-edition

I. Observation of the human right principles in the process of stabilization of social insurance system

This priority is pursued by means of continuous follow-up with the decisions made in the process of legislation and issuing the relevant opinions by the Ombudsman.

On 16 May 2011 the Ombudsman has issued opinion to the Parliamentary Commission for Social and Employment Matters on the need to ensure involvement of persons with special needs in the process of legislation. The Parliamentary Commission for Social and Employment Matters was discussing the amendments to the Law on State Pensions intended to limit the right to disability pension along with unemployment allowance; therefore the Ombudsman pointed out that, according to Article 3, Part Three of the Convention, the State has the duty to consult persons with special needs whenever decisions are made on any matters affecting such persons.

An opinion has also been issued to the Constitutional Court in proceedings No 2011-03-01 "On compliance of Section 5, Part Four, and Section 21, Part 2 [1] of the Law on State Social Insurance [1] with Sections 1 and 109 of Constitution of the Republic of Latvia". The contested norm stipulates that a person is socially insured for pension if the mandatory contributions are actually made. In the Ombudsman's opinion, no substantial changes have taken place either in legal regulation of the field of social insurance or in actual situation regarding the rights and duties of employees since the award made by constitutional Court on 13 March 2001 in proceedings No 2000-08-0109. (The award acknowledged that Paragraph 1 of the Transitional Provisions of Social Insurance Law stipulating that socially insured person means a person in respect of which mandatory contributions did not comply with Section 109 of the Constitution and that therefore it was invalid). The Ombudsman pointed out that target solutions of the contested norm that obviously contradict with the conclusions made by Constitutional Court in proceedings No 2000-08-0109 can not be treated as lenient to the rights and interests of individuals. According to the issued opinion, the State has not fulfilled the duty to guarantee the right to social security on the minimum level at least, since the State social security allowance to which the minimum amount of old age pension is tied makes LVL 45 per month; the said amount has not changed since 1 January 2006. It is not substantiated either by economical indices or by the means necessary to ensure provision of the basic needs of individual, and the legislator has not applied any of the commonly used internationally recognized methods to determine the minimum level of social security; the foregoing was also referred to in awards made by the Constitutional Court on 21 December 2009 in proceedings No 2009-43-01. It was therefore acknowledged that the contested norms do not comply with Section 109 of the Constitution.

Opinion on the draft Cabinet Regulations drafted by the Ministry of Welfare concerning the Minimum Amount of Old Age Pension was issued on 4 November 2011 to the Presidium of the Parliament and to the Cabinet of Ministers. The said draft provided for reservation of the regulation contained in Paragraph 34 of Transitional Provisions of the Law on State Pensions which stipulated that the minimum amount of old age pension could not be less than the State social security allowance adjusted by the following rate that depends on the length of insurance period: in case of insurance period from 10 to 20 years – 1.1 (49.50 lats); insurance period from 21 to 30 years – 1.3 (58.50 lats); insurance period from 31 to 40 years – 1.5 (67.50 lats). The Ombudsman pointed out that the minimum amount of old age pension currently provided for in the Law on State Pensions and the draft Cabinet Regulations do not

guarantee the minimum social security. The minimum social security allowance to which the minimum amount of old age LVL 45 a month is tied, has remained unaltered from 1 January 2006, and it is not substantiated by any economical indices. The Cabinet was proposed to take into consideration the conclusions contained in awards of Constitutional Court when determining the minimum amount of old age pensions, for example, to chose some internationally recognized methods applied to determine the minimum level of social security.

II. Ensuring commensurable rights of owners in compulsory lease relations

Most of the applications filed in 2011 concerned the legal relations arising from legal acts that regulated the land reform. In case of multi-residential housed situated on land owned by any parties (other than apartment owners), or the so-called compulsory lease, the main issue referred to in the applications was incommensurately high rent for the land. Having assessed the information contained in the applications the Ombudsman concluded that the existing regulation applicable to compulsory lease relations was incommensurate, and therefore this issue was set among priorities of the Ombudsman for the year 2011, and attention of the Ministry of Justice was drawn within the scope of inspection proceedings to the issues prevailing in compulsory lease relations. The Parliament also acknowledged the need for solution of this issue, and the Cabinet was obligated by the amendments introduced on 22 September 2011 to the Law on Land Reform in the Cities of the Republic of Latvia to review the legal regulation of compulsory lease and to propose the necessary amendments to the relevant regulatory acts to the Parliament by 1 September 2012.

The Ombudsman pointed out to the Ministry of Justice that no applications have been at the Ombudsman's Office, as from the beginning of 2011, from land owners complaining for small income from rent in case of the so-called compulsory lease. The number of complaints filed by apartment owners is, however, comparatively high, and therefore such distribution of financial burden should be taken into account when deciding on normative regulation of compulsory lease. The Ombudsman has supported the idea of drafting methodology to determine the land parcel functionally pertaining to a multi-residential house, and to introduce additional criteria for determining cadastral value of such encumbered property. The space of remaining portion of land has to be taken into account when determining the land parcel functionally pertaining to the building. If the remaining portion is large, application of some extra criteria should be considered to determine the cadastral value of such land parcel so that improvement of normative regulation also results in actual improvement of the legal status of apartment owners. If, however, smaller cadastral value is determined in respect of land parcels involved in compulsory lease, it should also be taken account that other types of legal relations may exist as well, that is, land parcels on which buildings owned by other entities are built as a result of voluntary legal deal. Subject to the principle of legal equality stipulated in Section 91 of the Constitution, it is necessary to assess whether or not the conditions of the above-mentioned groups of persons – parties to compulsory lease and parties to voluntarily established lease, respectively – are equal and comparable according to certain criteria, so that the same regulation can be applied to them.
The Ombudsman continues to monitor the progress achieved in this matter.

III. Assessment of the vehicle designed to control the quality of health care

Assessment of the quality control vehicle in health care has been initiated in 2011, yet focusing on this priority is expected in 2012 and 2013. Until present, information collected from the inspection proceedings has been identified concerning the decisions and actions

taken by authorities responsible for control of health care. The result shall be summarized and analyzed during the next reporting period.

IV. Assessment of the actions taken by municipalities in handling housing matters

To assess the actuality of housing issues in 2011, it has to be acknowledged that on most occasions the individuals applying to the Ombudsman have asked to settle civil legal matters, such as disputes arising from legal lease relations, managerial matters as well as the issues related to the right to use residential premises in cases where individuals are unable to meet their loan obligations. Similar to the previous reporting period, urgent matters included assessment of the steps taken by municipal authorities in handling the housing matters. The number of arbitrary evictions has also increases, and consequently the number of individuals with urgent need for support.

On most occasions no proofs have been obtained to the individuals' claims concerning the activities of municipal authorities, though individual breaches have also been identified and pointed out to the municipalities in question. Inspection proceedings have proven, for example, that no register of apartments was kept at all by the municipality responsible for providing residential premises to a person discharged from prison. When such register was established, it took more than half a year till the municipality fond it possible to provide temporary dwelling to such person, allegedly due to lack of resources. The Ombudsman draw the attention of municipality in his opinion to the need for urgent solving of this matter, and also notified such fact to the Ministry of Regional Development and Municipal Affairs; the latter replied it had obligated the municipality to provide explanations.

Cooperation of municipalities with the Ombudsman and taking into consideration the conclusions drawn in the opinion on individual occasions should be mentioned as a positive example. It was identified in the inspection proceedings, for example, that the municipality had groundlessly deleted the person from apartment register. The municipality acknowledged their default in reply to the Ombudsman's appeal, and the person was consequently entered into the apartment register. On the given occasion, the issue was successfully settled within the framework of administrative proceedings and time-consuming legal proceedings could be avoided. It would be also worth to mention lengthy correspondence whereby a person was applying for assistance to municipality yet the latter took no steps to address the issue. The Ombudsman asked to explain the reasons of such refusal, and the municipality replied it had decided on granting assistance to the person in question after institution of inspection proceedings by the Ombudsman's Office.

Activities of municipalities in general were assessed on the basis of individual occasions where persons had applied to the Ombudsman's Office with their claims regarding specific actions of municipalities. It is important to note that on some occasions persons refused to accept the offered assistance for various reasons, and thus the process of granting assistance was delayed. Legal regulation of housing entitles municipality on such occasion to delete a person from the register of those seeking assistance, since all persons have the duty to cooperate. Therefore, individual occasions have been established where persons groundlessly blame municipalities for ineffective handling of their housing matters.

V. Social protection of the participants of elimination of the consequences of and individuals injured as a result of the accident at Chernobyl Nuclear Power Plant

Normative regulation of the field of social protection of persons injured in the accident at Chernobyl Nuclear Power Plant (hereinafter – Chernobyl NPP) who have reached retirement age has been assessed within the scope of this priority. Breach of the principle of legal equality enshrined in Section 91 of the constitution was established in relation to the above-mentioned group of persons.

Constitutional Court of the Republic of Latvia (hereinafter – Constitutional Court) rendered award on 2 February 2010 in proceedings No 2009-46-01 by which Article 1 of the Section 91 of Constitution of the Republic of Latvia (hereinafter – the Constitution) was declared ineffective as from 1 July 2010. The above norm only provided for reviewing disability pensions payable to the individuals injured as a result of accident at Chernobyl NPP if the level of disablement or severity or disability changed. Such reviewing frequently resulted in higher pensions granted to individuals with lower degree of disablement than to those with higher disablement.

On 13 May 2010 the Saeima adopted amendments to Article 1 of the Transitional Provisions of the Law providing for review of disability pensions and survivor's pensions granted before enactment of the Law, regardless of changes in the rate of disablement or severity of disability. Such right to reviewed pension is not, however, available to the individuals injured at the accident of Chernobyl NPP who have reached the age of retirement.

A recipient of old age pension who had been injured as a result of accident at Chernobyl NPP applied to the Ombudsman's Office. State Social Insurance Agency had calculated the amount of his potential disability pension reviewed in accordance with Article 1 of the Transitional Provisions of the Law. The amount of old age pension granted to the above-mentioned individual at the time of application was LVL 179.91, and the additional payment to pension made LVL 17.50 a month. The amount of his disability pension if reviewed in accordance with the contested norm would make LVL 321.12.

In the Ombudsman's opinion, the individuals with disabilities resulting from the accident at Chernobyl NPP to whom disability pensions in the amount of compensation of the actual damage were granted before enactment of the, and who continued receiving old age pension instead, should be treated equally with the persons who receive disability pension. The principle of equality requires equal treatment of individuals in similar conditions – namely, the individuals with disability resulting from the accident at Chernobyl NPP.

Constitutional Court instituted proceedings No 2011-12-01 on 13 June 2011 upon the motion of the Ombudsman concerning the compliance of Article 1 of the Transitional Provisions of the Law on Social Protection of those who have participated in elimination of the consequences of the accident at Chernobyl Nuclear Power Plant and those injured as a result of accident at Chernobyl Nuclear Power Plant with Section 91 of the Constitution of the Republic of Latvia.

On 1 March 20012, Constitutional Court decided on dismissal of the above-named proceedings. Constitutional Court pointed out in their awards that the Chernobyl Law did not regulate the procedure for reviewing old-age pension in case of persons to whom old-age pension is granted upon reaching certain age instead of disability pension, and that it did not impose restrictions on this group of persons; eventual restrictions of the fundamental right of persons to whom old-age pension is granted instead of disability pension could arise from the Law on State Pensions. It means that the legislator is competent to decide on amending the

procedure for calculation of old-age pension in case of persons who receive old-age pension instead of disability pension.

Constitutional Court has clearly and plainly pointed out in their award that, whenever the Ombudsman's proposals regarding the need to amend regulatory acts are received at Saeima, such amendments have to be considered in their merits, or a motivated opinion has to be issued regarding the failure to do so.[86]

VI. Actual Problems in the Field of Social and Economical Rights

Apart from the priorities set in the field of social and economical rights, work on other actual matters significant to society was also continued.

1. The Right to Property

The Ombudsman, considering the eventual infringements of the right to property guaranteed by Section 105 of the Constitution, has pointed out that the term "property" in the context of Section 105 of the Constitution should be understood to include not only movable and real estate but also the economical interest that can be lawfully and certainly expected. As regards real estate, Section 994, Part One of Civil Law should be taken into consideration stipulating that only persons registered in the Land Register as owners of real estate shall be treated as such. Therefore, Section 105 of the Constitution guarantees protection to real estate if the ownership title thereto is corroborated in the Land Register.

Having reviewed the information stated in the applications, the Ombudsman concluded that regulation applicable to compulsory lease relations is not commensurate, and therefore this issue was set among priorities of the Ombudsman in 2011; he also drew the attention of the Ministry of Justice to the problematic issues in compulsory lease relations and appealed for addressing such issues.

Ministry of Justice was also informed about restrictions imposed on the rights of persons in case of cadastral survey conducted on the account of State budget (in case of returned ownership to land or allocation of an equivalent land parcel). At present, finalization of cadastral survey funded from the State budget may be expected in 36 years. The Ombudsman pointed out to the Ministry of Justice that no ownership title could be corroborated in the Land Register unless cadastral survey of land is provided and the relevant documents (such as land border layout, for example) are drafted. Corroboration of ownership title in the Land Register has declared as mandatory by the State so that ownership in respect of real estate is valid in relation to any third parties, and to enable the owners to handle their property, dispose of it or encumber it with rights in rem (namely, to enable efficient use of property). There is no doubt that, in case of certain categories of land reform subjects, cadastral survey of land on the account of State budget assets decided upon the legislator has rather resulted in providing financial support to certain group of persons, rather than the legislator's obligation. It is also clear that the amount of funds available from the State budget is limited, and therefore persons may have to wait for some time to receiving support from the State; such period, however, should be reasonable. The principle of legal stableness deriving from Section 1 of the Constitution stipulates that settlement of matters has to be ensured in reasonable period of time. Continuous lack of legal certainty not only leads to infringement of the principle of legal

[86] Ruling made by Constitutional Court of the Republic of Latvia on 1 March 2012 on dismissal of proceedings No 2011-12-01, also available at http://www.satv.tiesa.gov.lv/upload/2011-12-01_Lem%20par%20tiesved%20izb.pdf

stableness but eventually may lead also to infringement of the fundamental rights enshrined in Chapter 8 of the Constitution. To prevent this, measures should be taken to minimize infringements of the rights of persons.

The Ombudsman has reviewed the situation in making land parcels available for privatization and concluded that, where decision on reserving ownership title to a land parcel for municipality is appealed against to court, legal status of such land parcel remains unchanged, given the suspended effect of administrative deed, that is, ownership title to the land parcel is not reserved to municipality by relevant decision of the latter within the meaning of the Law on Privatization of Residential Houses owned by the Government and Municipalities. The land parcel is therefore treated as a public object of rights, and no lease relation may exist in respect thereof.

The Ombudsman has further established in relation to land reform that, whenever a municipality issues unfavorable administrative deed, it may not refer to general norms, such as Section 21 of the Law on Municipalities. It is related, first of all, to the law pretext principle which obligates an institution to ensure that administrative deeds are issued on the basis of legal norms. Second, it is related to the arbitrariness prohibition principle that enables the involved institution to check whether or not the institution may pass the decision in question in accordance with an applicable norm of law. If the space of land already allocated to a person has to be reduced, the municipality has to observe the competence prescribed by law. According to Section 15, Parts One and Two of the Law on Finalization of Land Reform in Rural Areas, in case of land units that are not registered with the Land Register, disputes between parties concerning land borders are settled by Land Border Dispute Commission of the respective territorial structural unit of State Land Service. In case of land units registered in the Land Register, disputes between parties concerning land borders are settled by court. According to the Ombudsman's opinion, the State Land Service or court of general jurisdiction, rather than municipality, is competent to assess whether or not the land borders are properly established and whether or not reducing of the space of land unit is substantiated.

Ombudsman's Office has been assessing the encumbrances derived from the institution of joint ownership. Individuals have applied to the Ombudsman with complaints on binding encumbrances related to common-use premises used by other joint owners. The Ombudsman has pointed out that joint ownership governed by Sections 1067 – 1075 of Civil Law is included in the Section "Restrictions applicable to property as a whole". Therefore, the above title indicates to the fact that joint ownership means first of all restriction imposed on the property. Such restriction means, inter alia, that joint owners have the duty to bear the charges, encumbrances and costs related to maintenance of the item in proportion to their respective shares. If a join owner is not satisfied with the fact of joint ownership, Section 1074 of Civil Law stipulates that each of the joint owners may apply for division of the joint property and therefore assume liability solely for his/her separate property.

As to the consent of all joint owners to any actions taken in respect of the jointly owned item, the Ombudsman pointed out to legitimacy of such requirement. If, following reconstruction that results in increased space of the building, an institution issues certification to the Land Register without obtaining consent of the other joint owners, such action on part of the institution is illegitimate. At the same time, other persons in similar circumstances, comparable according to certain criteria, may not claim similar action on part of the institution. The Ombudsman acknowledged that, since the principles of law constitute an integral part of law-based state, they may not have the effect of facilitating any illegitimate

activities including the passing of decisions that are illegitimate (contradicting with the law). The principle of legitimacy should prevail over the principle of equality.

Major part of applications filed in relation to restriction of ownership title refers to actions taken by municipalities to collect real estate tax. Individuals have filed with the Ombudsman's Office applications objecting to the duty to pay real estate tax for real estate owned by the lessor including municipality, and to collecting of such tax from low income persons. The Ombudsman has acknowledged legitimacy of the contested actions taken by municipalities.

Section 12, Part 2.[1] of the Law on Land Reform in Cities of the Republic of Latvia and Section 54, Part Two of the Law on Privatization of Residential Houses owned by the Government and Municipalities prescribe the duty of apartment owners to compensate the real estate tax paid for land to the landlord, while Section 11, Part 5, Paragraph 1 of the Law on Lease of Residential Premises prescribes the duty of tenant of residential premises to pay real estate tax. Section 2, Part Five of the Law on real Estate Tax prescribes that real estate tax in respect of land, buildings and engineering structures owned by the Government or municipality has to be paid by the user or by the lessee, if there is no user.

According to Sub-Paragraph 23.3 of Cabinet Regulations No 495 of 20 June 2006 Concerning Application of the norms of Law on real Estate Tax, to apply Section 2, Part Five of the Law, the manager of multi-residential house is treated as user of the land and building (part of it)) owned by the Government or municipality, or privatized, as the case may be. Therefore, the manager of multi-residential house may be the payer of municipal real estate tax.

According to section 5, Part Three of the Law on Real Estate Tax, municipality may issue binding regulations concerning exemptions available to certain categories of real estate tax payers|. The Law prescribes that tax exemptions may be granted to tax payers (those charged with the tax), rather than to any other persons (tenants of residential premises, for example)). Moreover that application of exemptions from payment of real estate tax is the right, rather than obligation, of municipality. Municipality is entitled to review the efficiency of and need for granting the exemption in question. Municipality is entitled to extend the scope of persons entitled to exemptions from real estate tax payment as well as to exclude certain groups of persons from such scope, or to reduce the amount of exemptions, etc. The said right of municipality derives from the law and, given that real estate tax payments form a component of income part of the municipal budget, the Ombudsman is not competent to assess either the exemptions to be applied by certain municipality or the amount thereof.

The Ombudsman has assessed restriction of ownership title in relation to the status of nature area subject to special protection applied to a real estate owned by private individual. The Ombudsman has concluded that the second sentence in Section 105 of the Constitution which stipulated that Property shall not be used contrary to the interests of the public enshrines social value of the right to property, namely, that owners may be restricted in disposal of an item owned by them towards significant public benefit. At the same time, such restriction should be based on law.

The procedure for fixing borders in case of nature areas subject to special protection is prescribed by Law on Nature Areas Subject to Special Protection. Establishing of nature areas subject to special protection is certainly aimed at the right of society to live in benevolent environment. It is obvious that granting the status of nature area subject to special protection is the only way to preserve the habitats of wild plants and animals that deserve special

protection. In addition, an owner may be compensated for restrictions imposed on their economical activities. It follows from the above-stated that the benefit gained by society from restricting of the owner's rights exceeds the restriction itself.

The Law on the Rights of Land Owners to Compensation for Restrictions Imposed on their Economical Activities in Nature Areas and Micro-Reserves Subject to Special Protection provides for compensation of restrictions imposed on economical activities in protected areas established by the Government or municipalities, namely: 1) compensation (of restrictions imposed on forest management activities); 2) repurchase of land.

It should be noted, however, that economical activities on non-forest lands may be highly different (cattle-breeding, cultivation of grain, rural tourism, wind energy, etc.), compared to restrictions on forest management where economical value of a forest stand yield is relatively easy to estimate according to uniform methods. In crop farming, for example, the lost economical benefit depends on the cultivated crops, while the choice of crops is the right of land owner and a matter of business plan. Therefore, no universal method for calculation of comparable lost economical benefit is available (*Letter No 18-1e/14868 dated by the Ministry of Environment Protection and Regional Development on 16 September 2011*). Calculation of annual payments is also impossible for the same reason. The Ombudsman acknowledges in relation to the above-stated that the compensation mechanism selected by the State is reasonable and commensurable.

Having assessed the circumstances in which a land owner can claim compensation for restrictions imposed on their economical activities in nature areas subject to special protection, the Ombudsman concludes that Section 6, Part Two, Paragraph 4 of the Law on the Rights of Land Owners to Compensation for Restrictions Imposed on their Economical Activities in Nature Areas and Micro-Reserves Subject to Special Protection (hereinafter in this Section referred to as – Compensation Law) leads to unreasonably different treatment of the persons referred to, and he appealed to the Saeima for amending the said norm. It follows from the currently applicable regulation that the right to compensation arises if restrictions on forest management have been imposed when legal grounds of ownership title have become effective, and that ownership title may be registered in the Land Register when restrictions on forest management have been imposed. Section 6, Part Two, Paragraph 4 of the Compensation Law provides for different procedure, namely, that ownership title has to be corroborated with the Land Register before restrictions on forest management may be imposed.

The Ombudsman has established that conditions of persons referred to in Section 6, Part Two, Paragraph 4 of the Compensation Law who have derived their ownership title from a lawful transaction are comparable to those of other persons referred to in Section 6, Part Two of the Compensation Law. All persons referred to in the said Section have acquired ownership title to land parcels situated in a nature area subject to special protection, and restrictions of forest management activities are equally imposed on them. If corroboration of ownership title with the Land Register prior to imposing restrictions on forest management activities is introduced as a statutory precondition, the persons referred to in Section 6, Part Two, Paragraph 4 of the Compensation Law would be subject to different treatment, compared to other persons referred to in Section 6, Part Two of the Compensation Law.

Assessment of the legitimate purpose of such different treatment shows that teh above regulation may be aimed at preventing transfer transactions made to compensate the

restrictions imposed on forest management activities. Such regulation is, however, incommensurable.

If, for example, a person was interested in compensation and such person was aware of the intention to impose restrictions on forest management activities in a certain area in relation to the status of nature area subject to special protection, transfer of such land parcel and corroboration of ownership title with the Land Register would take place prior to imposing the intended restrictions on forest management activities. Therefore, the intended purpose of Section 6, Part Two, Paragraph 4 of the Compensation Law would not be achieved.

Second, such regulation may result in a situation where bona fide land owners who have acquired the land parcel in an area subject to special protection from their parents as a donation, for example, would claim no compensation because they have not managed to corroborate their ownership title with the Land Register. Different treatment prescribed by Section 6, Part Two, Paragraph 4 of the Compensation Law in relation to such land owners is therefore incommensurable and illegitimate, and it therefore contradicts with the principle of legal equality.

A more detailed solution should be transposed in the Compensation Law to eliminate the existing situation, so that the persons who continue management of a land parcel that forms a part of nature area subject to special protection and to which restrictions of forest management activities apply could be compensated of the restrictions of their forest management activities imposed prior to corroboration of ownership title with the Land Register. The possible solutions would include, for example, stipulation in Section 6, Part Two, Paragraph 4 of the Compensation Law that compensation is granted if restrictions on forest management activities have been imposed when the period of at least one year has lapsed from the date of agreement on transfer of the property.

Website of the Cabinet shows that the maximum time from passing of specific regulations on individual protection and use of nature areas subject to special protection till the enactment of such regulations (declaring at the meeting os State Secretaries) does not exceed half a year (see, for example, Cabinet Regulations No 871 of 21 October 2008; Regulations No 124 of 10 February 2009; Regulations No 427 of 12 May 2009). Such regulations would be therefore more lenient towards the persons who derive their ownership title from a legal transaction, and at the same time corresponding with the legitimate purpose of such regulations.

In 2011, persons applied to the Ombudsman for tiding up the public use areas adjacent to their property. The Ombudsman had acknowledged in 2009 already that the regulations applied by municipalities in relation to public use areas adjacent to property were not commensurable. According to the applicants, municipalities were taking no actions, however, to settle this matter. The Ombudsman established that the council had formed a special task force competent, inter alia, to assess the legitimacy of tidying up the public use areas adjacent to real estates and financial effect of such actions on the municipal budget. The task force concluded that no separate categories of persons could be exempted from such duty either in 2010 or in 2011, because the duty to tidy up such areas would otherwise lay on municipalities, and this would adversely affect their ability to perform other functions within their competence. The Ombudsman therefore concluded that municipal council had been seeking solutions to amend the procedure for tidying up public use areas adjacent to real estate, however failed to find any. In the Ombudsman’s opinion, however, it does not mean that an institution may be released from the obligation to review the applicable regulations and to ensure their compliance with the requirements of human rights.

Having reviewed a matter of eventual infringement of the right of property, the Ombudsman established that municipality may not use any property owned by a private individual without legal grounds. If the person's ownership title is corroborated with the Land Register, along with encumbrance – the right of way, no use or reconstruction of the involved way may be undertaken by municipality without approval of the land owner. The Ombudsman pointed out that, if municipality needs to use a way owned by private individual, the use of such way is subject to agreement with the land owner or deciding on alienation of the real estate required for public needs in accordance with the applicable procedure. The Ombudsman further concluded that the right to use a way does not derive from approved layout of area. It follows from Section 5, Paragraph 4 of the Area Layout Law that municipalities may only depict in maps the applicable use of municipal areas and the potential future use of such areas. Layout of any area per se does not mean granting of any rights (including the right of way) or imposing of any obligations.

Any reconstruction of motor roads conducted by the State is subject to compliance with Section 105 of the Constitution which prohibits arbitrary access by the State to real estate owned by private individuals. The Ombudsman has concluded that Section 105 of the Constitution does not prevent Governmental or municipal institutions from introducing provisions in the existing regulations to change the existing situation with the view of respecting public interests, subject to observation of the rights of owners. This means that preservation of the existing access roads is not a must upon construction of roads with national or EU meaning provided that safe, unhindered access by other ways is ensured to the persons in question to their property. If reconstruction involves closing of any access road, the authority in charge of reconstruction has the duty to ensure another, safe and suitable access way.

The Ombudsman has received a number of applications regarding restrictions imposed on the right of property due to construction process. The Ombudsman has established that construction boards have been delaying settlement of unlawful construction matters, and they have not been consistent in approach to elimination of the consequences of such construction; therefore the Ombudsman has issued recommendations to such construction boards to act in timely and effective manner to ensure prompt elimination of any infringement.

Individuals seeking protection of their right to property have been applying to the Ombudsman with their complaints regarding the actions on part of institutions failing to respond to their application in due time and in point of facts. The Ombudsman pointed out that obligation to reply in accordance with the due procedure to application filed by an individual derived from Section 104 of the Constitution. Section 104 of the Constitution is crucial not only as a constitutional guarantee of persons' right to reply but also as a precondition to exercise by persons of other human rights provided by the Constitution and other international human right instruments (including the right to property). If an institution fails to reply to a person's application or fails to do so within the period prescribed by law, such failure constitutes breach of Section 104 of the Constitution and Application Law; it contradicts with the principle of good governance and fosters legal negativism that is impermissible in the operation of public authorities. It should be noted that, if even an institution believes it has already replied to a specific application, it has no legitimate grounds to leave such applications without reply. An institution is entitled to leave an application without considering, pursuant to Section 7, Part One, Paragraph 5 of the Application Law. It may not, however, disregard any application.

The Ombudsman has also received applications from individuals regarding compulsory alienation of their property. Inspection of the relevant matters has enabled the Ombudsman to conclude that Cabinet decree on determining composition of real estate that presents an object of culture does not deprive the owner of ownership title – the property is not appropriated in favor of the State. Determining composition of an object of culture does not constitute grounds for transferring ownership title to the State.

Appropriation of real estate for public needs should be based on distinguishing between alienation of real estate from voluntary transfer thereof by the owner. It follows from the Law on Appropriation Real Estate for Public Needs that compensation granted for real estate appropriated for public needs may take two forms:

1. In case of alienation (where the owner does not consent to transfer the real estate voluntarily), the institution has the obligation to pay cash compensation by transfer of the relevant amount to the owner's account;
2. In case of voluntary transfer (where the owner consents to transfer the real estate), the Law prescribes that the institution has the right to agree with the owner on compensation satisfactory to both parties; it may take a form of cash compensation or allocation of an equivalent real estate. In other words, the Law does not impose obligation to repurchase the property on the institution in case of voluntary transfer (where the owner consents to transfer the real estate).

The Ombudsman has concluded that the above-described regulation complies with the requirements of human rights. European Court of Human Rights has acknowledged that in general appropriation of property without compensation reasonably related to the value of such property constitutes incommensurable infringement of the right to property; the Convention, however, does not guarantee the right to full compensation regardless of circumstances of the case, since the public interests on the grounds of which the property is appropriated, permit compensation in the amount smaller than market value of the property. The State has higher degree of discretion not only to determine whether or not appropriation of real estate is necessary for public needs but also to select the conditions of compensation.[87]

In the Ombudsman's opinion, the provision of "fair compensation" within the meaning of Section 105 of the Constitution does not include obligation of the appropriating institution to ensure the desired compensation to the owner. Institution has the duty to ensure objective assessment of the property and to estimate the amount of compensation as well as to enable the person to express opinion on the offered compensation. At the same time, institution has to act as a mediator to bring the public interests in proportion to those of owner of the appropriated property. It means that institution may not focus on protecting the rights of owner alone. It has to pursue the applicable appropriation procedure in a manner that serves the best public interests. Therefore, if no agreement can be reached on the amount of compensation, such dispute is subject to settlement by court in accordance with the civil legal procedure (see Section 27, Part Two of the Law on Appropriation Real Estate for Public Needs). Such procedure is established to prevent owner of real estate from groundless delaying of the appropriation process.

2. The Right to Social Security

In 2011, similar to the previous reporting periods, most of applications filed with the Ombudsman's Office in the field of social security are related to the right to pension and social aid. On most occasions, the applicants ask to review specific decisions passed by

[87] Carss – Frisk M. The Right to Property. A guide to the implementation of Article 1 of Protocol No.1 to the European Convention on Human Rights. Human rights Handbook, No. 4, www.echr.coe.int

authorities and refer to breaches of procedure. Applications filed with the Ombudsman's Office also refer to non-compliance of a regulatory act with superior regulatory acts and human rights. Such applications are mainly related to provisions of the Law on State Pensions and to the regulatory acts governing social aid available from municipalities.

A number of inspection proceedings conducted during the reporting period should be mentioned regarding restriction of the right to social security as a result of application or non-observation of regulatory acts.

2.1. Imposing resident income tax on long service pension

The Ombudsman's Office has reviewed inspection proceedings instituted on the basis of an individual application as well as oral complaints on imposing resident income tax on long service pension. Social Insurance State Agency (hereinafter – SISA) had introduced centralized administration of long service pensions, starting from 1 January 2011. It was established in the inspection proceedings that resident income tax had been deducted from long service pensions during the above-mentioned period. Such practice was accepted by Ministry of Welfare.

It was established in the inspection proceedings that deducting resident income tax from long-service pension by SISA was illegitimate. Paragraph 48 of Transitional Provisions of the Law on Resident Income Tax stipulates that, pursuant to the Law on State Pensions, in case of persons to whom pensions have been granted before 1 January 1996 in the amount exceeding (in aggregate with pension supplement for insurance period accrued before 31 December 1995) the non-taxable minimum specified in Section 12, Part Five, the non-taxable minimum is equal to the amount of such pension (in aggregate with supplement for the accrued insurance period).

Section 2 of the Law on State Pensions (hereinafter – the Pension Law) of 29 November 1990 effective till 1 January 1996 governed the granting of employment pensions: old age pensions, disability pensions, survivor pensions, and long service pensions as well as social pensions. According to Section 34 of the Pension Law, granting of long-service pensions was based on special regulations on long service pensions drafted by Council of Ministers of the Republic of Latvia in collaboration with trade unions. According to the said norms, Council of Ministers also passed the Decree No 34 of 30 January 1992 Concerning the Pensions to the ranks and files and to the commanding staff of interior institutions (employers' pensions) (hereinafter – the Regulations). Therefore, long service pensions granted in accordance with the Regulations should be also treated as pensions granted pursuant to the Pension Law in accordance with Paragraph 48 of the transitional provisions of the Law on Resident Income Tax.

The same applies to other long service pensions granted before 1 January 1996 pursuant to the regulatory acts provided for in the Pension Law. Therefore, long service pensions granted before 1 January 1996 may not be subject to resident income tax. The SISA has acknowledged non-compliance of the imposing of income tax with the legal norms, and it has informed Ombudsman's Office that deducting of income tax from long service pensions granted before 1 January 1996 would be discontinued starting from May 2011.

2.2. Refusal to Grant the Status of Low Income Family (Person) to Holders of Shares in Companies

Inspection proceedings have been conducted by Ombudsman's Office to assess, inter alia, whether or not the fact that a person holds capital shares in a company constitutes grounds for

municipal social service to decide on refusal to grant the status of low income family (person). It has been established in the said inspection proceedings that, for the purpose of Cabinet Regulations No 299 of 30 March 2010 Concerning the Granting of Low Income Status to a Family or Individual, capital shares held in a LLC should be treated as property, where such LLC is conducting economical activities and the gained income is included by such person in their declaration of the means of subsistence. The person who has applied to the Ombudsman's Office, however, holds capital shares in a company that carries our no economical activity, and such company may not be dissolved because of the means of security imposed on it: prohibition of re-registration of any kind whatsoever, so that no amendments to constitutional documents of the LLC may be filed with the Enterprise Register, and no entries may be made in the Enterprise Register records; therefore, no dissolution process may be instituted. In the given occasion, taking into consideration the purpose of criteria specified in Paragraph 2 of the Regulations No 299, namely, to determine the minimum level of income and financial condition under which a family (person) is treated as and is entitled to the status of low income family (person). Opinion issued in the inspection proceedings has been forwarded to the Social Service of Riga City Council, emphasizing that, when deciding on the granting of low income status to a family (person), the municipal social service should bear in mind the purpose of the given norm, that is, assess whether or not the property owned by such person has any effect on their level of income and financial condition.

2.3. Recovery of Overpaid Parent Allowance from SISA

Ombudsman's Office instituted inspection proceedings concerning the recovery of overpaid parent allowance from SISA. The latter informed Ombudsman's Office within the framework of inspection proceedings that non-compliance with the norm of Administrative Procedure Law on hearing the parties to proceedings occurred due to the limited financial resources.

According to the SISA practice effective before 1 October 2010, notices of identified overpayment were made to customers in case of decision unfavorable to them (basically in relation to overpayment of allowances), and they were able to submit explanations and arguments to SISA division by fixed deadline before decision on recovering the overpayment was made. SISA has stopped making such notices since 1 October 2010 due to limited financial resources. Decision of SISA division on recovery of overpayment also included the contesting procedure. Therefore SISA points out that persons have the option to submit their arguments and justifying evidence for contesting the original decision to the SISA Director who then makes the final decision in accordance with Administrative Procedure Law. SISA points out that such practice has no material effect on the contents of administrative deed. SISA further points out to the fact observed from the previous practice that the recipients quite frequently were misunderstanding the essence of notice made prior to sending the unfavorable decision, and seeking appeal to court, instead of providing information. Therefore, in the opinion of SISA, such practice is not contrary to the principles of Administrative Procedure Law. An opinion was issued to the Ministry of Welfare that the position of SISA could not be shared. Though even failure to hear a person not always has effect on the contents of administrative deed, and though even deviations from fulfillment of the obligation of hearing may take place, apart from the exemptions listed in Section 62 of Administrative Procedure Law, the institution may not be fully release from compliance with the above-stated principle.

The fact that opinion of a person is heard to during the contestation proceedings in respect of decision does not constitute sufficient excuse of failure to hear to a person prior to passing of the original decision because it may happen that the person is unable to contest the administrative deed for objective reasons. Institution has the duty to ensure compliance with

the applicable legal norms and principles throughout the administrative proceedings; otherwise their actions are non-compliant with the principles of legitimacy and good governance. A situation where public administration authority intentionally and systematically fails to observe any of the applicable legal norms and principles in their activities is not permissible in a law-basd state.

2.4. Maintenance of Non-Contribution Social Security System

Existence of non-contribution social security system has important role to play in exercising the right to social security. The goal of social aid is mainly aimed at providing support to persons who are unable to provide funds for themselves, either on their own account or from other sources, in particular allowances from social insurance system.

According to the information published in May 2011 (source: LETA, 18 May 2011), Ministry of Welfare intends to introduce amendments to the normative regulations to the effect that, starting from the next year, municipalities would have no obligation to pay housing allowance and allowance for securing the guaranteed minimum level of income any more. It is intended to increase discretion of municipalities to assess individually each situation and to decide on the ways for providing means of subsistence and support in provision of dwelling.

The right to social security is guaranteed by Section 109 of the Constitution that stipulates that everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law. Obligations of the State in the field of social security according to Section 89 of the Constitution should be viewed in close correlation with the international treaties binding upon Latvia. The UN Committee on Economic, Social & Cultural Rights established for supervising implementation of the UN Covenant in the State Parties has pointed out in General Comment No 19 "The right to social security" that ensuring the minimum level of income is among the so-called core obligations to be provided within the maximum resources available.[88] The minimum income has to cover the key needs of an individual for sustenance, dwelling, and health.[89] The State is responsible for ensuring fixed minimum level of income at least to socially vulnerable groups of population. Differentiating the minimum amount of such support depending on the resources available to municipality is impermissible. The amount of social aid available from different municipalities is already highly different at present, depending on financial resources of each municipality.

When the Ministry of Welfare had drafted a law on amendments to the Social Service and Social Aid Law, the Ombudsman issued an opinion to the Ministry of Welfare pointing out that the intention to reduce the target of social aid by excluding the duty to ensure satisfaction of the basic needs can deserve no support from the aspect of human rights. Regardless of whether the support is paid in cash or takes another form, it has to be provided in adequate amount and during adequate period to ensure that each individual can exercise their right to protection and supporting of their families, to adequate living standards, ad adequate access to health protection services. Such right has to be insured at least on the minimum level.[90]

Definition of the terms "adequate living standards" or "appropriate living standards" can not be found in any international legal acts; however, their contents and meaning may be derived

[88] Committee on Economic, Social & Cultural Rights General Comment No.19 (2007) "The right to social security": 04.02.2008, E/C.12/GC/19 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/97/PDF/G0840397.pdf?OpenElement (viewed on 30 May 2011).
[89] Ibid.
[90] Committee on Economic, Social & Cultural Rights General Comment No. 19 (2007) "The right to social security". Paragraph 22.

from the context of such acts. Article 25 of the UN Universal Declaration of Human Rights states that the right to adequate living standards includes food, clothing, housing and medical care, and necessary social services. Article 11 of the Covenant includes food, clothing and housing. The UN Convention on the Rights of the Child differs from the above-mentioned, since it does not specify what is understood by adequate living standards; instead it may include anything that is necessary for physical, intellectual, mental, moral, and social development of a child. The UN Convention on the Rights of Persons with Disabilities provides for the right to adequate food, clothing, housing, and to continuous improvement of living standards.

It may be concluded in general that the above-mentioned legal norm on the basic needs of each extends to food, clothing and housing, while ensuring adequate living standards require something more, depending on society-specific conditions and the needs of individual. As a rule, the State has the duty to guarantee adequate living standards and provide for the basic needs of individuals if necessary. Constitutional Court has also pointed out to this concluding that Section 109 of the constitution extends to the right to at least minimum social security, and the goal of such right is to ensure decent existence of a human.[91] It was therefore pointed out to the Ministry of Welfare that the proposed definition of the goal of social aid is not commensurate to obligations of the state provided for in the international legal acts in the field of social security, and that responsibility for ensuring the basic needs of individuals should be preserved. Such goal of social security should be kept in mind when drafting any norm in the field of social security.

2.5. Monitoring of Public Social Care Centers

Information about visits to public social care centers (hereinafter – PSCC) conducted after reorganization of such centers commenced on 1 January 2010 was presented in the previous annual report. On 25 February 2011, the Ombudsman issued Opinion No 1-8/3 in which conclusions made after the centralized visits to all five centers were summarized.

The following conclusions were presented in the Opinion:

1. Decision of social service on the need for social care and social rehabilitation services may be influenced by financial considerations; support should be therefore provided to the need for obtaining opinion of the relevant commission and to delegation of decision-making competence to an institution that is not involved in funding of the services in question;
2. The existing regulation does not include group home services to incapable persons; it prevents restitution of capability and contradicts with the objective of social rehabilitation services; elimination of the difficulties related to access the of incapable persons to group home services may be expected when the institution of incapability is modified;
3. The existing normative regulations do not specify that group home service is subject to precondition of receiving half-way home service; therefore, availability of group home service should be based on readiness of a person to receive such service;
4. Improvement of normative regulation should be considered in relation to provision of alternative social services;
5. Medicinal treatment is not a purpose of PSCC, yet the clients accommodated there are interested in continuous access to psychiatrist, and quality control of treatment service is equally important;
6. Medicinal treatment services are provided at PSCC, however the centers or their branches are not always registered in the Register of Medicinal Treatment Institutions, and

[91] Award made by Constitutional Court on 21 December 2009 in proceedings No 2009-43-01, Paragraph 31.2.

therefore such institution may not be subject to the control mechanism applicable to treatment institutions in terms of service quality as well as in terms of record keeping;
7. Normative regulation regarding health care provided by PSCC has to be improved;
8. Cooperation has to be promoted between orphans' courts and PSCCs to establish uniform understanding of the procedure for appointing guardians and to foster the restitution of capability in case of individual clients; employees of the centers should not be appointed guardians;
9. The idea of mandatory state or municipal support (allowance payment) to guardians should be supported;
10. More detailed regulation should be provided in regulatory acts concerning the application of occupational therapy: the involved jobs, specific duties and performance procedures constitute important factors in rehabilitation of clients and ensuring order in the center;
11. Employees of PSCC occasionally feel themselves unprotected; therefore, additional measures should be taken to support the staff and to increase their social guarantees;
12. The State should foster steps aimed at providing social care of persons with mental impairments at their homes; long-term social care and rehabilitation institutions provide qualitative services, however accommodation there imposes restrictions on the independence and self-dependence of individuals.

Ministry of Welfare was urged to address the matters referred to in the opinion, in collaboration with other institution, with special focus on facilitating the measures aimed at social integration of persons with mental impairments and ensuring the right of such persons to self-dependent life. The opinion was sent to Ministry of Welfare, Ministry of Health and to all five PSCCs. No reply was received from Ministry of Health. Ministry of Welfare expressed no support to the proposals made in the Ombudsman's opinion; they noted that no medicinal treatment services were provided by PSCCs and that there were not sufficient financial resources available for developing alternative social services. Ministry of welfare expressed no opinion concerning the need for social care and social rehabilitation services.

During the meeting of the Ombudsman, the staff of Ombudsman's Office and representatives of the Ministry of welfare held at the Ombudsman's Office on 9 November 2011, representatives of the Ministry of Welfare acknowledged that the Ombudsman's opinion regarding the need for improvement of services provided by PSCCs was reasonable, and that these argent topics should be addressed. Officials of the Ombudsman's Office continue visits to PSCCs to assess the services provided by such institutions.

In the end of 2011, Ministry of Welfare formed a task force for Improvement of Long-Term Social Care and Social Rehabilitation Services and Assessment of Possibilities to Integrate Health Care Services. The task force was entrusted with drafting proposals for introduction of social care and social rehabilitation services tailored to individual needs and functional impairment levels (including health care elements), as well as proposals for improvement of regulatory acts to tie up welfare and health services. Representative of Ombudsman's Office is also a member of the said task force.

3. The Right to Health Protection

Applications filed in the field of health protection mainly refer to mistakes committed by or attitude experienced from medicinal professionals and to proceeding of Health And Working Capacity Expertise State Commission in determining the categories of disability.

It should be emphasized that the process of treatment means activity in the area of private law based on agreement between patient and medicine professional, as well as the treatment

institution; therefore, the Ombudsman is not competent to assess the process of treatment. From the aspect of human rights it is essential to ensure that the State has established effective vehicle to control the quality of health care services.

Section 10 of the Treatment Law provides for public legal vehicle; namely, the quality of expertise of professional and working capacity at treatment institutions is controlled by Health Inspection. Administrative Department of Supreme Court Senate has acknowledged that, once a person files an application with the inspection concerning the breaches committed in health care in respect of such person, the inspection may proceed in either of the two following ways. The first way is to institute proceedings concerning administrative breach where the applicant is declared the injured party. The second way is to issue assessment of quality of the provided health care. (..) The action chosen by the inspection depends on the patient's application, severity of the potential breach, lapse of time in case of administrative offence, and other circumstances.[92]

Assessment of quality of the provided health care service issued by Health Inspection in the form of opinion is treated as actual measure on part of the institution for the purpose of Section 89 of Administrative Procedure Law. The Ombudsman may check whether or not the actual measure has been taken and whether or not it complies with the norms of material law. Legal norms provide for no special procedural conditions to issuing opinions; therefore it is essential to establish whether of not Health Inspection has complied with the general principles of procedural law.

A number of inspection proceedings should be mentioned during the reporting period in relation to protection of the right to health.

3.1. The Right to Reasonable Assessment of the Quality of Health Care Service

Application was filed with Ombudsman's Office by an individual who had filed a complaint with MADEKKI[93] in 2003 already concerning dental care service provided in poor quality, thus exercising the right of patient to assessment of quality of the provided medicinal care. Administrative court has later qualified as unlawful the opinions issued on two occasions to the concerned individual. Upon receipt of the third opinion, the individual applied to the Ombudsman for assessment of the actions of Health Inspection.

It was established in course of inspection proceedings that Health Inspection had not observed the principle of legitimacy; namely, when issuing the third opinion, the inspection failed to take into consideration the directions made by administrative court in their awards; contrary to that, it attempted to contest in their opinion the arguments described in the award. It was also established that the issued opinion contradicted with the law since the substantiation contained therein was not sufficient, and therefore the individual was not able to check whether or not their objections had been taken into consideration, and whether or not the conclusions were essentially substantiated. The Ombudsman applied to the Health Inspection with request to take into consideration the said opinion and to ensure impartial control over the provided health care services, and to ensure compliance with administrative procedure principles including the principle of legitimacy in future work of the inspection.

---

[92] Judgment made on 16 October 2008 by Administrative Department of Supreme Court Senate in proceedings No SKA-411/2008

[93] According to Paragraph 3 of the Cabinet Decree No 432 of 11 July 2007 On the Establishing of Inspection for Quality Control of Medicinal Care and Expertize of Working Capacity, Pharmacy State Inspection, and on Reorganization of Sanitary State Inspection and Establishing of Health State Inspection, the Health Inspection is the legal successor of the functions, rights, obligations, financial assets, property, and records.

3.2. Provision of Technical Aids to People with Special Needs

An open letter has been received at Ombudsman's Office from Liepāja Cooperation Network of Social Organizations concerning the provision of technical aids to people with special needs; the issued addressed in that letter include, inter alia, the right of persons to protection of their health.

As a result of structural reforms in the area of technical aids, provision of technical aid services has been delegated to the non-governmental sector from 2010. According to the Ministry of Welfare, the said structural reforms have been aimed at ensuring that decrease of State budget expenditures in 2010 affects administrative costs and affects to smaller extent the direct recipients of such service. Given, however, the decreased funding, certain technical aids are only provided to low income persons, and the scope of technical aids available on the account of state budget has been reduced, while the number of persons waiting for provision of technical aids has notably increased.

The inspection proceedings are pending; information has been requested and received from State VSIA "Nacionālais rehabilitācijas centrs „Vaivari"", Latvian Society of Blind, Latvian Association of the Deaf, and the Ministry of Welfare regarding the situation in the field of provision of technical aids. Given the urgency of the above-described problems, the issue concerning provision of technical aids to people with special needs has been included in the agenda of the Ombudsman's Conference in 2011 to facilitate discussion, cooperation and agreement between parties to the dispute within the scope of inspection proceedings. Participants of the conference included Māra Leja, Manager of Liepāja Club for Persons with Disabilities "Draugs", representing the position expressed in the open letter of Liepāja Cooperation Network of Social Organizations; Aldis Dūdiņš and Ineta Pikše both representing the Ministry of Welfare; Aivars Vētra, Manager of Technical Aid Center of the Rehabilitation Center "Vaivari"; Arnolds Pavlins, President of Latvian Association of the Deaf; as well as Aigars Bolis, Environment Accessibility Expert of the Association "Apeirons".

During the conference, all participants pointed out to the lack of funding as the most crucial problem in provision of technical aids; urgency of other issues was also noted, such as the problems in procurement of technical aids that are directly related to the quality of technical aids.

Participants of discussion also pointed out to the need to increase liability of users for use of technical aids since in practice it has been frequently observed that users neglect their technical aids and their maintenance; on certain occasions, users even select to sell the technical aid instead of using it. Control over attending family physicians also should be increased because on some occasions technical aids turn out to be groundlessly ordered, thus increasing the already long lines of waiting people and preventing people who really need them from access to them. On the other hand, not all aids are subject to prescription by doctors; some aids could be made available to individuals, for example, when they reach certain age.

3.3. The Right to Health Protection – Distribution of Legionellosis

Inspection proceedings have been instituted upon application filed by a person concerning the distribution of Legionellosis (Legionelle pneimophillia) among the population. 30 occasions of Legionellosis have been confirmed in Latvia during the period from January to September

2011. On two occasions the disease has lead to lethal result. According to the summary information of the State agency "Latvijas Infektoloģijas centrs", 14 occasions of Legionellosis had been registered during the period from 1 January 2007 to 31 October 2010, or 0.3 occasions per month; while 34 occasions have already been registered from 1 November till present, or three occasions per month in average.[94] Legionelle germs are capable of significant reproduction in water supply systems in temperature range of $+20^0$C to $+45^0$C in presence of organic substances (biological film, sediments, etc).[95] According to the Cabinet, most occasions of Legionellosis have derived from infection got by people in Latvia, including at their own homes. 12 focal home points of infection have been detected in 2011 by means of epidemiological investigation, and 16 people have got infected there.

The State Agency "Latvijas Infektoloģijas centrs" informs via mass media that distribution of Legionellosis continues; legionelle germs have been detected most frequently (on 32% occasions) in hot water, in particular (on 48% occasions) in heating units at multi-residential buildings. Legionelle germs have been detected with much smaller frequency in cold water samples – on 8% occasions.[96] This proves that inappropriate temperature of hot water could present a risk factor for distribution of legionelle germs in Latvia, along with hot water mains.[97]

Normative regulation in the field of cold and hot water quality as well as the tool for quality control of hot water was reviewed within the inspection proceedings. The Ombudsman issued opinion to the Cabinet and to the Ministry of Welfare with the following conclusions: 1) the existing regulation is not sufficient to ensure the right to health protection, and mandatory requirements applicable to the quality of hot water should be drafted, as well as a tool for controlling compliance with such requirements; 2) information about the appropriate preventive measures has to be made accessible to all groups of population to ensure the right to health protection, so that the risk of Legionellosis distribution is prevented.

The Opinion contained appeal to the Cabinet to find solution for quality assurance and monitoring of hot water supply, and to draft an appropriate normative regulation as well as to take steps towards providing information about preventive measures to the population so that the risk of Legionellosis distribution is prevented.

The Cabinet approved at their meeting on 4 November 2011 the reply drafted by the Ministry of Welfare under No 18/TA-2250 (hereinafter – Letter of the Cabinet) on the steps required to bring under control distribution of Legionellosis. Special attention was paid at the Cabinet meeting to the situation of Legionellosis occurrence among the population, and the Cabinet was asked to consider seriously the potential solutions; no support, however, was received to such appeal. Minister of Health only proposed to increase the scope of information available to population on preventive measures aimed at controlling the distribution of Legionellosis. Commitment to keep society informed deserves appreciation, of course; it is not sufficient however to ensure the right of individuals to protection of their health.

The right to health protection is guaranteed by Section 111 of Constitution of the Republic of Latvia. The right to health protection includes, inter alia, the right to safe and healthy household conditions. The State has to ensure prevention, treatment and combating of

[94] Website of the State Agency "Latvijas Infektoloģijas centrs" http://www.lic.gov.lv.
[95] Idem
[96] *Distribution of Legionellosis at multi-residential buildings continues,* http://www.tvnet.lv/zinas/latvija/398634-daudzdzivoklu_namos_vel_arvien_izplatas_legionaru_slimiba.
[97] Idem

epidemic and endemic diseases.[98] The State has the duty to establish system for ensuring the above-listed rights, and effective vehicle to control enforcement of such rights. The State has included the right to health protection in the Constitution, thus granting special protection of such right by the State, and the involved rights may not have merely declarative nature.

The Ombudsman also informed of his position the Commission for Human Rights and Public Affairs; he pointed out that the existing regulation in the field of ensuring the right to health protection has to be improved. The scope of authorities and the tasks of competent institutions in the field of health care are not sufficient to ensure protection of human health in case of distribution of Legionellosis. The proposed solutions included more stringent control over the quality of hot water, for example, granting extended powers to the State Agency "Latvijas Infektoloģijas centrs" in the implementation of disinfection measures; preventive steps taken by Health Inspection to control the quality of hot water; providing more comprehensive information to society. The Ombudsman appealed to the Saeima Commission for Human Rights and Public Affairs for deciding on the required steps to address this issue.

Mass media reported in late 2011 on continued distribution of Legionellosis.[99] According to the data summarized by Infectology Center of Latvia, the number of Legionellosis occurrances in 11 months of 2011 reached 41, including three lethal outcomes. Given the situation, the State should listen to the Ombudsman's opinion, ensure the constitution-guaranteed right to health protection, and decide on the required steps to keep distribution of the disease under control.

4. The Right to Live in Benevolent Environment

Most of applications filed in 2011 concerning the right to benevolent environment refer to cumbersome noises and smells. Having reviewed the information contained in inspection proceedings, the Ombudsman pointed out that the right guaranteed by Section 115 of the Constitution to live in benevolent environment was not absolute. The right to benevolent environment may be subject to restrictions to align them with public interests, such as balances commercial development and economical welfare. In other words, the right of a single individual (or group of individuals) may not be placed higher than the rights of other individuals. In case of noise caused by night-clubs, the right of people to adequate sleep has to be balanced with the right of merchant to pursue the respective commercial activity.

The State has established procedure for measuring the level of noise and identifying excessive noise. In case of noise measured in accordance with the procedure established by the Cabinet, if it is found that such noise does not exceed the permissible level, no individual can seek further protection. It should be kept in mind that, due to continuous development of technologies, the situation where no noise is present at all or the level of noise is relatively low can be hardly possible.

The regulation applicable in the State prevents protection of the interests of one group of persons only; for example, by setting no noise limits at all so that persons are subject to no limits in causing noise, or by setting so low limits of noise that they prevent normal functioning of equipment. Therefore, regulation establishing the noise limits is aimed at balancing the different interests as described above.

---

[98] Committee on Economic, Social & Cultural Rights. General Comment No.14. http://cesr.org/generalcomment, para. 11, 44.

[99] *Distribution of Legionellosis surprises even epidemiologists*. Diena TV, 21 December 2011, www.diena.lv.

Noise limits have been established on the basis of recommendations of the World Health Organization and the European Union. International Standardization Organization has developed standards applicable to describing, measuring and assessing environmental noise. Such standards are integrated in the regulatory acts of Latvia. Therefore, the regulation applicable in Latvia in relation to the permissible level of noise meets the common global requirements.

The Ombudsman has pointed out to the two different situations in relation to noise generated from real estate. The first situation is related to the process of construction and exploitation of a building. In particular, Section 15, Part One, Paragraph 14 of the Law on Municipalities, autonomous functions of municipalities include ensuring the legitimacy of construction processes taking place on their respective administrative territories. There are certain norms applicable to construction, including regulations regarding the preventing of noise, which are binding not only during construction period but also in course of exploitation. Municipalities are competent to conduct supervision of compliance with the said norms. Municipalities have to ensure that buildings on their territories meet the requirements of regulations.

Another situation is related to actually generated noise. Exceeding the norms of acoustic noise and limits of environmental noise is subject to administrative liability. According to Section 22 of Administrative Offence Code of Latvia, administrative sanction is the means of liability and shall be applied in order to educate a person, who has committed an administrative violation, in the spirit of law abiding and respecting provisions of social life, as well as in order to prevent the violator of the rights, as well as other persons, from committing new violations. It follows from the above-stated norm that the purpose of administrative sanction is ensuring compliance by a person with the requirements of regulatory acts and preventing commitment of new administrative offences, rather than imposing penalty on the offender. Therefore, according to the AOCL, recurrent nature of an offence is aggravates administrative liability, including an offence related to exceeding of the norms of acoustic noise and limits of environmental noise. As a rule, administrative sanction may never be an end in itself. At the same time, situation where the competent authority takes no actions in reply to administrative offence is impermissible in a democratic, law-based State.

Where any persons commit systematic breaches of the requirements of regulatory acts, effectiveness of the existing mechanism for protection of rights is put under question. Effectiveness of such mechanism is indeed directly dependent on application of the existing regulation. It means, that discussion of the need for additional compulsory mechanism may start no sooner than the competent authority has exhausted their best efforts to solve the situation. Therefore, timely reaction on part of the competent authority to potential administrative offences in the field of environmental and acoustic noise is also important from this aspect.

The Ombudsman has reviewed Paragraph 4.1 (governing the prohibition of noisiness) of the Binding Regulations of Riga City Council No 80 of 19 June 2007 Concerning the Public Order in Riga (hereinafter – Binding Regulations No 80) and concluded that Section 167.[1] of the AOCL (governing administrative liability for exceeding of the norms of acoustic noise and limits of environmental noise) is included in the AOCL under title 13 “Administrative offences that jeopardize public order”, and that the said norm prescribes administrative liability for any activities that cause noise and exceed the norm of acoustic noise or limit of environmental noise permissible during the specific time of day. Application of the said norm is subject to establishing not only the activity that has caused noise but also the fact that limit values of noise has been exceeded.

Limit values of noise are listed in Cabinet Regulations No 76 of 25 January 2011 Concerning the Measuring of Noise in Premises of Residential and Public Buildings (hereinafter in this section referred to as – Cabinet Regulations No 76). Cabinet Regulations No 76 have been enacted pursuant to Section 18, Part Three, Paragraph 1 of the Law on Pollution which stipulates that the Cabinet shall fix the values of noise, the procedure for their application and methods for their assessment. According to Section 1, Paragraph 14 of the Law on Pollution, the value of noise means a physical value used to describe noise that may have harmful effect. Therefore, Cabinet Regulations No 76 prescribe values of noise the exceeding of which may cause harmful consequences.

It is also clear, however, that noise other than the limit values prescribed by regulatory acts may also cause nuisance. Since the AOCL prescribes no administrative liability for noise that do not exceed the above-mentioned limit values yet cause disturbances of public peace and order (such as disturbing sleep), municipalities are free to establish administrative liability for such offences in their binding regulations.

A number of applications have been received regarding smells from different sources. The Ombudsman has found out that no regulation is effective in Latvia to ensure the right of individuals to accommodation in residential premises with no harmful smells. Therefore, work has been commenced on regulating this issue.

Regarding the smoke that results from neighbors smoking on balconies of multi-residential houses, the Ombudsman established that Latvia had joined the WHO Framework Convention on Tobacco Control. Conference of the States Parties to the WHO (the body of WHO entrusted with promoting implementation of the Convention) has drafted guidelines for implementation of Article 8 of the above-named Convention stipulating that the State has the duty to ensure protection against tobacco smoke in all internal public areas, public transport and other possible (outdoor or partially outdoor) public areas. “Public areas” for the purpose of the said Convention mean any areas available to unlimited number of individuals, or intended for common use. Therefore, duty of the State to ensure protection against tobacco smoke in public areas derives from the above-mentioned international norms. Balconies/loggia of multi-residential buildings do not constitute public areas – they are not available to unlimited number of individuals. Moreover, they form part of apartment estate owned by private individual. The Ombudsman therefore acknowledged that the existing regulation complies with the Convention, and therefore no infringement upon human rights can be established.

During the previous reporting period the Ombudsman drew the attention of the Ministry of Welfare to the need for work on normative regulation also in relation to the permissible values of electromagnetic radiation.

The Ombudsman assessed the legitimacy of building of electronic communication towers and pointed out that the fact that regulatory acts contain no clear specification of the distance between electronic communication tower and other objects did not mean breach of the right to live in benevolent environment. The competent authority assessing the proposed construction has to be guided not only by regulatory acts but also from the general principles of law. This means that the authority has to define the most effective way for balancing the interests of addressee of the administrative act in question and the interests of other part of society, including definition of distances between objects, where appropriate.

It has to be noted regarding electromagnetic radiation that Council Recommendation 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) is based on analysis of short-term exposure to electromagnetic fields as defined by the International Commission for the Protection against Non-Ionizing Radiation. The said Recommendation is based on scientific research the conduction of which continues in the European Union. The Recommendation is not legally binding, yet the recommendations contained in it refer to examples of good practice or to appropriate requirements in the given area.

5. The Right to Education – Professional Education

Application concerning the reorganization of Latvian Culture College (hereinafter in this section – the College) has been filed with the Ombudsman's Office. Having reviewed the application, the Ombudsman pointed out that status of the college was defined in Paragraph 1 of the Cabinet Regulations No 465 of 3 July 2007 Concerning the Latvian Culture College; namely, the College is an educational establishment founded by the State and supervised by the Ministry of Culture.

According to Paragraph 65 of the said Regulations, decision on reorganization or liquidation of the college may be passed by the Cabinet upon motion of the Minister of Culture. Since, pursuant to Section 58 of the Constitution, all public administration authorities are subordinated to the Cabinet, the Cabinet decision on reorganization of the College constitutes an internal decision passed within the directly managed institutional system (*cf. Award passed by Administrative Department of Supreme Court Senate on 12 February 2010 in case No SKA-253/2010, paragraph 10, www.at.gov.lv*).

Any disputes concerning internal decisions are subject to internal subordination-based settlement by a superior official or another official (*Briede J. Administrative Act. Riga: Latvijas Vēstnesis, 2003, p.p.140*). Taking into consideration the foregoing, the Ombudsman concluded that assessment of the efficiency of internal decisions passed by public administration authorities did not fall into the Ombudsman's competence, unless such decision involved material infringement upon human rights.

Section 112 of the Constitution which stipulates that everyone has the right to education, *per se* does not guarantee the right to professional education. The State has to establish flexible programs and different education systems to ensure that education meets the needs of students (*UN Committee on Economic, Social and Cultural Rights. Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 13. The Right to Education. www.ohchr.org*). It does not mean, however, that the State has the duty to ensure introduction or preservation of all possible study programs. If a type or program of education changes, the State has the duty to ensure completion of the pursued education.

According to the summary of the Draft Cabinet Decree on Reorganization of Latvian Culture College, the Decree provides for transitional period of two years after merging of the College with Latvian Academy of Culture, and completion of studies according to the existing programs by the students enrolled to the College shall be ensured during the above-mentioned period.

6. The Right to Housing

Assessment of the actuality of housing issue of 2011 shows that on most occasions individuals have been applying to the Ombudsman for handling of civil legal matters, such a disputes arising from legal lease relations, managerial matters as well as the matters related to

the right to use residential premises by individuals who have been unable to meet their loan obligations. Similar to the previous reporting period, actual topics included assessment of the actions taken by municipalities in handling the housing matters. Occasions of arbitrary eviction have also become actual resulting in increased number of individuals who need immediate assistance.

Ombudsman's Office has conducted inspection proceedings concerning arbitrary eviction of individual from residential premises. Information has been requested from police within the framework of inspection proceedings, and the lessor has been notified of eventual liability for arbitrary eviction. Involvement of the Ombudsman has resulted in positive outcome of the issue, since the parties have agreed on reconciliation. Another inspection proceedings are related to a fact of arbitrary eviction, where the applicant points out to illegitimate actions on part of enforcement officials and representatives of police. In the given occasion, according to the applicant, the apartment door has been forced and the effects found in the apartment have been removed to garbage container in the absence of the applicant. The applicant is not aware of effective court judgment on eviction from the residential premises. Neither the enforcement officials nor representatives of police have presented any documents regarding compulsory enforcement of a court judgment. Conducting of the inspection proceedings included explanation required from the Latvian Council of Bailiffs and from the State Police, along with request to issue opinion on legitimacy of activities taken by representatives of the involved institutions. The Latvian Council of Bailiffs informed about disciplinary proceedings instituted upon receipt of explanations from the concerned enforcement official who has been suspended from his duties pending investigation.

The Ombudsman has also conducted inspection proceedings to assess the right of house owners to their property where such right is restricted by regulatory acts that govern legal lease relations. An owner of denationalized building applied to the Ombudsman's Office pointing out to the actions taken by tenants to delay renovation of a building estate that has the status of culture monument. In the given occasion, tenants of the building estate have been registered by municipality for provision of residential premises; in the owner's opinion, however, the process of granting aid was delayed because the tenants refused to accept the apartments proposed by municipality. The owner was therefore prevented from commencing renovation of his building. Legal proceedings are seen as the only way to settlement of the dispute; continuous litigation, however, may result in financial damages to the owner.

Ministry of Economy pointed out within the framework of inspection proceedings that the Law on Lease of Residential Premises (hereinafter – the Lease Law) was enacted in 1993 and it contained a number of norms required to ensure the right of tenants of residential premises during the conversion of State-owned property including denationalization of State and municipal property. The said Law imposes, for example, additional obligations of the owners of denationalized buildings or buildings returned to the lawful owners in relation to tenants during the first seven years following restitution of ownership. Since more than 15 years have passed from conversion of State ownership, the tenants have had sufficient transitional period for adaptation to the market conditions. The Law, however, still contains the norms that restrict the right of owner of residential building to free disposal of their property; therefore, Ministry of Economy has commenced work on drafting new regulations in the field of legal lease relations. The new regulations would be based on the need for abandoning the currently applicable restrictions that have no effect on public interests in general yet notably affect the owners' right to property guaranteed in Section 10 of the Constitution.

The Ombudsman applied to the Ministry of Economy for providing information about the progress in drafting the above-mentioned regulation in relation to legal lease relations and the proposals intended to be included in such regulation. The Ministry of Economy pointed out that the work on draft law on lease of apartments was commenced in September. The task force initially agreed on individual matters related to legal lease relations; a number of relevant matters is, however, pending drafting and they have not been discussed by the task force yet. The Ministry of Economy drew attention to the fact that presentation of the draft law to the Cabinet is scheduled to the first quarter of 2012. The Ombudsman has committed to follow up developments in this area.

The focus issues in the reporting period also include actions of municipalities in handling the housing matters, that is, the matters regarding registration of persons for accommodation, deletion of persons from list of recipients of assistance; compliance with the principle of good governance in arrangement of support to individuals in handling their housing matters. In general, actions of municipalities have been assessed on individual occasions where persons have been applying to the Ombudsman's Office with claims regarding specific actions of municipalities. It is important to note that on some occasions the persons decline the proposed assistance thus delaying the process of providing assistance. On such occasions, legal housing regulations give the right to municipality to delete such person from the list of recipients of assistance since the persons have the duty of cooperation. Therefore, individual occasions have been identified where individuals groundlessly reproach municipalities for ineffective handling of their housing matters.

The Area of Criminal Law

What is Criminal Law in the Context with Human Rights?

Criminal Law is related to the actions of repressive public authorities in the course of pre-trial investigation, imposing and enforcement of sentence. Therefore, the area of criminal law focuses on virtually all fundamental rights listed in Section 8 of the Constitution and in the Convention, the infringement of which results or may result mainly from the actions of State or municipal police, or the officials of Prison Administration. These include imposing and enforcement of sentences in administrative offence matters; investigation of criminal offence and the related restriction of rights; as well as conditions at prison facilities and restrictions imposed on the rights of individuals kept in custody. The key issues in the context of this area may include:

1) the right to life and health (effective investigation in case of infringement of rights);
2) prohibition of inhuman treatment and torture (actions on part of officials and conditions at prison facilities);
3) the right to liberty (application of the means of security);
4) the right to fair court (in the context of pre-trial investigation);
5) restriction of the right to property (during pre-trial investigation);
6) restriction of privacy (during pre-trial investigation and during the enforcement of sentence).

Priorities in the Area of Criminal Law:

1. Protection of the rights of individuals kept in closed-type imprisonment facilities.

2. Protection of the rights of individuals during the pre-trial investigation

3. Observation of the guarantees to protection of the rights of individuals in their communication with police.

I. Protection of the rights of individuals kept in closed-type imprisonment facilities

Prisoners as a group of persons subject to low protection can be subject to various infringements of their human rights. Protection of the rights of individuals kept in closed-type imprisonment facilities has been set as priority with the purpose to continue identification and elimination of systemic problems commenced in previous years.

Part 1, Paragraph 2 of the Recommendation Rec(2006) of the Committee of Ministers to member states on the European Prison Rules[100] (hereinafter – European Prison Rules) stipulate that persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody. The Senate has concluded in a number of proceedings that, in case of prisoners, certain minimum human rights must be ensured which an individual may not be deprived of without infringing upon the individual's right to human treatment *(cf. Paragraph 11 of Senate Award of 15 June 2006 in case No SKA-348/2006; Paragraph 7 of the Award of 14 February 2007 in case No SKA-186/2007; Paragraph 11 of the Award of 15 June 2007 in case No SKA-404/2007).*

A notable number of applications are received from imprisoned individuals every year concerning the circumstances of deprival of their liberty, breaches of the principle of good governance, insufficient health care and other issues.

[100] According to the practice of Constitutional Court, European Prison Rules constitute an authoritative source for identification of the minimum scope and contents of the rights of sentences persons (see, for example, Award made by Constitutional court on 2 December 2009 in proceedings No 2009-07-0103, Paragraph 14).

The Ombudsman is the sole independent public institution to whom the legislator has delegated the mandate to visit closed-type facilities at any time without special permit; to move freely within the territory of such facilities; to visit any premises, and to meet vis-à-vis any individuals kept in closed-type facilities. Officials of the Ombudsman's Office effectively use such right to obtain objective information through handling of individual applications as well as through monitoring visits undertaken at their own initiative. 14 visits[101] to imprisonment facilities have taken place in 2011. Monitoring visits were conducted to the Prison of Šķirotava, Prison of Vecumnieki, Prison of Daugavgrīva, Prison of Jelgava, Prison of Olaine and Central Prison of Riga.

Representatives of the Ombudsman's Office also monitored the arrangement of elections at prison facilities. Visits to most of prison facilities were conducted on 23 July (referendum on dismissal of the 10th Saeima) and on 17 September (elections of the 11th Saeima).

Employees of the Ombudsman's Office are regular members of the following task force established by the Ministry of Justice in relation to amending of legal acts and making proposals on the improvement of operation of prison facilities:

- Task force for criminal sentence enforcement policy,
- Task force for drafting new internal regulations for prison facilities,
- Task force for improvement of normative regulation on the procedure for appealing against/contesting decisions passed during the imprisonment and criminal sentence enforcement period,
- Task force for coordination of research activities in the area of criminal sentence enforcement.

Periodical monitoring visit of the European Committee for the Prevention of Torture (CPT) to Latvia took place this year during the period from 5 to 15 September. Meeting of the representatives of the Committee delegation with the Ombudsman was also included in the visit. The topics discussed during the meeting included the role of Ombudsman in monitoring of closed-type imprisonment facilities and summary of the recommendations issued by the Ombudsman to the competent authorities. Special emphasis was made on the lack of effective investigation institution at imprisonment facilities, and information was shared about the facilities where the conditions were most inappropriate to accommodation of prisoners, in particular the Investigation Division of the Prison of Valmiera and Life Sentence Division of the Prison of Jelgava

1. Observation of the Principle of Good Governance

60 applications concerning infringements of the principle of good governance in the field of criminal law were filed in 2011. Another 186 applications contain requests for information regarding various sentence enforcement matters. Section 10 of the State Administration Law stipulates that State administration shall operate in compliance with the principle of good governance. This includes transparency in relation to private individuals and the society, and implementation of fair procedures in reasonable time, as well as other conditions aimed at ensuring the rights and lawful interests of private individuals by public administration.

In case of imprisonment facilities, the principle of good governance means that prisoners have free access, both written and verbal, to the prison staff. Prison administration has to ensure timely response to the prisoners' requests and complaints. Prison administration has to ensure proactive communication with prisoners, inform them about the rights and duties of prisoners,

[101] Apart from attendance of the Referendum and Elections of the 11th Parliament in the capacity of observers

and to provide reasonable replies to all questions of prisoners, as well as to handle the problems of prisoners at the imprisonment facility in question.

The Ombudsman concludes from the applications filed by prisoners and from the information collected in course of visits to imprisonment facilities that infringements of the principle of good governance can be observed at imprisonment facilities where large number of prisoners is accommodated, such as the Central Prison of Riga, the Prison of Daugavgrīva, for example. The Chief of Prison can certainly not be available to each and every prisoner; therefore, senior inspectors at prison facilities have special role to play there. Senior inspectors are those who communicate most actively with the prisoners, because complaints most frequently arise from failure to clarify a specific issue or to listen to a prisoner at all.

Repeated applications are filed concerning alleged control exercised by prison officials over the prisoners' correspondence with the institutions the correspondence with which is subject to no checks. According to allegations, letters sent in sealed envelopes are brought back to the prisoners who are advised to abstain from sending them.

The Ombudsman addressed a letter to the Prison administration recommending discussion of the importance of observation of the principle of good governance in protection of the prisoners' rights during the process of training or at meetings with prison managers.

Inspection of the prisoners' dossiers during the visits also shows that explanations made by prisoners regarding the circumstances of incidents are not always taken into account by prison administration when deciding on applying disciplinary measures to imprisoned persons. The applied disciplinary penalties have significant impact on decisions made by administrative commissions of imprisonment facilities on referral of prisoners to more/less strict service regime. Dossiers of prisoners at the Prison of Šķirotava were inspected focusing on the contents of decisions made by administrative commissions, and it was established that on most occasions they (protocol decisions) were ambiguous and their formulation was basically composed of general standard expressions, such as "the required result of re-socialization has not been achieved", or "the purpose of deprival of liberty has not been achieved". According to observations, such formulations did not make prisoners to understand the reasons of refusal to refer them to less strict service regime. Moreover, administrative commissions have made negative effects concerning referral to less strict regime even in situations where the chief of re-socialization section has issued positive opinion regarding the prisoner in question.

In addition, a peculiar trend is observed to cause obstacles to removal of prisoners to open-type facilities. Removal of a prisoner to open-type prison is initially declined, yet some time later a positive decision is made, though no significant changes in the prisoner's behavior or any other aspects can be identified from materials of the case.

It follows from the received applications and from conclusions made during visits that home rule of prisoners is present at prison facilities. During the visit to the Prison of Šķirotava, for example, the prisoners did not even attempt to conceal such rule and discussed it freely. This demonstrates that prison administration is also aware of such rule, and that it should be more active in taking the steps necessary to eliminate such rule. The above-mentioned is demonstrated by certain examples: for example, cleaning of bathrooms and sanitary rooms is always done by prisoners of lower rank or the so-called "outsiders".

The matter of charging the costs of consumed electric power on prisoners is also on agenda. According to the provisions of Paragraph 41 of the Cabinet Regulations No 432 of 30 May 2006 Concerning the Internal Regulations of Imprisonment Facilities, costs of electric power

consumed by individual household appliances shall be born by the prisoner. Consequently, a prisoner may only use personal TV and other household appliances if he/she can bear the costs of consumed electric power.

The Ombudsman pointed out to the Ministry of Justice the lack of transparency in procedure used to collect payments for consumed electric power in the beginning of 2011 already. The criteria applicable to collection of payments for consumed electric power were not clear. The Ministry of Justice addressed a letter to the Ombudsman on 3 March 2011 to inform that Prison Administration had been directed to draft amendments to the Cabinet Regulations No 327 of 25 April 2006 Concerning the Service Price List for Imprisonment Facilities in order to regulate fee for use of electric appliances. No amendments, however, have been introduced until present.

2. Effectiveness of appealing against the decisions made within the framework of progressive liberty deprival system

Applications concerning appeal against disciplinary penalties and decisions of administrative commissions are continuously filed with the Ombudsman's Office. The Ombudsman has instituted inspection proceedings in order to ensure systematic assessment of this issue. According to conclusions made in the inspection proceedings, the vehicle for appealing against decisions on applying disciplinary penalties to prisoners and decisions made by administrative commissions is ineffective.

Latvian Penalty Enforcement Code (hereinafter – PEC) stipulates that penalties imposed for breach of regime may be appealed against by prisoners to the Prison Administration, and after that – to the Administrative Court. Administrative commissions, however, are taking into account the imposed disciplinary penalties when deciding on change of regime, and negative decision on most occasions is based on disciplinary penalty record, even if such penalty has been duly appealed against. Decisions of administrative commission are also promptly enforced, notwithstanding that they are subject to appeal.

The Ombudsman concluded that no purpose can be seen at present to appeal against disciplinary penalties, once the enforcement of penalty is immediate and appeal is a lengthy procedure; moreover, the penalty is anyway taken into consideration by administrative commission when deciding on change of regime.

Disciplinary penalties may be appealed against in accordance with the procedure provided for in Administrative Procedure Law (hereinafter – APL), and handling of such matters by administrative court can take a year or two. On the other hand, decisions of administrative commissions may be appealed against to the courts of general jurisdiction in accordance with the procedure provided for in Criminal Procedure Law. The cases regarding decisions of administrative commissions are finalized within a few months. The two issues are closely interrelated; therefore the Ombudsman has pointed out in his opinion that their handling within a single procedure would be reasonable since they refer to the same penalty enforcement.

In addition, administrative commission should make decision no sooner than it is clearly established whether or not the element – penalty for breach of regime on which assessment of the prisoner is based – has been lawfully applied. Appeal against decision of administrative commission should also be based on substantiated, legally uncontestable facts, rather than formal procedure.

The above-described issue is included in the agenda of Task Force established by the Ministry of Justice for improvement of normative regulation on the procedure for appealing against/contesting decisions passed during the imprisonment and criminal sentence enforcement period. A representative of the Ombudsman's Office is also a member of this Task Force.

The opinion also focuses on the issue that administrative commission trends to ignore court rulings on repealing the decisions made by administrative commissions, and to make new decisions identical to the previous ones. Though Section 50.[13.] Part Four of the PEC stipulates that, when the court has repealed decision made by administrative commission, the matter is subject to discussion at the nearest meeting of administrative commission, such situation is impermissible. The duty to comply with court rulings arises from the Constitution of the Republic of Latvia and the Law on Judiciary. Moreover, the court has frequently pointed out in their rulings to material shortcomings in the actions of administrative commissions. The Ombudsman has therefore concluded that at present unnecessary load is imposed on courts; decisions of administrative commissions are not repealed, and the prisoner gains no benefit even if court repeals decision of administrative commission: it only entails the duty to ensure repeated examination of the matter at the nearest meeting of administrative commission

The above-mentioned issue was discussed at the meeting of Task Force established by the Ministry of Justice for enforcement of criminal sentences; representatives of the Ombudsman's Office also participated at the said meeting. Members of the Task Force shared the conclusion made in the Ombudsman's opinion on the need to ensure that administrative commissions comply with court rulings. Representatives of the Ministry of Justice imposed on Prison Administration the duty to take steps for addressing this issue. The Ombudsman is committed to follow up compliance with court rulings by administrative commissions.

3. Health Care

Applications concerning health care issues (unavailability of physicians, quality shortcomings of available medicinal aid, shortage of medicine preparations) have been also filed this year, like in previous years. On 20 June 2010 the Ombudsman's opinion No 20 was issued in which problems were discussed and recommendations made to the Ministry of Justice, Ministry of Health and Prison Administration. The opinion stated that the existing health care system for prisoners did not meet the guidelines of European Prison Rules. In October 2011 the Ombudsman addressed a letter to the Prime Minister to draw repeatedly attention to the health care problems at imprisonment facilities.

The Cabinet informs that the Ministry of Justice has managed in 2011, with support from the Ministry of Health, to achieve notable progress in improvement of the health care system for prisoners. New funding procedure has been established for health care of prisoners. It should be noted, however. The Ombudsman has committed to follow up in 2012 practical implementation of the given regulatory act.

Amendments to the Cabinet Regulations No 744 on amendments to the Cabinet Regulations No 1046 of 19 December 2006 Concerning the Procedure for Organizing and Funding of Health Care were enacted on 27 September 2011 to re-divide competence between the Ministry of Justice and the Ministry of Health in funding health care of prisoners.

Ministry of Justice shall bear the following costs:

- Health care services provided by medicine professionals employed at imprisonment facilities;
- Patient contributions and patient co-payments in case of prisoners who receive health care services outside the imprisonment facility.

Amendments to the Regulations No 1046 have the effect of approximating the rights of medicine professionals at imprisonment facilities to those of attending family physicians, including the right to refer prisoners to health examinations thus enabling them to receive state-funded health care services, both inpatient and outpatient, outside imprisonment facilities on the account of state budget, including compensated medicine preparations, equally to other members of society.

4. Household conditions

The practice of the Ombudsman's Office for handling individual complaints on household conditions at imprisonment facilities changed, starting from 2010. No prompt examination of individual complaints is conducted at imprisonment facilities; instead, inspection visits are planned on the basis of information obtained from applications to ensure efficient use of resources.

For example, complaints were continuously received concerning inadequate household conditions at isolator cells at the Central Prison of Riga and at the Prison of Olaine. Inspections were carried out, and they resulted in conclusion that individual isolator cells at the two imprisonment facilities fail to meet the requirements of human rights

For example, complaints were continuously received concerning inadequate household conditions at isolator cells at the Central Prison of Riga and at the Prison of Olaine. Inspections were carried out, and they resulted in conclusion that individual isolator cells at the two imprisonment facilities fail to meet the requirements of human rights.

Toilets have the form of a hole in floor, and they are not separated from the other area. There is a cold water tap situated over the hole; therefore, a prisoner has to do washing and other actions related to personal hygiene over the sewage opening. The Ombudsman has repeatedly emphasized that the fact that hygiene care has to be done over the toilet that forms a hole in floor and on which there is a cold water tap situated, presents humiliating conditions from the view of human rights. Similar conditions were established in 2008 at the Prison of Jēkabpils. The Ombudsman recommended on that occasion to abstain from use of penal isolator cells; five penal isolator cells were closed, however, no sooner than following the visit conducted in early December 2009 by European Committee for the Prevention of Torture (hereinafter – CPT) and the directions issued as a result of such visit.

The Ombudsman recommended to abstain from placing prisoners in the above-described isolator cells of the Central Prison of Riga and Prison of Olaine. Administration of the Prison of Olaine committed in their reply to respect the recommendation issued by the Ombudsman.

Visits to closed-type imprisonment facilities also involved attention paid to the implementation of recommendations made earlier by the Ombudsman.

4.1. Prison of Jelgava

The Ombudsman, as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), concluded in 2007 already that regime

and accommodation conditions at the Prison of Jelgava failed to meet the requirements of human rights. Representatives of the Ombudsman's Office visited the Prison of Jelgava on 23 March 2011 including inspection conducted at life sentence block. They conducted during the visit that prisoners sentenced for life could seek neither employment nor education. The only daily activity available to them was outdoor walk during one hour. Therefore, a prisoner spends 23 hours a day in the cell. Prisoners sentenced for life are completely separated not only from other prisoners but also from each other. A prisoner can freely communicate and contact only his/her cell-mate. In fact, nothing has changed in conditions at such cells in comparison to the previous visits. The cells are situated in the middle of room, where passage along the cell "windows" has outside-facing windows made of glass blocks. The cell windows have a grid on them. Therefore, prisoners accommodated in cells have no access to daylight. Separation of toilet facility is rather formal. The size of cells is small and, given that prisoners spend 23 hours a day there, their accommodation in such cells is humiliating to human dignity.

4.2. "Transit" cells at Central Prison of Riga

The Ombudsman notified in 2010 the Head of Central Prison of Riga and the Chief of Prison Administration of regular complaints filed by prisoners concerning insufficient daylight at the cells of first block of the Central Prison of Riga. It was established during visits to the prison that windows had iron structures fixed on them, just like in case of quarantine cells. The Ombudsman recommended to ensuring normal daylight in cells. Representatives of the Ombudsman's Office visited the Central Prison of Riga in 2011 and, having inspected the "transit" cells, established that the Ombudsman's recommendation concerning the ensuring of access to daylight was not implemented. Windows were still covered with safety "blinds" made of steel that prevented daylight from cells. In cell No 73 there was a single mercury light lamp above the window. Such lamp only provided the required lighting in direct vicinity to the window. No lighting was provided in other parts of the cell. It turned out during the visit that, even with natural lighting switched on, virtually nothing could be seen near the door to cell No 73 and in the toilet area. In cell No 76, on the turn, natural lighting was switched off, and prisoners were in full dark at about 15:0 o'clock when the door was opened. If even the safety blinds fixed on windows can not be removed for objective reasons, the failure on part of prison administration to provide adequate natural lighting has no excuse. Allegation of the staff that natural lightning is switched off upon the prisoners' request is beneath contempt. It was also pointed out that activities of prisoners only started after 17:00 when working hours of the staff were over. Such improper attitude must not be accepted. Prison administration has to ensure that prisoners have their time filled with sapid activities.

4.3. Daugavpils Branch of the Prison of Daugavgrīva

Prisoners continuously file applications with the Ombudsman's Office complaining on accommodation conditions at Daugavpils Branch of the Prison of Daugavgrīva. Recently, however, the number of complaints on household conditions at the said branch of prison trend to increase, and they concern the same issues on which the Ombudsman's Office has already focused following the visit conducted on 7 September 2010. Therefore, inspection proceedings have been instituted concerning the implementation of the issued recommendations.

The Ombudsman has previously noted in relation to the conditions at quarantine cells that accommodation conditions at the inspected quarantine cells fail to meet human right standards, in particular there is no natural ventilation and lightning provided in the cells, and separation of toilet is insufficient to ensure privacy. No more than four prisoners were present at quarantine cells during the visits; however, the cells had beds for 12 persons (six bunk

beds); the space of cells is not sufficient for the intended number of prisoners. The Ombudsman pointed out to urgent need to either eliminate the shortcoming identified at quarantine cells or to discontinue their use. In reply to the shortcomings pointed out by the Ombudsman, the Prison Administration informed in early 2011 that arrangements aimed at insuring natural ventilation and lightning has been made promptly after the Ombudsman's notice, and repair works would be continued within the limits of funding allocated for the year 2011.

Repeated inspection of quarantine cells reveal failure to comply with the issued recommendations. 30 prisoners in total were present at quarantine cells during the visit. Natural lightning is very poor and insufficient. Windows are made of glass blocks; some of them are walled up, and they are all covered with grids. Windows may not be opened, and therefore no natural ventilation is available in cells, while forced ventilation is insufficient. The above-stated is especially true in case of cells where large number of prisoners is accommodated.

Separation of toilets is formal, namely, they are separated from the other area with a small partition which is not sufficiently high and separates the toilet from one side only. On most occasions it was observed that no regular cleaning is done at quarantine cells. Representatives of the Ombudsman's Office observed that some cells had one or two prisoners accommodated there while others had about seven to nine prisoners, and some cells were unoccupied. The prison staff explained that the cells with 9 prisoners were intended for the prisoners who were waiting for transportation to Grīva Branch of the Prison of Daugavpils. Minor redecoration could be observed in one of the inspected cells; such fact, of course, deserves appreciation, yet the separation of toilet is insufficient also in the redecorated cell.

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms imposes a positive duty on the State to ensure that all prisoners are kept in the conditions compatible with human dignity so that the enforcement of penalty does not make the sentenced person subject to difficulties or challenges of such an intensity that increased the inherent level of sufferings at prison, and so that the health and welfare of prisoners is adequately ensured, subject to practical requirements of imprisonment *(Paragraph 51 of the Award of European Court of Human Rights made on 2 December 2004 in "Fabtuch v Latvia)*. The State may not refer to lack of financial or other assets as excuse to their failure to ensure any rights, since the breach of prohibition of inhuman treatment may not be justified by any circumstances whatsoever. Applications concerning breaches of Article 3 of the convention are filed by prisoners not only with the national institutions but also with European court of Human Rights; as a result, the State has to pay notable amounts to individuals. Moreover, different improvements can be achieved without significant financial investments, for example, separation of toilets, or supply of cleaning products to prisoners.

The Ombudsman urged the management of Prison Administration and the Prison of Daugavgrīva to take into consideration the above-stated and to ensure separation of toilets from the other area to the extent sufficient to ensure that no person who uses toilet feels abased or offended. Re-distribution of prisoners to all quarantine cells should be considered. Appropriate cleaning products and aids have to be supplied so that the prisoners can clean up the cell (even in case of short-term accommodation). The existing conditions at quarantine cells are incompatible with the prohibition of inhuman treatment stipulated in Article 3 of the European Convention for Protection of the Rights and Fundamental Freedoms.

The visit conducted by the staff of Ombudsman's Office also included inspection of a number of accommodation cells. According to general assessment, conditions in accommodation cells have experienced no improvement. Redecoration of cells is necessary, and in particular the condition of floors and ceilings requires improvement. The Ombudsman asked to pay special attention to hygiene standards in cells, in particular to ensure that the prisoners have the possibility to clean up their cells according to schedule (to wash walls, windowsills, to clean the toilets, etc.), and to ensure that the prisoners do so.

The steps aimed by administration of the Prison of Daugavgrīva to improvement of household conditions of prisoners sentenced for life deserves appreciation.

4.4. Prison of Šķirotava

Proposals and recommendations were issued following the visit to the Prison of Šķirotava in November 2009 concerning improvement of household conditions at the prison. Conditions at isolator cells were incompatible with human right standards. Monitoring visit conducted in 2011 resulted in conclusion that the old isolator cells were not used any more, and than new cells had been arranged with accommodation conditions by far better than the previous ones. It was recommended, however, to improve natural as well as artificial lighting there.

4.5. Prison of Vecumnieki

Prison of Vecumnieki is the only prison in Latvia that may be treated as open-type prison by its form, because it has no closed or partially-closed type prison departments, and there is an ample unrestricted territory on which the prisoners may move freely. Visit on 12 October 2011 included inspection of isolator cells, residential and other premises. Infringements of human rights were identified in respect of isolator cells. The cells were chilly and damp at the time of inspection. In case of two isolator cells intended for accommodation of two prisoners, the toilet is not separated, and the window is small, therefore natural lighting is also minimal. The attention of Ombudsman was drawn during the visit to the fact that prisoners were also accommodated in workshop premises and on farm on the territory adjacent to the prison. The above fact was confirmed by the staff; they pointed out that the reason was protecting the concerned individuals from other prisoners. About 10 persons are accommodated in the workshop rooms. The rooms are in very poor condition: with very thin external walls in poor condition, and no central heating is provided in sanitary premises. As to the farm, two prisoners who work at the farm are also accommodated there. They have a room adjacent to the cattle-shed. The Ombudsman has issued his opinion on the identified breaches to the competent authorities, pointing out that the rooms arranged in workshop area and at the farm are not suitable for regular accommodation of people. Section 50.[6] Part Three of Penal Enforcement Code of Latvia stipulates that sentence shall be served by convicted persons in open hostel-type prisons. Therefore, according to the normative regulations, accommodation of convicted persons at farm or workshop premises is not permitted if even they have expressed their agreement to be separated from other prisoners because they feel unsafe. The State certainly has the duty to guarantee safety of the prisoners who may not be accommodated in common residential premises for various reasons; therefore, the willingness of prison administration to ensure safety of prisoners deserves appreciation, yet it has the duty to provide accommodation in accordance with the law even in such occasions.

5. Availability of Information

An inspection case was instituted by the Ombudsman's Office concerning the availability of information to imprisoned individuals. It was established that the prisoners with no financial assets and no support from relatives had limited access to information.

In the given occasion, the question is about the right to information guaranteed by the constitution and international legal acts. The first sentence of Section 100 of the constitution stipulates that "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views".

Paragraph 24.10 of European Prison Rules recommends that Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

It was established in the inspection proceedings that prisoners may only use their personal TV devices if they are able to bear the costs of consumed electric energy.

TV is treated as a source of information. From the view of human rights, an imprisoned person must have the possibility to obtain information about public processes, while the state has no duty to ensure access to information in a specific manner (convenient to an individual). The State has discretion in ensuring to prisoners the possibility to obtain information about public processes.
The Ombudsman therefore finds it appropriate to ensure that the Prison Administration has to seek optimum ways solutions to provide access to information taking into consideration the capacities and resources of each imprisonment facility: for example, to provide libraries with printed matters, or to provide access to TV or radio broadcasts in the common use premises
Availability of information includes not only availability of radio and TV but also access to library and newspapers. Each prisoner must have the possibility to exercise this right, and prison administration may not impose groundless restrictions on such right.[102]

Convicted persons, irrespective of the regime determined for them, shall be permitted without restriction to purchase literature in the book marketing network, subscribe to newspapers and magazines and purchase writing materials with funds from their personal account (PEC – Section 44). Convicted persons on the lowest degree of regime shall be entitled to receive books from the prison library with the mediation of prison administration. Convicted persons on medium and highest degree shall be entitled to attend prison library according to the routine schedule. Convicted persons shall be entitled to receive unlimited number of newspapers, magazines and regulatory acts within the mail/parcels addressed to them.

Officials of the Ombudsman's Office have identified during their visits to prison facilities different practice in access to TV in prisons of similar regime. Taking of the lowest degree prisoners to an area outside their cells for watching TV was not common in any of the visited prison facilities. It was also established during such visits that the range of literature available from prison library was neither wide nor versatile, and no periodicals were available upon subscription.

As mentioned before, the state has no duty to ensure access to information in a specific manner convenient to an individual prisoner. The Ombudsman is therefore of the opinion that, subject to the possibilities and resources available to each prison, the prison administration in question has to seek the optimum solution for ensuring access to information, such as supplying periodicals to prison libraries, for example, or ensuring the possibility to watch TV or to listen radio at common use premises.

[102] *Poltoratskiy v. Ukraine*

The above issue was also discussed at the meeting of regular task force for criminal sentence enforcement policy. Ministry of Justice also acknowledges the existing problem related to availability of information in case of convicted persons who serve their sentence at medium or highest degree closed-type prisons. convicted persons who have no personal TV devices should have the possibility to watch TV at common use premises of prison facility, implementation of such solution, however, would involve additional funding from the State budget.

6. Investigation institutions at imprisonment facilities

The ombudsman focused in 2010 already on the issue of effectiveness of investigator's work at imprisonment facilities and established that the existing practice could not be treated as compliant with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The information obtained during the monitoring visits conducted in 2011 to the Prison of Vecumnieki and Prison of Šķirotava confirmed the above-mentioned conclusions.

Having reviewed the evidence collected in a number of cases at the Prison of Šķirotava, it was evident that some incidents involving violence had eventually occurred among the convicts; the efforts to establish the objective truth were not sufficient, however.

For example, according to the enquiry material, "The convicted person slipped on stairs and thus caused injury in his lower jaw, and therefore no criminal offence can be established. The injury was classified as a result of accident. Materials of the case include report of medicinal division and explanation of the prisoner who explains that he has fallen down and hurt himself, and that he has no claims towards any party. No explanations from other convicted persons have been obtained in the case." The foregoing certainly proves ineffectiveness of such inspections, because none of them provides clear explanation of the origin of the injuries caused to convicted persons. Investigator in such situations always trends to accept the convicted person's explanation that an accident has occurred, notwithstanding that such explanation is highly questionable. Therefore, such inspection materials have virtually no value.

7) **Restrictions imposed on the rights of detained persons following the ruling of the first instance court**

The given topic is related to the rights of individuals to private life. The right of detained persons to appointed meeting is subject to regulation in accordance with the procedure stipulated in the Law on Detention Procedure. A detained individual has the right to meet relatives or other persons during at least one hour once per month. Longer meeting is presently prohibited by law. The Ombudsman pointed out in 2007 already to the Ministry of Justice that absolute prohibition of longer meetings to detained persons constitutes non-compliance with the human right standards prior to and moreover after the rendering of the first instance court ruling. Absolute prohibition of meeting does not constitute the least restrictive remedy that can facilitate achievement of the purpose – unhindered investigation or unhindered criminal proceedings. Ministry of Justice returned to discussion of this issue in October 2011, and ability of prison facilities to ensure practical enforcement of such right is currently discussed, given the existing capacity.

8. Re-socialization

Amendments to the Latvian Penalty Enforcement Code related to re-socialization of individuals sentenced to deprival of liberty were made in summer 2011,

The main focus in 2012 shall be on the implementation of re-socialization measures at imprisonment facilities.

9. Housing issue after release from prison

The Ombudsman's Office has focused on the urgent topic of insufficient support on part of the State to the individuals released from imprisonment facilities. The persons released from prison present a special social risk group. Such persons frequently have had social problems related to housing and employment still before detention. Continuous imprisonment aggravates distorted perception values, and also family ties happen to be broken on most occasions during the imprisonment. At present, enforcement of criminal sentences also involves re-socialization measures that have to be followed by supporting the individuals after their release from prison.

The right to housing is stipulated in Article 11, Part 1 of the International Covenant on Economic, Social and Cultural Rights. The States Parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The right to housing means the right to adequate housing including the access to services, materials, facilities and infrastructure. Recipient of the right to adequate housing shall have access to natural and social resources, potable water, housing and light; sanitary and bathing possibilities, means for preservation of food, sewage networks, and aid services. Each State Party to the Covenant, including Latvia, has the duty to ensure this fundamental human right.

Granting of aid is governed on national level by the Law on Assistance in Resolving Housing Issues (hereinafter – the Law) and the relevant binding municipal regulations. Section 14, Part One, Paragraph 5 of the Law stipulates that *Residential premises shall be provided first of all to low income persons released from prison, if they have been residing on administrative territory of the respective municipality and if the residential premises occupied by them earlier are not available in accordance with the applicable procedure. The above regulation shall not apply to the persons who have given consent to a third party to privatization of the apartment leased by them from the State of municipality where they have reached agreement with such party on waiver of the right to use the residential premises or consented to sale or other disposal of the apartment, and the person has no more right to the apartment in question as a result of such transaction*. The Law stipulates that prison administration shall give six months' notice to the respective municipality on the need to provide housing to the imprisoned person.

Settlement of the issue of housing actually starts upon release of an individual from prison when the status of low income person is initially granted to him or her. It means that the person lacks not only place of residence but also financial means during some period after release from prison. The access to social service is also burdensome. The only readily available solution is shelter home that only provides short-time accommodation. In the Ombudsman's opinion, prompt support should be provided to the prisoner. Failure on part of municipal authorities to provide timely support may result in damage caused to other individuals' property, health and even life, and returning of the individual to prison. The individuals who have served deprival of liberty should receive support in their social integration; it means that the State not only takes

The Ombudsman addressed a letter to the Latvian Association of Municipalities (LAM) asking to cause focusing of municipal authorities on this matter. The letter also contained

direction to identify the municipalities unable to meet effectively the statutory requirements, the cause of such inability and the possible solutions. The LAM pointed out in their reply to the Ombudsman that lack of funding was the primary reason of difficulties in effective meeting of the statutory requirements. In the opinion of LAM, re-introduction of co-funding of housing from the State budget would potentially help to solve the problem.

II. Protection of the rights of individuals during the pre-trial investigation

Criminal proceedings are subject to the internationally recognized human rights, without imposing unjustified criminal procedural duties or incommensurable infringement with the individual's life.[103] The investigation measures taken during the pre-trial period, procedural means of compulsion, handling of property matters, and finalizing of pre-trial criminal procedure within reasonable time limits have direct effect on human rights of individuals. It may not be excluded, however, that human rights of an individual may be incommensurately restricted or infringed within a pending criminal proceedings due to insufficient regulatory norms, their interpretation or actions on part of individual officials.

Criminal proceedings are subject to the internationally recognized human rights, without imposing unjustified criminal procedural duties or incommensurable infringement with the individual's life.[104] The investigation measures taken during the pre-trial period, procedural means of compulsion, handling of property matters, and finalizing of pre-trial criminal procedure within reasonable time limits have direct effect on human rights of individuals. It may not be excluded, however, that human rights of an individual may be incommensurately restricted or infringed within a pending criminal proceedings due to insufficient regulatory norms, their interpretation or actions on part of individual officials.

Representative of the Ombudsman has been a member of regular task force formed by the Ministry of Justice for drafting important amendments to the Criminal Law; the amendments have been submitted to the Parliament. The draft laws are aimed at implementing the second major reform of criminal law following the regaining of independence, so that the system of criminal penalties is approximated to the penal system of the Member States of European Union (EU). The amendments are intended to define clearly the purpose of criminal penalties, that is, not only to punish a person but also to restore justice, protect the society, ensure re-socialization, and prevent other persons from commitment of crimes. According to the above-listed purposes, the amendments are expected to facilitate imposing of alternative penalties and minimize to notable extent the maximum and minimum limits of penalties, in particular for property-related crimes by 40 per cent in average. This would enable reducing of the number of prisoners in future by 30 per cent in average. At the same time, severe penalties would be still effective in case of crimes involving threat to human health and life, drugs, and sexual crimes. The amendments are also intended to replace detention as criminal penalty to a new form of deprival of liberty – short-term deprival of liberty, so that deprival of liberty for the period of fifteen days to three months can be applied in case of criminal offences. The amendments are also intended to minimize the limits of imprisonment periods depending on classification of the committed criminal offences. The purpose of reducing the limits of periods according to the draft law is ensuring that the imposed penalty is commensurable with the dangerousness and harmfulness of the criminal offence, rather than modifying the classification of criminal offences. This means that compulsory work or pecuniary penalty should be imposed in case of less severe crimes, and deprival of liberty should only be imposed on special occasions.

[103] Section 12 of the Criminal Procedure Law
[104] Section 12 of the Criminal Procedure Law

1. The right to finalization of pre-trial criminal proceedings within reasonable time limits

40 applications in total have been filed in 2010 concerning the eventual infringements of the right to fair court during pre-trial investigation, and 63 applications have been filed in 2011. The number of applications filed with the Ombudsman's Office concerning complaints on long-lasting criminal proceedings increased in 2011 as well as complaints on ineffective application to the supervising prosecutor. Directions of the prosecutor supervising the criminal proceedings have not been complied with on some occasions, thus causing doubt in effectiveness of supervision of criminal proceedings. Negative prescription has even occurred on some occasions preventing finalization of proceedings to fair settlement of legal relations. Such situations most often lead to infringement of the rights of injured parties.

Section 37 of the Criminal Procedure Law stipulates the duties of prosecutor who supervises investigation related to the supervision of criminal proceedings, including the duty to direct the course of investigation and the steps to be taken in case of failure to ensure efficient investigation or in case of unjustified intervention in the person's life, and to demand replacement of the process directing entity by direct superior of the investigator. The prosecutor is also entrusted with handling complaints and deciding on the applied rejections, etc.

It happens, however, quite frequently that directions given by prosecutor are ignored in the course of criminal procedure, supervision exercised by prosecutor turns out to be virtually ineffective, and the right of parties to proceedings to finalization of the criminal procedure within reasonable time limits is infringed. On some occasions, supervising prosecutors are indolent in performance of their duties and fail to use all tools available according to the law to seek expedient and successful progress of criminal proceedings without tolerating unjustified delay.

When handling the applications concerning delay of criminal procedure the Ombudsman has asked the superior prosecutors on virtually all occasions to assess whether or not unjustified delay has occurred in the criminal procedure, and also requested information about the actions taken within the scope of criminal procedure. Replies received from prosecutors were highly different (both positive and negative), and they demonstrated no common understanding of Section 13, Paragraph 1 of the Ombudsman's Law: that the Ombudsman is entitled to request and receive free of charge the necessary documents from authorities within the framework of inspection case (administrative deeds, procedural decisions, letters) as well as explanations and other information. Authorities frequently refuse to cooperate with the Ombudsman and fail to provide efficient information under the pretence of Section 375 of the Criminal Law which stipulates that materials of criminal proceedings constitute the secret of investigation; the Ombudsman is therefore prevented from performance of his statutory functions, namely, to carry out inspections in relation to potential infringements of the individuals' rights to fair court.[105]

[105] Administrative Department of Supreme Court Senate has pointed out in Paragraph 10 of the Judgment made on 6 November 2008 in proceedings No SKA-705/2008: "The secret of investigation referred to in Section 375, Part One of Criminal Procedure Law should not be understood as overall prohibition to release the materials of criminal proceedings during the pre-trial stage to any persons not specified in this norm; it is aimed to achievement of the goal of criminal procedure. Namely, it enables the entity driving the proceedings to decide whether or not release of such materials at the given point of time to the given person would jeopardize the interests of investigation, and to refuse such release. Non-release of materials in criminal proceedings may not be pursed as an end in itself. There are no grounds to refuse releasing of materials in criminal proceedings unless such release would affect the success of proceedings".

Examples:

- A person applied to the Ombudsman because she believed that criminal proceedings in which she had the status of injured person were being delayed. The Ombudsman applied to the supervising prosecutor to foster ensuring of the applicant's right to fair court, and asked to check whether or not the criminal proceedings were being delayed. The supervising prosecutor identified in his initial reply no breaches in the course of criminal procedure. Since the Ombudsman found the motivation referred to by the supervising prosecutor to be insufficient, a repeated request was made to inform about the actions taken within the criminal proceedings. In reply to such request, the superior prosecutor provided the necessary information and, according to such information, directions of the supervising prosecutor had not been taken into account in criminal proceedings and delay had occurred. It was further noted that inspection proceedings had been instituted in relation to disciplinary breach committed by the supervising prosecutor, and disciplinary penalty had been imposed on the supervising prosecutor.

- A person applied to the Ombudsman concerning eventual infringement of his right to fair court – eventual delay of criminal proceedings. The applicant pointed out that the process directing entity did not reply to his applications filed within the criminal proceedings. The Ombudsman asked the supervising prosecutor to carry out inspection. The reply to such request stated that criminal proceedings had been finalized and that complaint concerning the eventual delay of criminal proceedings had been declined. The Ombudsman was not satisfied with such reply, and so he applied to a superior prosecutor who repealed the reply issued by the supervising prosecutor. Repeated review of the criminal procedure established that proceedings had been delayed, and so it was resumed. Provision of information requested by the Ombudsman concerning the steps taken in the criminal proceedings was refused, however, pursuant to Section 375, Part One of the CPL which stipulates that during criminal proceedings, the materials located in the criminal case shall be a secret of the investigation. Moreover, familiarization by the Ombudsman with the decision on dismissal of criminal proceedings, which had been later repealed, was also refused. The Ombudsman applied to superior chief prosecutor of judicial area of prosecutors' office in relation to the above-stated; however no positive result was achieved. The Ombudsman was therefore prevented from obtaining full conviction that the applicant's right to fair court was ensured, and from issuing substantially motivated reply to the applicant.

Similar replies were also received from other prosecutors' offices: Prosecutor's Office of Riga Judicial Region, for example, refused to disclose information on the ground of Section 375, Part One of the CPL, that is, secret of investigation. Prosecutor for Financial and Economic Crimes, on their turn, provided without any reservation the requested information regarding criminal proceedings pending investigation, and thus straightening out any doubt regarding eventual breaches committed in the criminal proceedings.

Inspection proceedings concerning the eventual delay of criminal procedure lead to conclusion that supervising prosecutors have been frequently issuing instructions to the process directing entity. Such instructions are repeated again after some time because the initial ones are not taken into account. It is not clear whether or not the supervising prosecutor has sufficiently effective tools at their disposal to ensure that process directing entities take into account their instructions, or whether the problem is related to insufficiently active exercise of the powers granted to prosecutors by the law. Lack of timely implementation of

supervising prosecutor's instructions may lead to delay of criminal proceedings, and this may lead, on the turn, to infringement of the involved persons' right to fair court.

In order to settle the issue of common understanding of Section 13, Paragraph 1 of the Ombudsman's Law, the Ombudsman addressed a letter in September 2011 to the Judicial Council and asked to include this issue in discussion agenda. The received reply stated, however, that the scope of rights of the Ombudsman was the competence of legislator, and that therefore it should be addressed by means of proposal to an institution with the right of legislative initiative.

The Ombudsman applied in November 2011 to the Parliamentary Commission for Human Rights and Social Affairs of the Republic of Latvia. The Ombudsman pointed out to his duty to exercise control over compliance with the human right standards prescribed by the Constitution and international law. The legislator has granted to the Ombudsman the necessary tools to enable obtaining of all information necessary within the scope of inspection proceedings and assessment of whether or not human rights and principles of good governance have been complied with in each individual occasion. Recommendation No 1615 of Parliamentary Assembly of the Council of Europe dated 8 September 2003 stipulates that characteristics essential for any institution of ombudsman to operate effectively include guaranteed prompt and unrestricted access to all information necessary for the investigation.[106] In the situation where law enforcement institutions interdict familiarization with information relevant to inspection proceedings, the Ombudsman's right to perform the functions defined in the Ombudsman's Law is restricted. The Ombudsman issued a recommendation to Legal Commission of the Saeima to introduce amendments to Section 375, Part One of the Criminal Procedure Law defining the right of Ombudsman to familiarize with all information necessary within the scope of inspection proceedings, in order to eliminate different practice pursued by law enforcement institutions as a result of contradicting interpretation of Section 13, Paragraph 1 of the Ombudsman's Law and Section 375 of the Criminal Procedure Law.

2. Attachment of property

Seven inspection cases concerning attachment of property and removal of attachment have been instituted by the Ombudsman's Office, starting from 2007. The data collected during the previously examined inspection cases were summarized and inspection case was instituted at the Ombudsman's initiative concerning the compliance of Section 361 of the Criminal Procedure Law (hereinafter – CPL) with the requirements of human rights, in order to assess the compliance of regulatory norms and actions taken by enforcement institutions thereof with the requirements of human rights when handling the matters concerning attachment of property and removal of attachment.

It was concluded that the grounds for attachment of property listed in Section 361, Part One of the CPL should be formulated more specifically. It was established that prosecution authorities, when handling complaints on attachment of property, are basically guided by reference to the decision made by investigation judge who serves as the guarantor of human rights during the pre-trial criminal procedure. On the other hand, no assessment is made as to whether or not restriction of ownership title is commensurate and whether or not it is appropriate in a later period of time.

[106] http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1615.htm

CPL prescribes the grounds permitting attachment of property, while it specifies neither criteria for assessing whether or not attachment of property is appropriate in each individual occasion, nor amount of the property subject to attachment. It has been identified, however, that institutions have no understanding of contents of the term "property involved in criminal proceedings". Corruption Prevention and Combating Bureau, for example, in their letter No 1/4329 issued on 24 May 2011 in reply to the Ombudsman's question regarding the content of the term "property involved in criminal proceedings" referred to definition of material evidence in Section 134, Part One of the CPL. The inspection proceedings are still pending, and the above-described issue shall be further discussed by the Task Force established by the Ministry of Justice for work on Criminal Law and Criminal Procedure Law.

The following opinions have been issued to the Ministry of Justice within the scope of the given priority:

- Opinion concerning the compliance of Criminal Procedure Law with the requirements of Parliament and Council Directive No 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings (hereinafter – the Directive).
- Opinion concerning the proposal drafted by Commission of European Union in relation to the Parliament and Council Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

III. Observation of the guarantees to protection of the rights of individuals in their communication with police

The tasks of police include guaranteeing the safety of individuals and society.[107] Police has the duty to protect the lives, health, rights and freedoms, property of individuals, and the interests of society and the State against criminal and other illegitimate perils. Each and every individual seeks protection against danger caused by illegitimate or criminal actions on part of their fellow citizens, and in case of infringement everyone seeks to be certain that police would be able to find out the truth on expedient and impartial basis. Successful operation of police is dependent on assistance of part of population. Therefore, it is extremely important in day-to-day police operations to ensure compliance with human rights, legitimacy and humanism in order to maintain public trust. Police may impose restrictions on liberty of an individual on the occasions prescribed by law, and even apply physical force, special wrestling methods or special tools to guarantee public safety. Compliance with the standards of human rights is crucial in such operations to prevent wrongful treatment. The number of applications filed with the Ombudsman's Office in the recent years concerning unlawful actions of police officers is not high: for example, six applications have been filed in 2011 concerning eventual violence; in the context of information obtained from temporary detention facilities, however, it may be concluded that a number of improvements is required to add to police work.

Certain shortcomings and infringements of the principle of good governance have been observed on part of police staff in their communication with individuals.

Example:

- A person applied to the Ombudsman's Office stating that he had the 2nd group disability with mental impairments, and that he felt threatened by certain individuals on street. The actions taken by police to protect him were ineffective, and attitude towards him was

[107] Section 3 of the Police Law

offending. The applicant also pointed out that the police officer in charge has threatened to refer him to psycho-neurological hospital if he applied to police again.

Inspection proceedings were instituted to verify the circumstances referred to by the applicant. Preiļi Division of State Police Latgale Regional Department instituted inspection proceedings concerning this matter upon the Ombudsman's request. Having received the inspection materials, the Ombudsman concluded that the inspection had not been complete and that shortcomings could be identified. The Ombudsman therefore applied to the Internal Security Office of State Police for conducting repeated inspection.

The Ombudsman concluded that police had conducted inspection based solely on the arguments of one party, namely, the police officers. Their explanations were treated as more reliable. Investigation has to ensure the level of efficiency to ensure that review of all materials of the case certainly leads to conviction that all and any circumstances have been taken into account, all parties concerned have been interrogated and conclusions are based on explanations of the parties with equal reliability. It was therefore concluded that there were grounds to believe that inspection had been inefficient and that actions of the police officers involved breaches of the principle of good governance.

When conducting inspection of the actions of police officials, the Police department requested a psychiatrist to assess mental health of the applicant. Assessment of the materials of departmental inspection did not clarify the purpose of such medicinal opinion. The Ombudsman concluder that the actions of police when requesting information from medicinal institution regarding the applicant's mental health without consent of such person and without sufficient grounds should be treated as intervening upon the person's right to inviolability of privacy that constituted essential restriction of the person's fundamental rights.

Social Service of the respective municipality was also informed in the given case about the applicant's disability and his conflict with certain individuals. It was concluded that cooperation between the police staff and Social Service had not been sufficient in the given case. Behavior of the State Police and the staff of Social Service is also subject to criticism because they have been unable to provide proper assistance to the individual in the given situation.

Individual occasions may be mentioned that demonstrate incomplete (unclear) clarification of decisions and reasons (motives) of action by police staff. Where individuals lack understanding of the grounds of action or decision, they seek to contest them. It may be observed that persons who lack information trend to apply to various governmental authorities, thus causing excessive load on other authorities and institutions, and this indicates to non-compliance with the principle of good governance on the part of police staff.

Examples:

- A person applied to the Ombudsman's Office because the officials of municipal police had executed more than one administrative offence protocols in respect of the same offence. The said person filed an application with the chief of the respective municipal police, however no reply was made.
- A person filed application with the Ombudsman's Office concerning the fact that numerous summons had been issued by process directing entity. The person, however, was not notified by such summons of his status or rights in the case; the summons just contained warning of the consequences of non-attendance. Therefore, the person treated such summons as threat.

In 2011, the Ombudsman inspected compliance of the convoy areas of court houses with the requirements of human rights and established that search of convoyed persons was taking place in corridors and premises (cells) intended for short-term detention. It means that search can eventually take place in the presence of other convoyed persons. Such treatment constitutes infringement of the rights guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Section 96 of Constitution of the Republic of Latvia. Therefore, search conducted in the presence of other persons can be treated as an action injurious to esteem and dignity. Given that most of court houses are situated in adapted premises (residential buildings, for example) and the space of convoy areas is limited, the Ombudsman appealed to the State Police for ensuring that search of persons is not conducted in the presence of other convoyed persons.

Visits to courts revealed that certain convoy areas (at Ziemeļu District Court of Riga City, for example) present small, lockable rooms (of about 1x1 m) and a wooden seat platform occupies about a half of the space. Given the dimensions and layout of the room, movements of persons there are notably restricted. Convoyed persons are placed in the said premises on exceptional occasions for maximum period of one hour. Regulatory acts prescribe neither requirements in respect of layout of such premises nor the procedure for their use and occasions on which convoyed persons may be placed there. It is therefore possible that such premises are eventually used to cause physical or moral sufferings to a person, i.e., for ill-intentioned purposes; therefore the Ombudsman appealed to the State Police for abandoning the use of such premises, and to the Court Administration for closing of such premises.

1. Visits to Short-Term Detention Facilities of the State Police

To continue the practice of previous years, employees of the Ombudsman's Office at their own initiative have visited in 2011 temporary detention facilities (TDF) of the State police in Talsi, Aizkraukle, Jelgava, and Rēzekne. Such visits including interviews of the detained individuals and officials of the State police at TDFs enabled identification of shortcomings in regulatory norms or their application in most objective way.

Constitutional Court rendered award in proceedings No 2010-44-01 on 20 December 2010 declaring non-compliance of Section 7, Part Five, Paragraph 1 of the Law on Procedure for Accommodation of Detained Persons with Section 95 of Constitution of the Republic of Latvia.[108] The State Police was instructed to eliminate the shortcomings in the Law on Procedure for Accommodation of Detained Persons and ensure compliance of the conditions at TDFs with the statutory requirements.

Attention was paid during the visits to TDFs to the implementation of recommendations issued earlier by the Ombudsman. Summary of information obtained during the visits shows that in general the SP is taking into consideration and implementing the recommendations issued by the Ombudsman (in Aizkraukle TDF, for example, area for outdoor activities was arranged and windows installed in cells). On other occasions, however, non-implementation of the issued recommendations was identified (Talsi TDF, for example, continued the use of cells that did not meet the requirements of human rights).

[108] The Ombudsman filed an application in 2010 with the Constitutional Court concerning the fact that the size of partition prescribed by law as for separation of toilet facilities – 1.2 meters is not sufficient to ensure privacy of a person.

Information obtained in 2011 indicated to insufficient awareness of the procedural status and scope of rights among the individuals kept at TDFs. It was found out that the detained persons were notified of their rights in the form of extracts from regulatory acts. Interviews of detained persons revealed, on the turn, that they had no understanding of the purpose and contents of the forms issued to them and of their own rights. It means that the staff has met their obligations only formally. Officials of the Ombudsman's Office pay special attention to awareness of people kept in TDFs of their rights. Opinion survey is currently conducted among the persons kept in TDFs to obtain comprehensive information on the given matter.

It was found out that the staff of different TDFs of the State Police differently understands and applies the requirements of regulatory acts. (In certain TDFs, for example, hygiene articles are only available upon request, while in others they are offered to detained persons). The practice of supplying bedclothes at TDFs is also different: some TDFs provide bedclothes to detained persons while others do not.

Staffing of police officers at different sections also differs. It was identified in a numbed of TDFs, for example, that uniforms were not provided to the staff in the manner and amount prescribed by regulatory acts. No actions aimed at ensuring compliance with the requirements prescribed by the Law on Accommodation of Detained Persons were identified at the TDFs visited before October 2011. This leads to concerns about the possibility to ensure compliance with the statutory requirements by the deadline determined by the Constitutional Court (31 December 2011).

IV. Actual Problems in the Field of Criminal Law

Lawyers specializing in the field of Criminal Law also conducted inspection proceedings focusing on other matters, apart from the set priorities.

1. The Right of Individual to Security and Liberty

A person applied to the Ombudsman's office pointing out in his application that custody as means of security have been applied to the person by convicting judgment of the first instance court. The judgment is not motivated in the part concerning detention. Hearing of the case by appellate instance court has lingered, and so the person has been kept in detention for nearly three years already. The Ombudsman instituted inspection proceedings on the grounds of application and established infringement of the right to liberty guaranteed by Article 5 of the European Convention for Protection of Human Rights and Fundamental Freedoms in respect of the concerned person.

According to Section 273, Part Four of Criminal Procedure Law (hereinafter – CPL), the court has no duty to apply detention as the means of security when sentencing a person to deprival of liberty for severe or especially severe crime. The court has such power, however, when objective criteria and circumstances so require. Practice of European Court of Human Rights also indicates to the duty to assess the need for detention. The Ombudsman established in the given inspection proceedings that the first instance court has provided in judgment no motivation for application of detention. Whenever court changes the means of security to detention as the most severe of them, it has the duty to provide in the judgment convincing and motivated description of the grounds for change of the means of security prior to enforcement of convicting judgment. The Ombudsman therefore concluded that criteria for restricting of a person's liberty stipulated in the European Convention for Protection of Human Rights and Fundamental Freedoms and the judicature of European Court of Human Rights have not been satisfied.

According to Section 281, Part Five of the CPL, when the case has passed to appellate instance court application for repealing or altering the decision on detention may only be filed before the court proceeds with adjudication in case of health or family conditions that may constitute grounds for repealing or altering the decision on detention. Therefore, if the case has passed to appellate instance court, the right of person to request assessment of the need for detention is limited. The Ombudsman therefore concluded that control over the repealing or altering of decision on detention stipulated in Section 281, Part Five of the CPL is formal and has the effect of groundless reduce of the number of occasions where the need for detention of a person is subject to assessment. The person is prevented from requesting the court to assess the need for continued detention also in the circumstances where appellate instance court delays the proceedings, and the liberty deprival period determined by convicting judgment of the first instance court is about to expire, yet the person still has the status of detained person subject to restriction of their rights according to such status.

The Ombudsman applied to the Ministry of Justice in 2007 already with proposal to draft amendments to the CPL aimed to define clearly the need for ensuring control over the need of continued application of detention applied by convicting judgment of the first instance court. The above opinion of the Ombudsman was not taken into consideration, however. Section 4 of the currently drafted law on Amendments to Criminal Procedure Law envisages supplementing Section 281 of the Law with new parts, $5.^{1}$ un $5.^{2}$ respectively, prescribing the procedure for assessment of the need for continued detention when the case is presented for hearing in accordance with appellate procedure. According to the said amendments, where adjudicating of a case is postponed or suspended for a period exceeding two months, the appellate instance court shall have the duty to assess the need for continued detention. The detained person shall only be entitled to file application concerning assessment of the need for continued detention if adjudication of the case is scheduled to a date that is more than two months from accepting of the case for hearing. Given that control of detention after passing of the case to appellate instance court is formal due to the present wording of Section 281, Part 5, and that it does not meet the requirements of human rights, the Ombudsman has committed to follow up progress of the amendments announced at the meting of State Secretaries.

2. The Right of Individual to Fair Court

Proposal has been made to the Saeima of the Republic of Latvia concerning amendments to be made in the Law on Legal Aid by the State (hereinafter – LLA) to ensure that persons with law income level have access to legal aid provided by the state for filing a claim with and conducting proceedings by Constitutional Court.

Section 5, Part One of the LLA stipulates that the State shall provide legal aid in handling matters of legal nature on extra-judicial as well as judicial basis for the protection of infringed or contested lawful rights of persons on the occasions and in the manner and scope provided for in the Law. According to the LLA, the state shall provide legal aid in criminal proceedings, cross-border disputes, administrative proceedings (on certain occasions), and criminal proceedings, as well as extra-judicial legal aid.

The Ombudsman R. Apsītis established in the inspection proceedings conducted in 2010 that lack of access to legal aid in case of needy and low-income persons who apply to Constitutional Court incommensurately restricts their right to fair court guaranteed by Section 92 of Constitution of the Republic of Latvia and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Proceedings of Constitutional Court are complicated, and therefore strict requirements apply to the form and contents of

applications filed with the said Court, so that drafting of application required the skills of legal motivation.

The Ombudsman applied to the Ministry of Justice in late 2010 already for drafting amendments to the LLA aimed at preventing the incommensurable restriction of human rights guaranteed by Constitution. Unfortunately, Ministry of Justice did not support such proposal and pointed out that "draft law on amendments to the Law on Legal Aid by the State had been presented to the Saeima on 1 June 2009 and that such amendments had the effect, inter alia, of reducing the scope of legal aid provided by the state in order to (as stated in summary to the draft law) save the assets of State budget; therefore, the aim pursued by legal policy of the legislator was reducing of the scope of provided legal aid, and that therefore no motion concerning increased scope of legal aid can be seconded at present because it would contradict with the set political goal."

Though even the right to fair court is not absolute, Constitution contains no direct specification as to the occasions on which such right may be subject to restriction. Constitutional Court as well as European Court of Human Rights has held[109] that the right to fair court may be restricted insofar a person is not essentially deprived of them. Such restriction, however, has to be defined in law and justified to a commensurable legitimate purpose. The applicable regulation, however, virtually has the effect of depriving low income persons of their right to apply to Constitutional Court, and therefore they have no access to the above-described legal remedy.

The Ombudsman has also identified opinions of other law experts within the scope of inspection proceedings. A. Rodiņa, Associate Professor of the University of Latvia, points out in her promotion thesis "Theory and practice of constitutional complaint in Latvia" that "subjects of constitutional complaint have no access to state provided legal aid guaranteed to persons in civil, administrative, and criminal proceedings. Such duty of the state derives, however, from the guarantees provided in Section 92 of the Constitution.(...) person has to be able to demonstrate in constitutional complaint the fundamental right infringed (and the form of infringement) by a legal norm (act) that contradicts with a legal norm (act) of superior effect"[110]. J. Grīnbergs, Chairperson of the Bar Council of Latvia, points out to the need for providing in regulatory acts the possible solution for implementation of the duty related to provison of legal aid at Constitutional Court. G. Kūtris, Chairman of Constitutional Court, points out that: "Departments of Constitutional Court decline instituting of proceedings on about 36% occasions (in average) on the grounds of obviously insufficient legal substantiation. (...) It is therefore certain that application with higher legal quality would accelerate protection of the person's rights." Therefore, legal aid provided by the State in drafting application to Constitutional Court and representation in pending legal proceedings would ensure and accelerate protection of rights in case of low income persons.

3. Photo-Radars

Inspection proceedings were instituted in 2008 at the initiative of the Ombudsman R. Apsītis concerning the imposing of penalties for offences fixed by technical means (photo-radars). The purpose of such inspection proceedings was establishing whether or not the requirements of human rights are duly met when officials decide on imposing penalty on individuals. Summary and assessment of the collected information in 2009 enabled identification of

[109] Award made by Constitutional Court of the Republic of Latvia on 26 November 2002 in proceedings No 2002-09-01 and Award made by European Court of Human Rights on 21 February 1975 in *Golders v United Kingdom*

[110] http://www3.acadlib.lv/greydoc/Rodinas_disertacija/Rodina_lat.doc

shortcomings in the applicable normative regulations (Section 43^6. of Road Traffic Law), since in case of offences fixed by such means may lead to imposing penalty on persons who are not to blame for commitment of the offence in question. Moreover, such persons are prevented from contesting the protocol – decision, because they are not the addressees of such administrative act. Therefore imposing penalties for offences fixed by means of photo-radars may lead to infringement of the right to fair court guaranteed by Section 92 of Constitution of the Republic of Latvia and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Further, imposing minimum penalty for offences fixed without stopping the transport vehicle in question constitutes groundless breach of the prohibition of unequal treatment stipulated in Section 91 of the Constitution and Article 14 of the Convention.

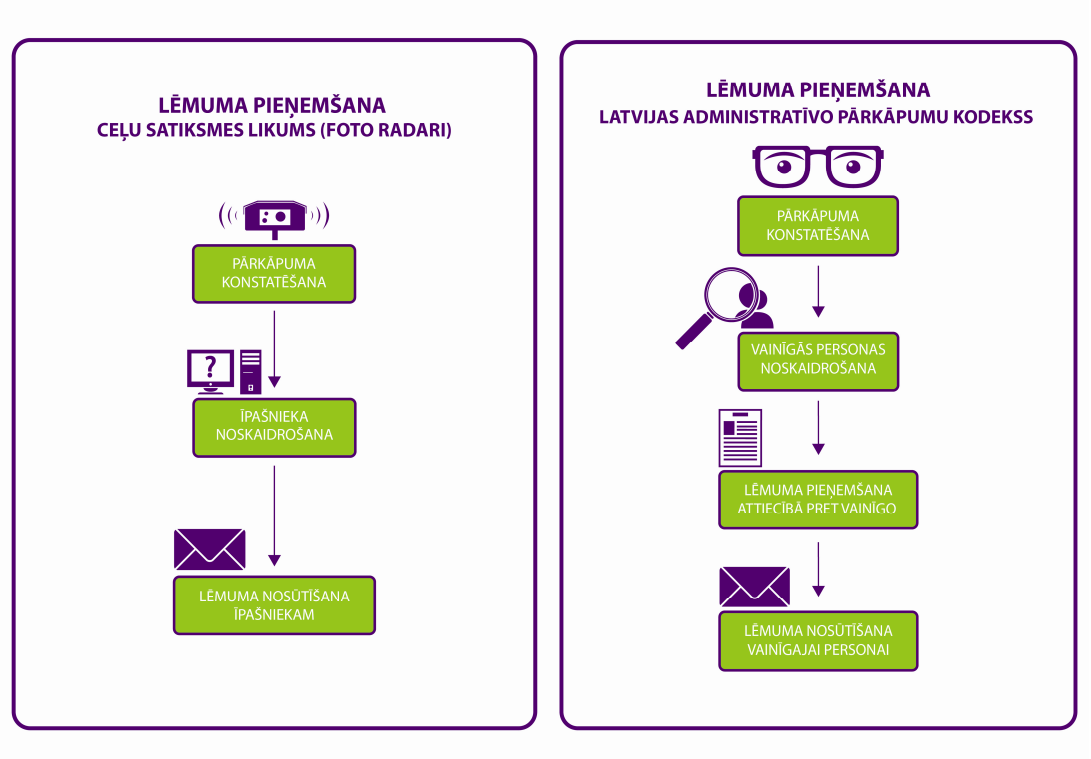
The Ombudsman R. Apsītis, acknowledging the need for maintaining balance between restrictions imposed on individual's rights and the interests of public security infringed by individual who breaches the Road Traffic Rules, applied in 2009 and 2010 to the Ministries of Interior, Justice, and Transport urging them to draft the necessary amendments to regulatory acts in order to eliminate the existing shortcomings. The ministries, however, did not find it necessary to proceed with drafting such amendments.

Center for Public Policy "Providus" identified shortcomings in the existing regulations in their study "Proceedings of administrative offences committed in road traffic" conducted in 2011. Authors of the said study concluded: "Identifying the individual (addressee of administrative act) is among the key facts to be established by the competent authority prior to issuing the administrative act. (...) The existing regulation prevents the possessor or owner of transport vehicle from demonstrating their innocence. The protocol – decision is delivered in a form that indirectly obligates to make prompt payment of the imposed penalty, rather than to cooperate".[111]

The tender "Introduction, installing and maintenance of measuring units for improvement of road traffic safety" announced by the Ministry of Interior was completed on 8 March 2011; as a result of such tender, the number of photo-radars in our country would be notably increased[112]. E. Zivtiņš, Chief of Prevention Department of the state Police, and A. Lukstiņš, Director of Road Traffic Safety Directorate, have repeatedly informed mass media that, apart from fixing breaches of driving speed, the photo-radars are also intended to fix other breaches (driving without valid technical inspection and insurance, and ignoring red light signals). It may b therefore presumed that the number of decisions shall also increase on imposing penalties without stopping the transport vehicle and identifying the offender.

The applicable legal regulation:
Section $149.^8$ of Administrative Offence Code of the Republic of Latvia (hereinafter – AOC) prescribes the liability for exceeding the permitted driving speed. Section 43^6 of Road Traffic Law (hereinafter – RTL) specifies peculiarities of administrative proceedings in case of breaches fixed by technical means without stopping the transport vehicle. The said Section prescribes that protocol – decision on payment of the minimum penalty – shall be delivered to the possessor/owner identified in certificate of registration of the transport vehicle.

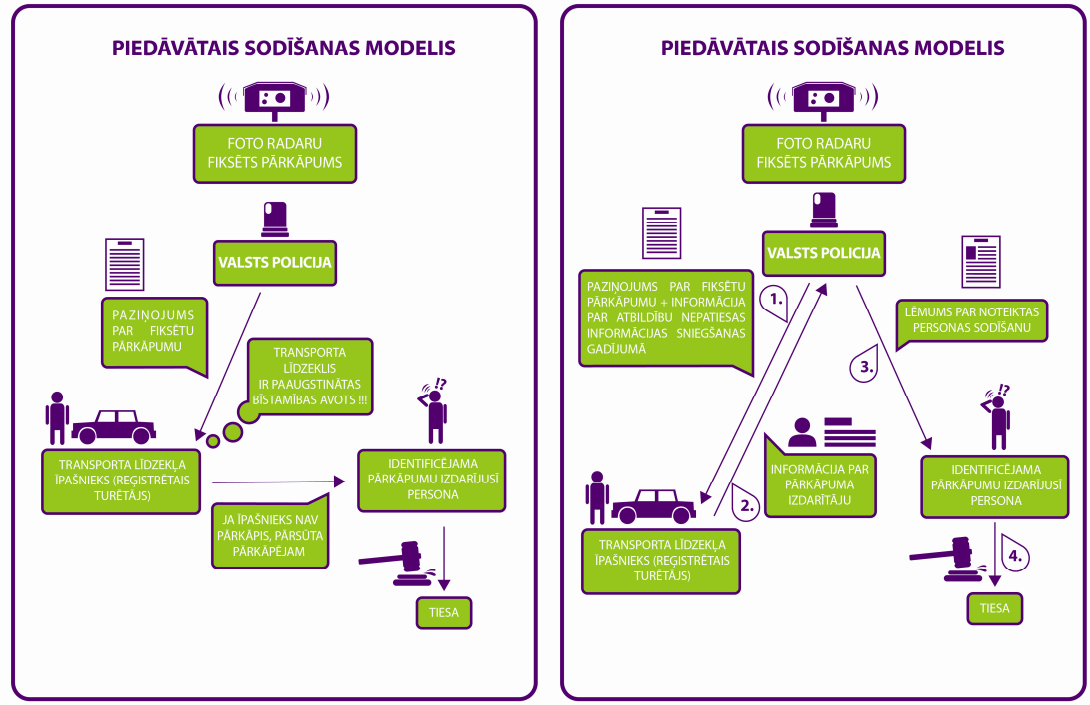
[111] Aperāne K., Litvins G. Administratīvā pārkāpuma lietvedība ceļu satiksmē. Providus, 2011, p.p..
[112] http://www.iem.gov.lv/lat/aktualitates/informacija_medijiem/?doc=22690



The Ombudsman appealed on 26 May 2011 to the Saeima Chairperson of the Republic of Latvia for drafting amendments to Section 43.[6] of the RTL by October 2011 in order to alter the procedure for imposing penalties in case of breach fixed by photo-radars, specifically to define that fixing of a breach by means of photo-radar constitutes grounds for institution of proceedings. An official shall send a notice (protocol) of the fact of breach to the owner of the involved transport vehicle and summon him/her to attend (for example: within ten days) and to provide identifying information about the offender (such option is already provided for by Section 20 of Road Traffic Law). Therefore, the State would have made the minimum actions necessary to identify the offender. Therefore, based on the breach fixed by photo-radar and on data provided by the owner, the official would be enabled to make impartial decision on imposing penalty on the offender. If, however, the owner fails to attend of fails (is unwilling to) provide the information necessary to make the relevant decision, he/she may be presumed to acknowledge his/her guilt in commitment of the offence in question. The official would therefore have the option and grounds to decide in accordance with the procedure prescribed by AOC on imposing penalty on the owner of transport vehicle.

The proposed models are not expected calling of absolutely all persons who have committed breaches to the account prescribed by law. They are, however, expected to ensure that the State would be enabled to reduce by minimum investigational activities the possibility of adverse consequences in respect of any person other than that who has committed the offence in question. The actions taken by the state would therefore comply with the principle of legal reliance. Moreover, persons would be subject to equal penalty regardless of the manner of fixing of the breach. This would enable preventing unequal treatment of persons who have committed equal offences. Imposing penalty exclusively on the offender would facilitate improvement of road traffic safety and prevent commitment of repeated offence.

The proposed model solutions:



The Ombudsman applied repeatedly on 4 November 2011 to the Chairperson of Saeima of the Republic of Latvia concerning the need to make the necessary amendments to legal acts.

The Ombudsman J. Jansons applied in December 2011 to the Saeima Commission for National Environment and Regional Policy proposing to amend Section 43^6 of Road Traffic Law.

4. The Right to Property

The Ombudsman R. Apsītis established that the duty of person prescribed by Section 257, Part One of Administrative Offence Code of Latvia to ensure enforcement of pecuniary penalty, i.e., to continue possession of the transport vehicle until payment of penalty constituted incommensurable restriction of the right to property. Moreover, a person may incur material financial damage through lasting proceedings when exercising the right to contest unfavorable decision. Therefore the existing regulation constitutes infringement of the right guaranteed by Section 105 of Constitution of the Republic of Latvia and Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Ombudsman's opinion concerning the need to draft amendments to Section 257, Part One of the APC of Latvia was supported at the meeting of task force of the Ministry of Justice held in 2010. Ministry of Justice notified the Ombudsman by their letter No I-175342 dated 12 November of the intention to delete the legal regulation contained in square brackets in Section 257, Part One of the AOC, and to include the relevant legal regulation in Section 258 of the AOC. Further proceeding with the above-described matter was scheduled to January 2011.

The amendments were not drafted, however, by October 2011, and the Ombudsman's proposal concerning the amendments to Section 257, Part One of the APC received no support from representatives of the Ministry of Interior at the repeated meeting of the Task Force of the Ministry of Justice. Since no consensus was reached by the Task Force of the Ministry of Justice, the Ombudsman J. Jansons applied in December 2011 to the Chairperson of Saeima Commission for Legal Affairs with proposals to amend Section 257, Part One of the AOC.

Prevention of Discrimination

What is Discrimination?

Discrimination means groundlessly different treatment on the basis of a prohibited feature (gender, race, complexion, age, disability, religious or political beliefs, national or social origin, financial or marital status, or sexual orientation. Prohibition of discrimination applies to relations between the State and a private individual, as well as to private legal relations.

Discrimination against individuals on any of the above-mentioned basis is prohibited in legal employment and service relations. Discrimination on the basis of gender, racial of ethnical origin, or disability of consumer is also prohibited when offering or selling goods or services.

The principle of equality means that authority or court has to pass equal decisions in case of equal actual and legal circumstances of the case (and different decisions in case of different actual or legal circumstances, respectively).

Discrimination means groundlessly different treatment, exclusion or restriction based on the race, color, language, national or ethnical origin, gender, sexual orientation, social background, financial or marital status, disability (health condition), religious, political or other beliefs or other conditions of the person discriminated against without well-motivated, objective excuse, or lack of commensurability of the goal to be achieved and the means used for achievement thereof. One can distinguish between direct discrimination, indirect discrimination, offending of a person, or directing or inciting to discrimination.

Direct discrimination is observed if a certain individual is treated in comparable situation less favorably compared to any other individual on certain prohibited grounds (gender, for example).

Indirect discrimination is observed if a seemingly neutral condition, criterion or practice in comparable situation causes or is likely to cause adverse consequences to a person on any grounds of discrimination, unless such condition, criterion or practice is objectively substantiated by legal purpose commensurable with the means used for achievement thereof.

Offending of a person means treatment in a manner undesirable to such person on any of the prohibited grounds of discrimination (gender, age, etc.) the purpose or consequences of which is offending of the person’s dignity and creating of intimidating, hostile, degrading, humiliating, or offending atmosphere.

Directing or inciting to discrimination is the form of discrimination observed is somebody is directed to discriminate against some other person on any of the prohibited grounds.

According to Article 14 of and 12 Additional Protocol to the European Convention of Human Rights, European Union Directives (2000/43/EC, 2004/113/EC, 2006/54/EC), Article 3 of the UN Convention on the Rights of Persons with Disabilities, the UN Resolution No 48/143, General Policy Recommendations No 2 and No 7 of the European Commission against Intolerance and Racism, Latvia has committed to establish an institution or institutions to promote equal treatment of all people without discrimination on the grounds of racial or ethnical origin, or gender. Such institutions may form a part of agencies responsible on national level for the protection of human rights or protection of the rights of individual. Such institutions are competent to ensure independent assistance to the victims of discrimination without infringing upon the rights of the victims and associations, organizations or any other

entities, and taking into consideration their complaints on discrimination, as well as to conduct independent surveys of discrimination; publishing independent reports, and issuing opinions on any discrimination-related matter. According to the Ombudsman's Law, the Ombudsman is entrusted with such work in the Republic of Latvia.

Priorities in the Area of Prevention of Discrimination:
1. Minimizing of discrimination in the field of employment.
2. Minimizing of hate crimes.
3. Ensuring equal access to goods and services regardless of gender, racial or ethnical origin, or disability.
4. Promoting implementation of the UN Convention on the Rights of Persons with Disabilities.

In addition to the above-stated priorities, the Ombudsman has especially focused in 2011 on minimizing of discrimination against Roma people as well as on minimizing of discrimination on the grounds of sexual orientation. Advisory Council was convened to handle legal regulation of partnership relations with the purpose to minimize exclusion experienced not only by persons with different sexual orientation.

I. Minimizing of Discrimination in the Field of Employment

The worsening economical situation in 2011 has adversely affected the condition of the groups of persons subject to special protection: persons with different national or ethnical origin, persons in pre-pension age, and persons with disabilities. The Ombudsman has focused 2011 on analysis of situation, increasing awareness among society, and also evaluation of individual occasions and assessment of discrimination.

Preventive work for minimizing of discrimination in the field of employment was started by the Ombudsman from review of the existing situation. In order to identify the distribution of discrimination in Latvia and to increase awareness of employed persons about the forms of discrimination and potential actions available to protect their rights, the Ombudsman's Office conducted a study of discrimination at workplaces in cooperation with the Friedrich Ebert Foundation. Technically, the study was performed by research agency TNS Latvia. The study was aimed at identifying whether or not persons are aware of the applicable normative regulation, and whether or not they have experienced discrimination against them upon the commencement, or during legal employment relations, or upon their termination. The study revealed that those seeking employment eventually disclose information upon commencement of employment or during the employment period that can serve as grounds of unequal treatment or discrimination against them. The provided information includes, for example, data about the person's nationality (57%), marital status (50%) and size of family (number of children (43%), hobbies (32%), health condition or disabilities (35%). The most common grounds for discrimination include: age (32%), nationality (23%), gender (19%), number and age of children (17%), language knowledge (16%), health condition/disabilities (9%), previous convictions (8%), sexual orientation (7%), religious beliefs (6%), marital status (5%), race (5%), color (5%), political beliefs (4%), financial condition (2%), etc.

The facts identified during the study are reflected in applications filed with the Ombudsman. Persons who apply to the Ombudsman's Office point out they can find no employment in Latvia because of their age. They point out to announced vacancies of accountant, for example, where the successful applicant's age is expected to be under 40. Other

announcements directly point out, for example: “Job for salesperson at flower shop (women, 19-30 years old), or “Job for sales manager under 35 years.”

Pursuing the inspection proceedings, the Ombudsman applied to the management of portals http://www.ss.lv/lv/ and http://www.reklama.lv/ with request to remove published vacancies in which the age of applicants was specified, and to ensure supervision in order to prevent publishing of discriminating job announcements on their portals. The Ombudsman encouraged the State Employment Inspection to impose more actively the administrative penalty prescribed by Section 204.[17] of Administrative Offence Code of Latvia in the amount of 100 to 500 lats for breach of discrimination prohibition stipulated in regulatory acts. The discriminating job announcements were removed from portals, and management of the portals has to ensure that no similar announcements are published. Such announcements indicate to discrimination against job-seekers on part of employer, and they result in segregation of society whereby persons of certain age can not apply to job even if they meet the relevant professional criteria.

The Ombudsman, having reviewed the received applications, established a breach committed by staffing agency where the provisions of regulatory acts concerning the questions permissible at interviews were not complied with. Information collected during such interviews formed grounds for discrimination against certain categories of people. Questionnaires of the agency had to be filled in by applicants to job abroad including information about the applicant’s health condition, disability, and citizenship. The Ombudsman established breaches of Sections 29 and 33 of Labor Law. According to the normative regulation, a merchant rendering the services of employment bureau is entitled to provide information about the requirements of citizenship applicable in certain countries, as well as information about potential allowances available to persons with children depending on them, without specifically asking the person whether or not such regulation applies to him or her. As to health condition objectively required in case of certain professions, Section 36 of Labor Law as well as other regulatory acts of the EU Member States stipulates that employers are entitled to check whether or not health condition of the applicant meets the requirements of the job applied for. The Ombudsman recommended that management of the said company does not include any questions concerning the marital status, national or ethnical status, conviction or disability of person in the range of questions to be replied to or in the database of applicants, unless prohibition of previous condition or specific health condition constitutes an objective criterion of employment.

Protection of employees during the periods of pregnancy, child-bearing and maternal leave was a separate issue focused on by the Ombudsman in 2011.

Breaches were identified during the inspection proceedings in decisions of the State Police to grant unpaid leave for care of foster child. Having reviewed the evidence collected in the inspection proceedings, the Ombudsman established that refusal to grant unpaid leave to police officer for care of foster child constituted breach of Section 91 of Constitution of the Republic of Latvia, Section 6 of the Law on Protection of the Rights of Children, and Section 29 of Labor Law. The Ombudsman pointed out that, pursuant to Section 91 of Constitution of the Republic of Latvia, the police officer in question should be treated on the same grounds as other parents who apply for leave in case of child birth. Taking into account the numerous applications for unpaid leave till 12 February 2012 filed by the police officer (on 21 April 2011, 15 August 2011, and 12 September 2011, Kurzeme Regional Division of the State Police had the duty to grant child care leave to the police officer with guaranteed employment

and position upon expiration of such leave. According to section 29, Part 8 of Labor Law, the police officer is entitled to moral compensation of continuous discriminating treatment.

The Ombudsman identified in the course of inspection proceedings certain shortcomings in Chapter 35 of Labor Law which regulated the procedure for granting of leaves. The Ombudsman applied to the Ministry of Welfare for introducing appropriate amendments to regulatory acts in order to prevent breaches resulting from systemic failure to comply with the present regulation concerning the granting of leaves to servants for caring of child given into such person's custody. Labor Law provides no special guarantees to persons who have become guardians of a child requiring actual care. It follows from the practice of Constitutional Court of the Republic of Latvia that the principle of legal equality prevents governmental authorities from enacting any norms that allow unreasonably different treatment of persons in similar, comparable circumstances. The principle of equality allows and even requires different treatment of persons in similar circumstances on objective, reasonable grounds[113]. Elements of similarity should describe with the best intensity the two situations[114]. The similar element in the given occasion is the child who needs care. The different element is legal status of the child – whether the child is born in family or adopted, or placed in custody. Since all children need care, time and attention, it may be concluded that, where employees ask for leave to take care of child born to, adopted by or placed in custody of such person, such employees have similar, comparable circumstances. Sections 153 and 156 of Labor Law lack exhaustive list of all and any occasions where employee is entitled to apply for, and the employer has the duty to grant leave for child care, regardless of legal status of the child. Inaccuracies in normative regulation may lead to situation where granting of leave is refused to a person who has a child placed in his/hr custody. As long as the unsubstantiated decisions made in breach of Section 91 of Constitution of the Republic of Latvia are not repealed and the leave necessary for child care is not granted, the involved person is prevented from possibility to ensure efficient care of child, and therefore it is prevented from receiving parental allowance prescribed by Law on Maternity and Disability Insurance. Taking into account the above-stated, appropriate amendments should be made to Chapter 35 of Labor Law in order to grant to a member of foster family and a guardian the right to leave for child care equivalent to that available to parents and adoptive parents.

II. Minimizing of Hate Crimes

Increased attention was paid in 2011 to minimize hostile comments and inciting to race-hatred on the Internet. The Ombudsman has issued 13 expert opinions to the Security Police in 2011 on hostile expressions and comments on the Internet portals. On most occasions such expressions have been identified to constitute infringement of the right stipulated in Section 100 of the Constitution, Article 10 of the European Convention of 4 November 1950 for Human Rights and Fundamental Freedoms, and Article 19, Parts 1 and 2 of the UN International Covenant of 23 March 1976 on the Civil and Political Rights to freedom of opinions and expression, freedom to receive and disseminate information and ideas of all types, regardless of State borders, in verbal, written, printed or artistic form, or through any means of information at the individual's discretion where such expressions result in creating hostile, intolerant treatment of the representatives of Russian or Arabian nationalities. Opinions were also issued regarding hostile speech in address of Latvians, the core nation of the Republic of Latvia.

[113] See the Award made by the Constitutional Court on 03.04.2001 in proceedings No 2000-07-0409, Paragraph 1 of Conclusions.

[114] See Comments on Constitution of the Republic of Latvia. Title VII. Fundamental Human Rights. Latvijas Vēstnesis, 2011, p.p. 95.

Instrument for monitoring intolerance expressed in comments on the Internet portals "Aggressiveness Index" was launched on 16 November 2011 upon the instruction of the Ombudsman within the framework of the Tolerance Day in order to minimize discrimination and intolerance including hostile expressions. The above-named research tool enables assessment of communication and reaction of the audience to actual topics.

The index shows the reaction of audience to various social and political developments, the most frequently used "aggressive" expressions, culture of comments and other interesting interconnections. The purpose of establishing the "Aggressiveness Index" is to explain the content of comments made by the audience on the Internet portals "TVNET", "Delfi", and "Apollo" in order to understand the emotional aggressiveness of commentators on the Internet. The project is intended to present a long-term research with summary of the data on monthly basis and explanatory analysis provided by experts. Those involved in the project include lecturers of the Faculty of Communications of Riga Stradins University: Sergejs Kruks, Anda Rožukalne, Klāvs Sedlenieks, Ruta Siliņa, and Ilva Skulte, as well as Normunds Grūzītis, Chief Researcher of the Institute of Mathematics and Informatics of the University of Latvia. The Project has been developed under the auspices of Ombudsman's Office with support of the Friedrich Ebert Foundation.

Intolerance on social portals and discussions on the Internet is among the topics to be discussed by the Ombudsman on this annual conference. Topics discussed at the Ombudsman's conference on 8 December 2011 included possible improvements of the existing situation and discussion of the need to improve normative regulation.

The discussion identified lack of qualitative eristic, the result of which was development of conflicting dialogues and emotional aggression on social portals and on the Internet. The proposed potential solutions included focusing on development of motivation skills at educational facilities, so that participants of discussion would not permit development of intolerance and hostility. Adherence to journalist ethics should be ensured and comments on articles likely to break out in hostile, intolerant discussions should be prevented, as well as publishing of articles that contain such information. It was pointed out in discussion that Internet was the looking-glass of society. If such freedom of expression is not available, intolerance would find expression in other areas, and it is therefore better to monitor and prevent negative trends in the network environment. According to "Aggressiveness Index", tool for monitoring intolerance, comments demonstrate self-contempt, intolerance to the different and extreme nationalism. A study has been initiated to identify social groups that express intolerance in order to find out the generation to be addressed and the methods to prevent such intolerance. It was proposed to make registration for comments on the Internet subject to identification; to establish system for identifying IP addresses of governmental and municipal computers procured on the account of state and municipal assets; and to introduce

wing mark in case of comments and messages entered from governmental and municipal computers procured on the account of state and municipal assets, thus preventing the possibility to spend the money of tax payers on publishing comments that contain hostility and intolerance. Management of the portal draugiem.lv has developed free program diskusijas.lv; where such program is installed, participants of discussions on the portal are identified by their accounts of facebook, twitter, google, draugiem.lv, thus minimizing their anonymity. It was also proposed to publish convicting sentences for criminal offences committed on the Internet to prevent the general public and participants of discussions from treating internet discussions as an anonymous environment, and that trespassers can be identified and punished. Awards of European court of Human Rights should also be published in Latvian language and available for use in judicial practice of the Republic of Latvia.

Measures were proposed to educate police staff in regions to prevent occasions like that mentioned by representative of draugiem.lv where Tukuma police division initially attempted to discourage a person who had received threats on the portal on the grounds of national ethnical background from filing application, pointing out that employer and address of such person could be available to the wrongdoers. It was proposed to publish articles and discussions on the portal along with prohibition of re-publishing in order to prevent endless re-publishing of intolerant messages. Discussions on portals frequently lead participants of discussion to electronic tracking of each other. Not all people know that unauthorized access to another person's e-mail or to social portal, as well as to a website constitutes a cyber-crime subject to deprivation of liberty; it was therefore proposed to inform general society and participants of discussions about the penalty imposed for commitment of cyber-crimes. Establishing and maintenance of cyber-space where action takes place, for example, exchange of music files in contradiction with copyright, is illegitimate. Management of discussion portal pointed out that retaining staff of 5 – 10 for checking each and every message in discussion environment 24 hours a day was not reasonable, and that it was therefore necessary to encourage proactive involvement of society and to report on breaches in public environment including on the Internet and social portals (reporting possibility is already available on major portals and discussion environments). Eventual amendments to Section 78 of Criminal Law were also discussed.

III. Ensuring equal access to goods and services regardless of gender, racial or ethnical origin, or disability

Applications, both oral and written, have been filed in 2011 by foreigners concerning denied access to recreational facilities and application of different charge for goods and services. The Ombudsman has pointed out to management of clubs that denial of access and charge of fee on foreigners while local inhabitants have access to clubs and pay no entrance fee constitutes direct discrimination on the grounds of racial and ethnical origin. Charging different fee on a foreigner and discrimination against local inhabitants who attend facilities to accompany a foreigner is also impermissible.

The Ombudsman instituted at his own initiative inspection proceedings of the information published in mass media concerning the fact that a access to a club was denied to a blind girl. Such denial was allegedly based on the girl's appearance and internal regulations of the club. The Ombudsman assessed two aspects in the inspection proceedings: first, the individual fact of discrimination against the blind girl and, second, internal regulations of the club – whether or not non-discriminating access to goods and services is ensured according to subjective criteria in case of the so-called "face control". Representative of the club management has expressed his apologies to the blind girl for such treatment discriminating against her. The girl

therefore has waived any claims and she is unwilling to attract unnecessary publicity to the described occasion. The Ombudsman, having assessed the results of inspection concerning "face-control", encourages management of the club to delete discriminating norms from their internal regulations and to specify criteria according to which access to club is granted/denied. Such criteria must be publicly available.

Increased attention was focused on preventing discrimination against persons with small children and persons with disabilities, emphasizing the need to make premises accessible and encouraging institutions and companies to change their attitude in order to make their goods and services available to everyone.

Complaints have been filed in 2011 by women who had not been allowed to enter shop premises with their children in prams. Women in Latvia trend to use child care leaves and stay with their children during the lactation period; therefore, such restrictions should be treated as indirect breach of the prohibition of discrimination, and they contradict with Section 3.[1] of the Law on Protection of Consumer Rights and with Council Directive No 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods. When the Ombudsman applied to management of company in the given case, they expressed apologies to the woman and carried out educational work to prevent similar situations in future.

IV. Promoting implementation of the UN Convention on the Rights of Persons with Disabilities

Persons with disabilities have been applying to the Ombudsman concerning breaches of normative regulations as well as individual infringements of their rights.

The Ombudsman applied to the Ministry of Finance pursuant to application filed by Society for Protection of the Rights of Persons with Disabilities and pointed out to groundlessly different treatment of societies, establishments and trade unions in determining the accounting entry systems. The Ombudsman asked to consider the possibility of permitting societies, in particular the organizations operating in the area of human rights, to keep their accounting in ordinary entry system, similar to that used by religious organizations, by prescribing exemption in Section 9 of the Accounting Law. Ministry of Finance pointed out in their letter No 20-3-04/3181 of 9 May 2011 received at the Ombudsman's Office on 11 May 2011 (incoming registration No 6-8/227) that amendments to the Law on Societies and Establishments should be pursued along with amendments to the Accounting Law to ensure adjustment of legal regulation in the two normative acts ant to prevent conflict of law. The Ombudsman has committed to follow up the progress of amendments to the Law on Societies and Establishments and to the Accounting Law.

Seeking to change the existing situation in terms of access to environment and to promote public involvement in the elimination of different absurdities, on 3 December, which is the International Day of People with Disabilities, Society "Apeirons" in cooperation with the Ombudsman's Office launched the campaign "Alternative solutions in operation" aimed at attracting the opinion of society and preventing situations where alternative solutions are mere formalities, rather than intended to ensure that persons with disabilities have equal opportunities with any other persons.

V. Actual Problems in the Field of Prevention of Discrimination

1. Promotion of Preventing Discrimination against Roma people

The comparatively small number of complaints received at the Ombudsman's Office concerning discrimination against Roma people may be explained by the fact that this part of society lacks information about and trust in mechanisms designed to the protection of rights. The Ombudsman has especially focused on improvement of cooperation with the representatives of the Roma community to seek improvement in their access to law enforcement institutions.

Memorandum of Cooperation was signed on 30 August 2011 by the Ombudsman and by Normunds Rudevičs, the High Commissioner of the International Romani Union, on behalf of the associations of Roma People.

Meetings with representatives of Roma community were held in 2011 in cooperation with the Roma advisor with the purpose of not only hearing the actual problems of Roma community in Latvia but also to inform Roma people about the Ombudsman's Office and its functions, including discrimination and solutions in case of discrimination, as well as to provide legal advice on the protection of rights.
Information about Roma advisor available at the Ombudsman's Office was distributed to Roma people in social networks to inform them about the procedure for applying to the office for assistance.

Informative material has been drafted for Roma community on engagement in business activities.

Study of the period from 1 January to 1 August 2011 was conducted to identify information reflected about the Roma community in the largest newspapers of Latvia (Diena, Latvijas Avīze, Neatkarīgā Rīta Avīze, "Час", "Телеграф", "Вести Сегодня") and Internet portals (Delfi, TVNET, Apollo). The Ombudsman's Office identified that comparatively small amount of information about Roma community is available from mass media; on most occasions, information is related to musicians of Roma nationality or to criminal news, and information about Roma people abroad. Racism and prejudices are phenomena widely spread by readers rather than by mass media. It may be concluded that there are no problems related to discrimination against Roma people in the public space of our country; comments of readers, however, reveal open hostility and inciting to physical violence against Roma people. This phenomenon follows each published article, regardless of whether it is related to Roma people in Latvia or in other countries.

Information on 7 occasions where Roma people have been offended on Internet portals on the grounds of their nationality has been forwarded to Security Police.

Proposals have been made by Ombudsman's Office to the Ministry of Culture for including in the Project on the Key Concepts of National Identity and Social Integration for 2012 – 2018 in promoting civil involvement as a form of integration. If the funding plan also includes funding to promote integration of Roma people, it is the task of Ombudsman's Office to seek that this target group is not excluded from distribution of funds intended for fostering of education and tolerance, as well as ensuring of equality.

2. Legal Regulation of Partner Relations

In May, non-governmental organizations and Saeima Commission for Human Rights and Public Affairs goaded the Ombudsman into focusing on the legal regulation of partner relations. Having surveyed the public opinion, the Ombudsman decided to convene advisory

council (hereinafter – Advisory Council) in accordance with Section 14 of the Ombudsman Law on the issue of legal regulation of partner relations with the view to discuss with selected group of lawyers and experts the proposals made regarding legal regulation of partner relations, as well as to assess the need for amendments to regulatory acts. Members of the Advisory Council include experts of the Institute of Women's Rights, Latvian Association of Lawyers, Association of LGBT and their Friends "Mozaīka", Latvian Center for Human Rights, Public Policy Center "Providus", Foundation "Moral Revolution", Order Brotherhood of Latvia, Resource Center for Women "Marta", as well as law experts from the University of Latvia, Riga Law School and Riga Stradins University, and representatives of the State Police. The Advisory Council has held two meetings to discuss the opinions issued by experts on the need for introducing legal regulation of partner relations in Latvia. Most of the experts pointed out that no separate legal regulation is required on cohabitation of homosexual partners so that their relations would be actually equated to the institute of matrimony protected by Section 110 of the Constitution. Instead, most of experts pointed out to wider scope of problems related also to cohabitating heterosexual partners without registered marriage. According to statistic data, the rate of children born out of wedlock has increased during 20 years from 17% to 45%.[115] Discussion focused on the need to strengthen the value of traditional family, promote natality and ensure stable living conditions, given that demographic problems in Latvia are increasing (low birthrate, migration, and ageing of society). Members of the Advisory Council emphasized, on the other hand, that safety and stableness of each and every individual is important, while actuality of this issue shows that certain part of society do not feel safe and protected in Latvia. Majority of the members of Advisory Council shared the opinion that financial relations of two cohabitating individuals, including their children, could be regulated within the scope of existing legal norms; attention should be paid, however, to certain legal norms concerning personal relations. Amendments made on 12 March 2009 to Criminal Procedure Law (effective from 01.07.2009) were mentioned as a positive example. The said amendments introduced the term "relatives" which means individuals with whom the natural entity in question cohabitates and runs common (undivided) household, thus equating such persons to spouse and close relatives. Section 167.[2] of Administrative Procedure Code and Section 48 of criminal Law also refer, apart from relatives and spouse of an individual, to persons with whom the individual has or has had unregistered marital relations, and to persons with whom the individual has common (undivided) household.

Since the Ombudsman, when forming the Advisory Council, experienced big interest expressed by different non-governmental organizations and representatives of social groups and their willingness to take part in the work of Advisory Council, the Ombudsman invited everybody interested in such work to public discussions on 29 November 2011 and encouraged exchange of ideas and opinions concerning the legal regulation of partner relations. Experts and persons interested in this topic participated at discussions, and it was concluded that society was not yet ready to amendments to the Constitution or other legal acts permitting registration of marriage between homosexual partners. The Ombudsman listened to different, even contradicting opinions during the public discussion. Appeals to strengthening and supporting the traditional family institution in the circumstances of critical demographic situation and to ensure favorable conditions for promoting natality were expressed on the one hand, while proposals to ensure equal legal protection to all people, to respect the reality, and to pay attention to the high rate of non-registered cohabitating couples in the Latvian society were expressed on the other hand. Discussions also included more radical proposals, such as

[115] Data of Central Statistic Agency for the period from 1990 to 2010; the databases are available at: http://www.csb.gov.lv.

extermination of homosexuality as a lifestyle that is degrading and offending to morality and ethics, or to classify it as a health condition.

Accession to the European Union has to some extent restricted the sovereign rights of Latvia, since it has assumed the obligation to adjust the national legal norms with the legal system prescribed by the Treaty Establishing the European Community. Sexual orientation as prohibited grounds of discrimination is enshrined in the Amsterdam Treaty of 1997[116]. Preamble of the Charter of Fundamental Rights of the European Union stipulates that the peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values. Article 21, Paragraph 1 of the Charter of Fundamental Rights stipulates that "any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".[117] Prohibition of discrimination, including discrimination on the grounds of sexual orientation, is therefore treated as common value by the Member States of European Union. European Court of Human Rights has concluded on 24 June 2010 in the award *Schalk & Kopf v. Austria*: "Since 2001, when the decision in Mata Estevez was given, a rapid evolution of social attitudes towards same-sex couples has taken place in many member States. Since then a considerable number of member States have afforded legal recognition to same-sex couples (see above, paragraphs 27-30). Certain provisions of EU law also reflect a growing tendency to include same-sex couples in the notion of "family"".[118] At present, legal regulation permitting registration of marriage between homosexual partners is applicable in seven European countries: Kingdom of Belgium, Republic of Iceland, Kingdom of the Netherlands, Kingdom of Norway, Republic of Portugal, Kingdom of Spain, and Kingdom of Sweden.[119] Fifteen European countries recognize registered partner relations between homosexual partners[120].

According to sociological surveys, most of the Latvian community objects to recognition of homosexual relations. When formulating their attitude towards homosexual people, 23.2% of respondents have pointed out that "both homosexual people and homosexual relations condemnable", 27.6% have stated they have no objections towards homosexual people, while homosexual relations are condemnable; 30% have pointed out that neither homosexual people nor homosexual relations are condemnable; and 18.9% have no opinion."[121] The position of society is also reflected in voting of peoples' deputies on amendments to Constitution of the Republic of Latvia. Saeima of the Republic of Latvia by enactment of the Law of 15 December 2005 approved amendment to Section 110 of the Constitution, and the said amendment which came into effect on 17 January 2006 stipulated that "the State shall protect and support marriage – a union between a man and a woman (..)", thus introducing constitutional meaning of the term "marriage" in Latvia. The legislator has explained in summary to the draft law that the need for amendment was dictated by continuous threat to

[116] The Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, available at: http://eur-lex.europa.eu/lv/treaties/index.htm
[117] European Charter of Fundamental Rights, available at://eur-lex.europa.eu/lv/treaties/index.htm
[118] *Schalk, Kopf v.Austria,* (application No. 30141/04), Paragraph 93 of the Award, available at: http://archive.equal-jus.eu/109/
[119] Rainbow Europe Country Index, May 2011, available at: www.ilga-europe.org
[120] Idem
[121] Center for Survey of Market and Public Opinion SKDS: Opinion Survey of the Inhabitants of Latvia Concerning their Attitude Towards Sexual Minorities, January 2011, p.p. 22.

marriage and family as traditional values established in Latvia in the course of cultural and historical development.[122]

Taking into consideration the recommendations made by the members of Advisory Council, the opinions expressed during the public discussion, and the results of public opinion[123], the Ombudsman concludes that most of the Latvian society is currently not prepared to equate registration of relations between homosexual partners to the institute of matrimony and to accept homosexual relations as a regulation-approved lifestyle; therefore, the draft law on registered partner relations and the auxiliary draft projects proposed by Association of LGBT and their Friends "Mozaīka" should not be forwarded. Given, however, that Section 89 of Constitution of the Republic of Latvia stipulates that the State shall recognize and protect fundamental human rights of everyone, and the principle of legal equality enshrined in Section 91, and acknowledging the reality, that is, the notable number of couples in Latvia cohabitating without registration of marriage, the Ombudsman applies to the Saeima for amending a number of legal acts so that legal protection of individuals cohabitating without registration of marriage, including cohabitating homosexual partners, is equated to that available to married couples.

In the Ombudsman's opinion, legal norms that should be amended include:

1. Legal protection of patients, in particular where decision has to be made on consent/waiver of treatment, or decision on preferred method of treatment, if the patient's health condition prevents him/her from making the relevant decision: Section 7, Part 1 of the Patients' Rights Law *(Vesting in other person the right to accept/waive treatment)*, Section 11, Part 2 *(Participation of patient in clinical study)*;
2. Preventing conflict of interests: Section 1, Paragraph 6 of the Law on Preventing Conflict of Interests in the Activities of Government Officials *(Terms used in the Law)*, Section 24, Part One, Paragraph 1 *(Information to be Stated in Declaration*), Section 23, Part One, Paragraph 2 of Public Procurement Law *(Operation Principles of Procurement Commission)*;
3. Procedural legal norms, in particular concerning the right to refuse the duty to testify and previously unpromised concealment or failure to inform: Section 164, Paragraph 1 of Administrative Procedure Law *(Persons who may refuse to testify)*, Section 22 of Criminal Law *(Previously unpromised concealment and failure to inform)*, Section 303 *(Release of a Person from Criminal Liability for Refusal to Testify)*, Section 107 of Civil Procedure Law *(Persons who may refuse to testify)*, Section 550 *(Withdrawal or removal of a bailiff)*;
4. Social rights of persons: Section 74 of Labor Law *(Remuneration in cases where the employee does not perform work due to a justifiable reason)*, Section 20 of the Law on Remuneration to the Officials and Employees of Governmental and Municipal Institutions *(Allowance in case of death of a family member or dependant*), the Law on State Social Allowances (Section 17, Part Five *(Granting of state social allowances and disbursement procedure*), Section 37 of the State Pension Law *(Disbursement of pension not paid because of the recipient's death and disbursement of funeral allowance)*;
5. The right to information: Section 5, Part Eight of the Patient's Rights Law *(The right to treatment)*; Section 34 of Vital Statistics Registration Law *(Persons who have the duty to inform about the fact of death)*.

[122] Summary to the Draft Law "Amendments to Constitution of the Republic of Latvia", available at: http://helios-web.saeima.lv/bi8/lasa?dd=LP1400_0

[123] Center for Survey of Market and Public Opinion SKDS: Opinion Survey of the Inhabitants of Latvia Concerning their Attitude Towards Sexual Minorities, January 2011

3. Principle of Legal Equality

Members of society have been actively applying to the Ombudsman in 2011 and pointing out to infringements of the principle of legal equality in a wide range of areas. Applications concern the TV air-time made available to candidates from political parties during the pre-election period, as well as to the issues of non-citizenship and language.

An application was received from a small party concerning infringement of the principle of legal equality in the services provided by National TV; according to the application, selection of participants for pre-election program was based on data of sociological surveys, and only those who had exceeded the limit of 2% could qualified for participation. Having completed the inspection proceedings, the Ombudsman established infringement of the principle of legal equality and pointed out that mass media funded from the State budget have the duty to comply with the principle of legal equality prescribed by Section 91 of the Constitution when making air-time available for presentation of information, and to seek that all parties have equal opportunities to present their opinions to public, regardless of the results of sociological surveys. The foregoing applies equally to prescribing advertisement conditions and to developing the broadcast programs funded from the budget of broadcasting organization. In the given occasion, society is entitled to claim from state-funded broadcasting company application of objective and fair criteria to those who qualify for participation regardless of funding details, namely, whether the program in question is funded from the state budget or from the funds earned from advertising.

A non-governmental organization applied to the Ombudsman's Office and pointed out to infringement of the rights of non-citizens by 79 differences in the rights available to citizens and non-citizens of Latvia, respectively. Legal status of non-citizens is not a form of citizenship of the Republic of Latvia. According to the Decree "On restitution of the rights of citizens of the Republic of Latvia and basic naturalization conditions" issued by Supreme Council of Latvia on 15 October 1991, those who had been citizens in June 1940 and their descendants were declared citizens of the Republic of Latvia. According to Section 1 of the Law of 12 April 1995 "On the status of citizens of former Union of Soviet Socialist Republics who are not citizens of Latvia or any other state", the status of non-citizens was applied to the citizens of former USSR residing in the Republic of Latvia (including those in terminated absence) and their children who met the following criteria: 1) they had their registered residence as of 1 July 1992 on the territory of Latvia or had their last registered residence before 1 July 1992 in the Republic of Latvia, regardless of the status of residential premises; or the fact that they had been continuously residing on the territory of Latvia during 10 years before 1 July 1992 was established by court ruling; 2) they were not citizens of Latvia; 3) they were not and had not been citizens of any other State. The above-mentioned regulatory acts established separate legal status applicable to the citizens of former Union of Soviet Socialist Republics. European Court of Human Rights has also held in the award rendered on 9 October 2003 in *Slivenko v Latvia*[124] that non-citizens ("permanently resident non-citizens") as a group of persons who have been deprived of their citizenship of the USSR as a result of collapse of the State and who have not acquired citizenship of any other state, are not equated in Latvia to any other general status of alien – the status of either a foreign natural or a stateless person. European Court of Human Rights used the term "ex-USSR citizens" in relation to non-citizens. Constitutional Court of the Republic of Latvia has clearly stated in the award rendered on 7 March 2005 in proceedings No 2004–15–0106 that the status of non-citizen is not and can not be treated as a form of citizenship of Latvia. Notwithstanding that legal status of non-citizens is not defined in the international legal acts, it is not unique by

[124] See the Award made by European Court of Human Rights in *Slivenko v Latvia* (No 48321/99)

nature, because it follows the example of the Law on Stateless Aliens of German Federal Republic enacted on 25 April 1951.[125] Many citizens of the Republic of Latvia retained this legal status during the post-war period in Germany until the restitution of independence of the Republic of Latvia. Similar laws are also effective elsewhere in Europe – in France, the United Kingdom, Spain, and other countries. Different scope of rights (the right to election, the right to hold public offices, etc.) derives from different legal relation with the Republic of Latvia in case of citizens and non-citizens of Latvia, respectively. The principle of equality permits and even requires different treatment of persons in different circumstances[126]. Therefore, differences in the scope of rights granted to citizens and non-citizens of the Republic of Latvia may not be treated as discriminating. Article 25 of the International Covenant on Civil and Political Rights of 16 December 1966 and other human right instruments binding upon Latvia in determining the scope of rights granted to their citizens are not applicable to non-citizens of Latvia. Republic of Latvia has the duty, however, to ensure to each individual the scope of rights which is at least equal to that specified in the Universal Declaration of Human Rights and Convention of 28 September 1954 Relating to the Status of Stateless Persons. Recommendations made by international institutions and non-governmental organizations as well as by the Ombudsman should be taken into consideration to achieve the goal – integration of ex-USSR citizens in democratic society. It is legislator who has to handle the specific legal and political considerations. Saeima of the Republic of Latvia has the exclusive competence to grant the right of election and other rights applied for by the person in their application to non-citizens. According to the data of the Office of Citizenship and Migration Affairs, 319 278 persons or 14.35% of the population of Latvia have the status of non-citizens as of 1 July 2011. Selection of citizenship of a certain country is the matter of discretion of each individual, and such selection may not be forced on, like it happened during the Stalin totalitarian regime in 1940. The number of people who prefer retaining such privileged status of stateless person rather seems to demonstrate that they find sufficient the scope of rights granted to them. If the right to elect municipalities is granted to non-citizens they may lose any motivation to become citizens of any state. Individuals certainly may not be deprived of such status on the sole grounds that they still expect restoration of their previous state within the former borders. Reducing of the number of non-citizens is not an end in itself. The Ombudsman appreciates removal of bureaucratic obstacles to registration of children born in the Republic of Latvia. Cabinet Regulations No 520 of 5 July 2011 Concerning the Procedure for Filing and Handling Application for Granting the Citizenship of Latvia to a Child" have the effect of simplifying the procedure for granting citizenship of the Republic of Latvia to children, whereas Article 4 stipulates that documents necessary for registration may be submitted either to the territorial division of the Office of Citizenship and Migration Affairs or to Vital Statistics Registry Office. Chapter 4 of the Cabinet Regulations No 522 of 5 July 2011 Concerning the Examination of Knowledge of Latvian Language, Fundamental Provisions of Constitution of the Republic of Latvia, the National Hymn and History of Latvia" provides for simplified examination of knowledge in case of persons with disabilities. The steps aimed at integration of non-citizens on the basis of Latvian language, Latvian culture and social memory must be continued by drafting a plan of certain steps aimed at encouraging such non-citizens either to naturalize and become citizens of the Republic of Latvia or to become citizens of any other democratic state.[127] Another possibility would be attracting of consultants for work with individuals to facilitate their real

---

[125] *Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet, Bundesgesetzblat*, I , 1951, 269. lpp; sk. arī tīmeklī *http://www.aufenthaltstitel.de/hag.html*

[126] See the Award made by Constitutional Court on 3 April 2001 in proceedings No 2000-07-0409, Paragraph 1 of Conclusions; see also on the web at: *http://www.satv.tiesa.gov.lv/upload/2000-07-0409.rtf*

[127] See the Key Concepts of National Identity, Civil Society and Integration Policy for the Years 2012 – 2018 approved by the Cabinet on 11 October 2011; ses also on the web at: *http://www.km.gov.lv/lv/ministrija/integracijas_pamatnostadnes.html*

integration and to help them pass naturalization tests in order to become citizens of Latvia, or to help them in filing documents for naturalization in another country.

4. Distribution of Residents upon Completion of Resident Medicinal Studies

The Ombudsman has issued opinion to the Constitutional Court concerning the distribution of residents and funding of resident medicinal studies. Cabinet regulations concerning the distribution residents and funding of their studies stipulate that in case of resident medicinal studies funded from the State budget the resident has to pursue employment with the medicinal institutions proposed by the Ministry of Health for at least three years. Cabinet Regulations also stipulate that medicinal residents have to repay the costs of their studies if they discontinue employment with the proposed medicinal institutions before expiration of the period of three years.

The first sentence of Section 91 of the Constitution stipulates that: "All human beings in Latvia shall be equal before the law and the courts." The Ombudsman judged whether or not the circumstances of medicinal residents and other students funded from the State budget are equal and comparable.

Having analyzed the legal regulation and purpose of resident medicinal studies, the Ombudsman established that only medicine professionals who have completed their diploma studies may pursue resident studies. It means that residents are not comparable to other students because these are medicine professionals who pursue resident studies. The difference between resident studies and other forms of studies lies in the scheme of employment relations. Given the different conditions and form of resident studies, the Ombudsman concludes that studies of residents and other studies funded from the State budget are not comparable. In the Ombudsman's opinion, circumstances of resident students and other students funded from the State budget are different and incomparable. The principle of equality permits and even requires different treatment of persons in different circumstances.

The Ombudsman assessed in course of inspection proceedings whether or not the contested norms comply with the first sentence of Section 106 of the Constitution: "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications."

Cabinet Regulations[128] governing the distribution of residents and funding of resident medicinal studies stipulate that funding of resident studies may have two forms: from the State budget and from the assets of a natural or legal entity. In case of resident studies funded from the assets of a natural or legal entity, the residents have no obligations towards the State upon completion of their resident studies.

If a medicine professional wants to have their resident medicinal studies funded from the State budget, they have to make agreement with the educational establishment. Such agreement shall determine the resident's obligation of employment with a certain medicinal institution during three years from completion of resident studies as well as the obligation to repay costs of resident studies to the State if the resident fails to meet the first above-mentioned obligation. The Ombudsman assessed whether or not in the given situation the

[128] Cabinet Regulations No 120 of 13.03.2001 Concerning the Distribution and Funding of Resident Medicine Studies; Cabinet Regulations No 972 of 25.08.2009 Concerning the Distribution and Funding of Resident Medicine Studies; Cabinet Regulations No 685 of 30.08.2011 Concerning the Distribution and Funding of Resident Medicine Studies.

above-mentioned obligations of residents towards the State are commensurable, and whether they are relevant to achievement of the State's objectives.

Restriction of rights imposed on resident students is aimed at ensuring protection of public health. Therefore, obligations imposed on residents according to agreement are relevant to achievement of the State's objectives. In the Ombudsman's opinion, if resident studies are funded from the State budget, the State has the right to impose obligation to work for the State. Moreover, resident students have the choice of contractual obligations prior to enrollment to resident studies. Comparison of the restrictions imposed on residents if their studies are funded by the state and the resulting public benefit shows that such restriction is commensurable. The Ombudsman therefore finds that the contested norm complies with the first sentence of Section 106 of the Constitution.

Area of Good Governance

What is good governance?
Good governance in a wider sense included all general law principles on which public administration is based and which are recognized in society as administrative procedure principles. God governance means proper governance. The principle of good governance includes a number of crucial things, including:

- Frankness towards private individuals as well as society;
- Accessibility, courtesy, and simplification of procedures;
- Protection of personal data;
- Implementation of fair procedures in reasonable periods of time.

Apart from the above-listed aspects, good governance also includes other provisions aimed at ensuring observation of the rights and lawful interests of society.
Good governance means ensuring democratic, legitimate, effective, open public administration available to general public. Good governance applies to governmental authorities as well as to operation of municipalities.

Priorities of Good Governance:
1. Compliance with the principle of legal reliance in public administration.
2. Promoting awareness among society of their rights and the principle of good governance.

I. Elimination of Non-Compliance with the Principle of Legal Reliance in Public Administration

Written applications and other documents have been filed with the Ombudsman during the period till December 2011 on 191 matters related to observation of the principle of good governance in public administration. Oral consultation and replies to e-mails on the matters concerning good governance have been provided on 189 occasions. The total number of occasions where the Ombudsman's Office has been applied to in relation to good governance makes 380.

27 inspection proceedings have been instituted concerning the observation of the principle of good governance in public administration. Institution of inspection proceedings has been declined on 74 occasions. 27 other different documents have been drafted. Representative of the area has been participating in the work of Public Administration Policy Development Council during the reporting period. During the reporting period, one staff member was employed in the area of good governance till October, and two were handling this matter from October till the end of November.

1. Calculation of Resident Income Tax

The number of applications has increased in 2011, compared to 2010, concerning illegitimate actions on part of SRS in recovering tax not prescribed by the Law on Resident Income Tax yet imposed as a result of audits, as well as late interest and penalties on income from sale of real estate that has been owned by persons for more than 12 months; such actions constitute infringement of the principle of legal reliance.

1.1. Assessment of the Actions of State Revenue Service

Starting from 2007 – 2008, the State Revenue Service has been pursuing practice of auditing the natural entities who had sold their real estates during the period from 2002 to 2007 when Section 9, Part One, Paragraph 19, sub-paragraph "c" of the Law on Resident

Income Tax applicable at that time did not prescribe imposing resident income tax on the income gained from such activities. Seven individuals had filed applications with the Ombudsman in 2010 concerning groundless decisions of the SRS on imposing such tax and late interest. In contradiction with the opinion of the SRS Finance Police and Prosecutors' Office, and contrary to the common practice, the SRS continues to state in their explanations to the Ombudsman that such tax has to be paid by individuals on the grounds of amendments subsequently made to the Law on Resident Income Tax. The Ombudsman concludes that the above-described actions on part of the SRS contradict with the principles of public administration stipulated in Section 10 of Public Administration Law stating that public administration is subject to the legislation and law; that it operates within the scope of competence stipulated in regulatory acts; and that it may only use the granted authority in accordance with the sense and purpose of such authorization; it has to ensure operation in compliance with human rights and the principle of good governance including frankness towards private individuals and general society in order to ensure respecting of the rights and lawful interests of private individuals. The SRS had also committed breach of Section 13, Paragraph one of the Ombudsman Law through preventing the Ombudsman from exercising of his rights and obtaining explanations from the institution within the scope of inspection proceedings, since in fact such explanations were not provided.

Since the SRS took no actions in reply to the Ombudsman's recommendation to stop the illegitimate activities, recommending documents were drafted to the Ministry of Finance as supervising authority of the SRS for discontinuing illegitimate actions on part of the supervised institution. The Prime Minister was also notified of the existing situation.

1.2. Opinion Issued to the Constitutional Court

According to the ruling made by Judge of Constitutional Court on 26 September 2011, Ombudsman of the Republic of Latvia was summoned, in his capacity of concurrent, to issue opinion in proceedings No 2011-15-01 on compliance of Section 9, Part One, Paragraph 19, sub-paragraph "c" of the Law on Resident Income Tax (in the wording effective as of 22 November 2001) with Section 91 of Constitution of the Republic of Latvia.

Proceedings No 2011-15-01 by the Constitutional Court include assessment of compliance of Section 9, Part One, Paragraph 19, sub-paragraph "c" of the Law on Resident Income Tax (in the wording effective as of 22 November 2001) with the fundamental rights guaranteed by Section 91 of Constitution of the Republic of Latvia – the right to equal treatment.

Application was filed with the Constitutional Court by Administrative Regional Court (hereinafter – the Applicant) by ruling of 20 June 2011 in proceedings No A42626408, AA43-0416-11/14 concerning the complaint of a person against decision of State Revenue Service (hereinafter – the SRS) for imposing resident income tax, late interest and penalty on the income gained from sale of real estate owned by person for more than 12 months during the period when collection of such tax was not permitted by the contested norm. The SRS treated sale of such real estate to unregistered commercial activity, and therefore the contested norm was not applied. The Applicant shares interpretation of the norm contested by the SRS and points out that the norm enacted by legislator has the effect of authorizing non-taxable *black-marketing* (regular sale) of real estate. In the Applicant's opinion, the contested norm contradicts with the right of person to equal treatment. The Applicant finds that the principle of equality is infringed if persons who systematically sell their real estates without registration of commercial activity are treated equally to those who are registered,

establish a business company or pursue systematic sale of vehicles. The application is also motivated by the allegation that application of the disputed norm leads to loss of tax in notable amount otherwise payable to the State budget, and therefore contradicts with public interests and causes material loss to society.

The Ombudsman's opinion on this matter

In the Ombudsman's opinion, the circumstances in case of the persons referred to in the application who systematically sell for consideration real estates owned by them for at least 12 months and the persons who have registered their commercial activities and pay resident income tax or establish a business company for the purpose of systematic sale of real estate for consideration and pay resident income tax, or systematically sell for consideration movable property, are not similar and comparable according to certain criteria, and therefore the contested norm is not applicable to the persons referred to in the comparison by the Applicant.

Since the persons referred to by the Applicant are not comparable because of different features, in the Ombudsman's opinion, no infringement of the principle of equal treatment or breach of Section 91 of the Constitution can be established in the contested legal norm.

Constitutional Court dismissed proceedings No 2011-15-01 concerning the compliance of Section 9, Part One, Paragraph 19, sub-paragraph "c" of the Law on Resident Income Tax (in the wording effective as of 22 November 2001) with Section 91 of Constitution of the Republic of Latvia and concluded that content of the contested norm differed from that referred to in the application, and that therefore there were no grounds for further proceeding with the matter and assessment of compliance of the contested norm with the first sentence of Section 91 of the Constitution, since this matter has to be determined by interpretation and application of the contested norm in accordance with the purpose thereof and the intention expressed by the legislator.[129]

2. Assessment of the Actions of Rural Support Service

Having reviewed the refusal on part of Rural Support Service (RSS) to accept and record application of a person concerning payments in accordance with the Cabinet Regulations No 584 of 6 July 2004 effective at the time of application, the Ombudsman established that the RSS infringed the principles of public administration stipulated in Article 3.13 of the Rural Support Service Regulations and Section 10 of Public Administration Law. As a result of the above-mentioned actions, the due direct supplementary payments from the funds of European Union were not received by the farm**.**

Complaint filed by the person on the above-described actions was reviewed at the instances of Administrative Courts during 4 years. The matter was heard in point of facts by Administrative District Court; Administrative Regional Court, however, ruled out that hearing of the complaint should be dismissed since, according to the practice of Administrative Department of Supreme Court Senate, where a person has exceeded the procedural deadline stipulated for contesting of an administrative act, no application for repealing of such administrative act may be reviewed by the court because the person has not complied with the applicable procedure for pre-trial extrajudicial hearing of a matter.

Regional Court therefore ruled out that Administrative District Court has been acting unlawfully when accepting and reviewing the application in point of facts.

[129] http://www.satv.tiesa.gov.lv/upload/2011-15-01%20PR%20par%20izbeig%C5%A1anu.pdf

As a result, the applicant has the possibility to institute repeatedly in 2011 the administrative proceedings instituted in 2007 by applying to the RSS for re-defining the deadline for filing application the delay of which had been established by the court. The Ombudsman further established that Administrative Regional Court had incorrectly held that the original application had been filed by the person in 2005, notwithstanding that the fact of declining of such application by the SRS was the subject of dispute.

The Ombudsman held that actions of the RSS had been illegitimate and non-compliant with the principle of good governance, while hearing of the matter at the first court instance on point of facts and refusal to adjudicate the matter on the second instance by administrative court had been inefficient, time-consuming and non-compliant with the fundamental purpose of Administrative Procedure Law to ensure observation of the fundamental principles of a democratic, law-based state, in particular observation of human rights in the concerned public legal relations between the State and a private individual (Section 2, Paragraph 2 of Administrative Procedure Law).

The Ombudsman issued recommendation to the Ministry of Agriculture and to the RSS to pursue the effective ruling of Administrative Regional Court by which the date of filing the application in dispute with the RSS had been contested, and to compensate the damages caused to the farm through non-receipt of supplementary direct payments from the State.

The Ombudsman applied to the Judicial Council and Ministry of Justice for assessing whether or not the actions taken by administrative district court and regional court in the given occasion comply with the norms of Administrative Procedure Law and the Judiciary Law; whether or not such actions have been efficient and whether or not the legal proceedings have been effective, given the fact that application filed in 2007 and reviewed in point of facts has been left without adjudication by appellate instance court in 2010 thus "enabling" the applicant to institute new legal proceedings with administrative court.

Ministry of Justice made no assessment of the identified problem – *an application reviewed in point of facts by administrative district court has been left without adjudication by appellate instance court* – in their reply to the Ombudsman. The Ministry pointed out it could not establish prolongation of hearing there because the ruling on leaving the application without adjudication had come into legal effect.

The Ministry of Justice pointed out in their letter to the applicant on the same matter that repeated application to court was not permitted, in contradiction with Section 281 of Administrative Procedure Law (*If an application is left without adjudication, the applicant may submit the application to the court anew in compliance with the procedures prescribed by law*).

3. Application of Differentiated Rates for Sales of Electric Power

The Ombudsman, pursuant to application of President of the State, has instituted inspection proceedings concerning the compliance of normative regulation on differentiated rates for sales of electric power with the public interests. The Ombudsman has established that regulation of such rates contains infringements of the principle prescribed by Section 10 of Public Administration Law, namely, that public administration shall act in the best interests of society.

Section 5 of the Law on Utility Service Regulators stipulates the key principle of operation of Utility Service Regulation Commission (hereinafter – the Commission), that is, making decisions and enacting administrative acts aimed at protection of the interests of users and promoting development of the providers of utility services in compliance with the principle of justice, transparency, impartiality, equality, and proportionality. Title IV "Determination of Rates", however, contains no reference to the interests of users. According to Section 20 of the Law, the rate has to be fixed in the amount sufficient to cover economically reasonable costs and to ensure profitability of utility services.

Moreover, regulatory acts provide no clear understanding of the procedure applied to verify economical reasonability of the rates submitted for approval. Verification of the proposed rates is based on methods that are not appropriate to determine with reasonable certainty whether or not economical reasonability of the calculated rates serves not only the purpose of development of the company but also protection of the interests of users.

The Ombudsman also sees potential risk that, when verifying economical reasonability of the proposed rates, the Commission might have indirect interest in maintaining or increasing annual turnover of utility services, given that operation of the Commission if funded from the state fee received for regulation of utility services.

The Commission has declined all reproaches contained in the Ombudsman's opinion. Taking into consideration, however, the fact that increase of rates payable for electrical power affects economical interests of each and every inhabitant of Latvia, the Ombudsman has committed to continue profound investigation of the given matter.

4. Assessment of the Actions of Salaspils County Council

The Ombudsman instituted inspection proceedings pursuant to application concerning environment unfavorable to tenants at hostel-type building of the municipality of Salaspils, avoiding by Salaspils County Council (hereinafter – the Council) from handling social problems and failure on its part to inform population about future plans and possible use of the building in question.

The Council informed the Ombudsman in their explanations that they had let the apartments owned by them for lease to the house manager whose dishonesty is complained on by tenants of the building, and that the Council had no intention to make apartments at the former boarding-house available for privatization. Since the stipulations of the Law on Privatization of Residential Houses Owned by the State and Municipalities specifying the categories of apartments no subject to privatization (Section 74 of the Law) are binding upon the Council, yet the Council has failed to decide on granting the status of office hostel, office apartment or social residential house, or the status of premises required for performance of municipal functions prescribed by law to the apartments in question, the Ombudsman has concluded that the apartments in question currently meet the status of apartments subject to privatization. Therefore, the Council has to decide whether it shall grant the status of apartments not subject to privatization to the apartments in question or sell the undivided share of joint residential property owned by the municipality in accordance with Section 8.[1] and Section 9 "Privatization in Case of Jointly Owned Residential House" of the above-named Law.

Therefore, through the failure to meet the requirements of the Law on Privatization of Residential Houses Owned by the State and Municipalities, the Council has committed breach of not only Section 105 of Chapter IV Fundamental Human Rights of the Constitution

through imposing restrictions on the right of apartment owners to use their property, but also provisions of Section 3 of the Law on Municipalities: “Municipality shall be the local governing authority ensuring performance of the functions prescribed by law, subject to the interests of the State and inhabitants of the administrative territory in question” and infringed the principles of public administration listed in Section 10 of Public Administration Law that prescribe the duty of municipality to inform society about their operation.

Pursuant to Section 25, Part Three of the Ombudsman Law, the Ombudsman recommended to the Ministry of Environment Protection and Regional Development to impose obligation on Salaspils County Council to ensure compliance with the requirements of the Law on Privatization of Residential Houses Owned by the State and Municipalities in accordance with the opinion issued on the given inspection proceedings.

II. Information of Society about their Rights and about the Principle of Good Governance

Acknowledging that successful implementation of the principle of good governance and its application in the work of governmental and municipal authorities depends to large extent on the formation of adequate awareness among society of the contents of good governance and fostering public awareness was set among strategic priorities of the Ombudsman. Given that only one staff member was employed on full-time basis in the area of good governance during the reporting period, information of society about their rights and the principle of good governance basically took the form of consulting individuals on the concerned matters: replies to applications and e-mails received from individuals as well as personal consultations to the visitors of Ombudsman’s Office. Educational events are also scheduled in future years for the staff of concerned governmental and municipal authorities as well as additional information campaigns within the limits of available financial resources.

Information by the Ombudsman's Office

1. Structure and Resources of the Office

Staff of the Ombudsman's office has been reduced by 25% from 2008 as part of reorganization of the Office, notably affecting administrative capacity and ability of the Office to pursue settlement of problems at their own initiative. At present, the maximum number of staff positions of Ombudsman's Office is 39 including 10 positions entrusted with support functions crucial to enable performance of the key functions: clerical function, secretarial function, logistic administration function, property management and maintenance, and accounting function. Recruitment of additional staff resources has become an urgent matter because the present staff resources are insufficient to ensure performance of all functions and tasks of the Ombudsman's Office. The issue is demonstrated in the following table on the trends of achievement of expected results by the Ombudsman's Office during the period from 2007 to the end of 2011.

Statistics of the Ombudsman's Office for the Period from 2007 to 2011

Year	Written applications	Instituted inspection proceedings	Finalized inspection proceedings	Institution of inspection proceedings declined	Oral consultations	Total applications and consultations
2011	2246	328	355	629	1707	3953
2010	1359	294	185	649	2242	3601
2009	1986	609	402	772	1617	3603
2008	2502	741	412	1009	2434	4936
2007	2269	47	240	633	2831	5120

Factors influencing the load on resources

1) Work load on the staff has increased multiple times, given the activities pursued by the Ombudsman's Office in 2011 to increase public awareness. Performance of job duties therefore frequently exceeds normal working hours, the load of handling applications and inspection proceedings is not evenly distributes, and there is no sufficient time for field visits for the purpose of educating the society and intensified assessment of certain topics; deadlines for reviewing applications and finalizing inspection proceedings are frequently exceeded. Moreover, the number of visits consulted on daily basis by legal advisors of the Ombudsman's Office has notably increased.

2) The UN Convention on the Rights of Persons with Disabilities came into effect on 31 March 2010. Ombudsman's Office was entrusted in accordance with the law to ensure supervision pursuant to Article 33, Part Two of the Convention, and the entrusted functions include promoting, protection and monitoring implementation of the convention. Notwithstanding the assigned new functions, no additional funding was allocated to the Ombudsman's Office.

3) According to the stipulations contained in EU Directive 2008-115 and Section 50.7 of Immigration Law, the process of return by force is monitored by the Ombudsman. It means visiting the detained aliens subject to return by force at the place of their accommodation to assessing the conditions of living and accommodation, as well as availability of medical care and meeting other needs; and assessing their access to exercising of their rights; interviews with the detained aliens to identify their awareness of the course of return by force, possibility to exercise their rights; ensuring that personal items withdrawn upon detention are returned to

detained persons; their transportation from center for accommodation of detained persons to the place of departure; observation of check-in of persons and their luggage; and presence upon the process of return by force in order to ensure compliance with human rights of detained aliens. The Center for Accommodation of Detained Foreigners was relocated from Olaine to Daugavpils before June 2011, and therefore the involvement of staff and transport resources required for performance of this function also increased.

Operation of Ombudsman's Office has been subject to restrictions during several years, so that only steps of prime urgency have been taken rather than full scope of functions and tasks. As a result, operation of Ombudsman's Office has been seemingly ineffective, preventing public awareness of the Office, leading to discussions on expediency of such institution.

1.1. Funding Allocated from the State Budget and its Application in 2011

(in lats)

Item No	Financial criteria	Previous year (actual result)	Reporting year	
			Approved by the Law	Actual result
1.	Financial resources to cover the incurred costs (total)	558901	592921	585393
1.1.	Endowments	558901	558949	554074
1.2.	Charged services and other own income		22200	19547
1.3.	Financial aid from abroad			
1.4.	Donations and contributions		11772	11772
2.	Costs (total)	558276	592921	577566
2.1.	Maintenance costs (total)	558276	590781	575426
2.1.1.	Current costs	557573	589405	574050
2.1.2.	Costs of interest			
2.1.3.	Subsidies, endowments and social allowances			
2.1.4.	Current contributions to the budget of European Community and international cooperation	703	1376	1376
2.1.5.	Transfer of maintenance costs			
2.2.	Costs of capital investments		2140	2140

Ombudsman's Office has managed to raise additional funding in 2011 to conduct studies and analyze situation in the field of human rights. So, the following projects have been implemented in cooperation with and funding in the amount of LVL 11 772 contributed by the Friedrich Ebert Foundation: monitoring tool "Aggressiveness Index" has been developed for monitoring of intolerance expressed in comments on Internet portals, and study

"Discrimination at working place" has been conducted; implementation of the project "Media and children" is pending. Agreement has been reached in the end of year with the Ministry of Interior on implementation of the project "Development of mechanism for supervision of persons subject to return by force" pursued within the scope of Framework Program "Solidarity and Management of Migration Flows" of European Return Fund, in the total amount of LVL 14 056.

Agreement on sublease of the premises of Ombudsman's Office entered into in the beginning of 2011 has added LVL 19 547 to own income.

Appropriation of the basic budget of Ombudsman's Office has been redistributed during the year within the framework of the project among economical classification codes to decrease funding of salaries by 3% or LVL 13 141 and to increase funding of goods and services by 22% or LVL 24 524, in order to pursue activities aimed at public awareness and to cover the costs incurred for provision of activities of the Office.

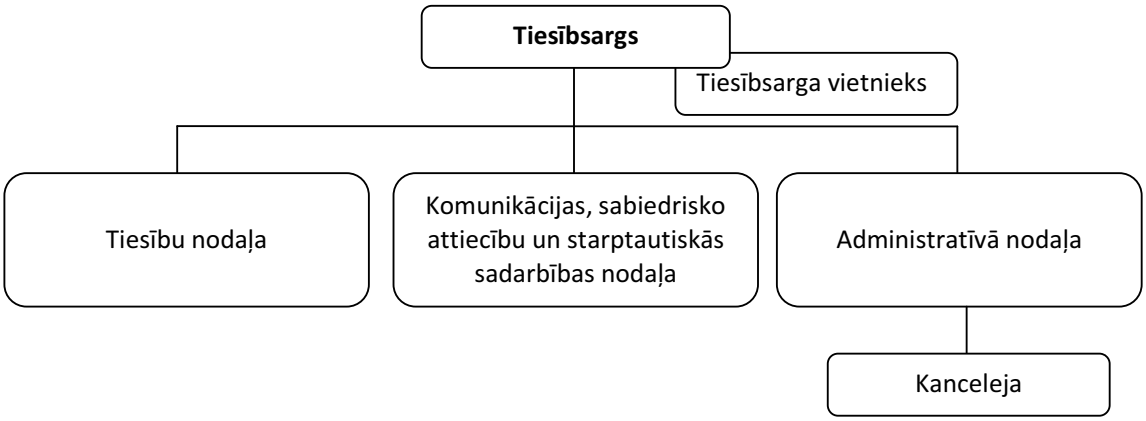
Actions taken by the Ombudsman's Office have brought good results; the number of persons who apply to the Office for assistance is increasing: 2246 written applications have been received in 2011, which means increase by 887 applications or 65% compared to 2010; 352 inspection proceedings have been completed, which means increase by 92% or 170 proceedings compared to 2010; and identification of the Ombudsman's Office has notably increased.

1.2. Report by the Ombudsman on the achievement of budget program score in 2011

Parameter	Planned in 2011	Achieved in 2011
Applications received from individuals	2600	2246
Inspection proceedings instituted at the Ombudsman's initiative	25	26
Inspection proceedings instituted pursuant to applications	250	302
Institution of inspection proceedings declined	600	629
Drafted e-mail replies on the matters within the competence of Ombudsman's Office	500	530
Oral consulting provided in person at the Office	850	1410
Oral consulting provide on telephone	x	2793
Issued opinions to governmental authorities on draft legal acts	75	26
Issued opinions to Constitutional Court	7	15
Arranged inspections at governmental and municipal institutions (of closed or partially closed type, as well as orphans' courts, educational establishments, etc.)	25	36
Arranged educational events (seminars, visiting consulting sessions, lectures, etc)	1	26
Publications in mass media	300	2074
Participation at task forces and commissions	130	233

1.3. Structure of the Ombudsman's Office

Structure of the Ombudsman's Office was changed in 2011 to improve management of its operation. The following structure was put in place by the end of reporting year:



Department of Law is organized in the Ombudsman's Office in six areas of law: the right of children; civil and political rights; social and economical rights; criminal law; prevention of discrimination; and good governance.

2. Measures aimed at Informing and Educating Society

According to the Ombudsman Law, functions of the Ombudsman include promotion of public awareness and understanding of human rights, remedies available for protection of such rights and the role of Ombudsman, its functions and achievements.

Notwithstanding that the budget has been notably decreased, compared to previous years, the Ombudsman's Office has put in their best efforts to pursue informing and education of society.

Information to society has been provided both orally in person and in writing by means of letters or e-mails, as well as in mass media. 1707 consultations have been provided to population in 2011. On multiple occasions, persons have been applying to the Ombudsman for learning about their rights and available legal remedies. The Ombudsman has been explaining on such occasions the individuals should apply to certain competent authorities for proper handling of the matters in question and verification of validity of contested decisions. Such individual informing is resource-consuming, yet it enables maximum support in the protection of rights of each individual.

Successful cooperation has developed with professional weekly magazine "Jurista Vārds" to address specialists in the areas of human rights and law. Such cooperation has enabled wide range of lawyers and experts of law to reflect the Ombudsman's opinions on actual topics of human rights and good governance in Latvia.

Active publishing of the Ombudsman's opinions was launched in 2011 not only on the Ombudsman's Internet website but also in mass media to address extended audience. Explanatory work has been of crucial essence there.

2.1. Public Awareness Campaign "Human rights and good governance in everyday situations"

In 2011, the Ombudsman's Office, supported by SIA "Rīgas satiksme" and SIA "Pilsētas līnijas", has displayed information materials in public transport of Riga City to demonstrate everyday situations involving human rights and good governance. Ten pictures were created in total to reflect by illustrations and humor the human right and good governance situations most frequently referred to by persons in their complaints to the Ombudsman's Office, or situations in Latvia that need improvement in the Ombudsman's opinion.

Though even the concept of human rights may seem something remote and abstract, actually we are facing it in everyday situations whenever exercising our right to express our opinion or meeting representatives of other cultures and accepting the fact that people are different, or expecting polite attitude from the personnel of institutions. If people are aware of their rights they are certainly less exposed to the risk of facing situations where their rights are groundlessly restricted by others.

Illustrations of situations involving human right and good governance have been generated by the artist Edgars Sīms.

2.2. "Aggressiveness Index"

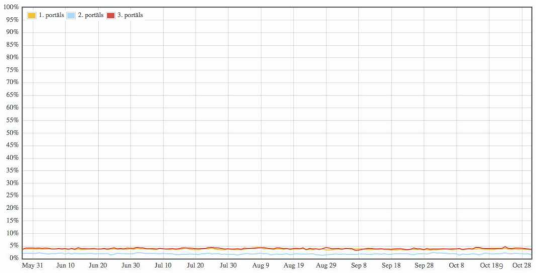
The tasks of Ombudsman include minimizing discrimination and intolerance, including hate speech. "Aggressiveness Index", a tool for monitoring intolerance expressed in comments on

the Internet, was launched by the Ombudsman's Office on 16 November 2011 within the framework of the Tolerance Day. The above-named research tool enables assessment of communication and reaction of the audience to actual topics.

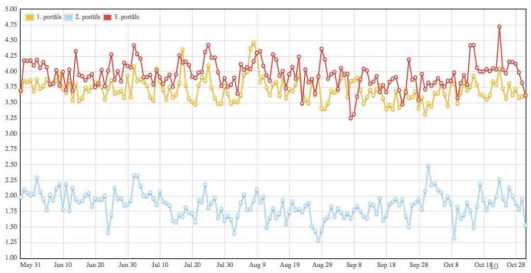
The index displays the reaction of audience to different social and political developments and the most frequently used "aggressive" words, commenting culture and other interesting interrelations.

The "Aggressiveness index" was developed for the purpose of assessment of communication in the environment of comments created by the audience on the portals "TVNET", "Delfi" and "Apollo" in order to understand emotional aggressiveness on the Internet on part of the authors of such comments.

- Visos portālos agresivitātes līmenis ir līdzīgs



- Visos portālos agresivitāte mainās diezgan līdzīgi



According to results of the study, the rate of aggressive comments does not exceed 5%; the level of verbal aggressiveness is similar on all three portals, and the changes also trend to be similar.

The highest aggressiveness has been identified during the period of study on different dates, On 5, 11, 23, and 26 June, for example, on 2 – 3 July, as well as on some other dates.
On most occasions, verbal aggressiveness was induced by the following factors:

- Expressions made by certain politicians and political commentators;
- TV plots (demonstrated in programs "De facto", "Nekā personīga" (Nothing Personal), "Tautas balss" (Vox Populi));
- Presentation of news practiced by the portals (consistency of headlines with contents);
- Photos.

Aggression in comments on the Internet is promoted by aggressive views and even inciting to aggression expressed by other commentators. Typically, expressions borrowed from political speeches or mass media are used in comments. Notable part of the contents is composed of miscalling and reflections on the views expressed by other commentators. Moreover, aggressive expressions trend to wander off the original point. Self-marginalization and denial

of the different may be observed along with sniffy, disdainful attitude towards the commentators and the nation in general, on the one hand, and intolerance to the different, nationalism and extreme trends – on the other hand.

This project is a fruit of successful cooperation of scientists, the Ombudsman's Office and The Friedrich Ebert Foundation. The project is intended to present a long-term research with summary of the data on monthly basis and explanatory analysis provided by experts. Those involved in the project include lecturers of the Faculty of Communications of Riga Stradins University: Sergejs Kruks, Anda Rožukalne, Klāvs Sedlenieks, Ruta Siliņa, and Ilva Skulte, as well as Normunds Grūzītis, Chief Researcher of the Institute of Mathematics and Informatics of the University of Latvia.

2.3. Public Discussions and Lectures

In 2011, the Ombudsman's Office has also organized discussions and lectures to promote understanding of the role and tasks of the Ombudsman, and of human rights, legal equality, and good governance. Successful cooperation has also developed with higher education institutions: the Ombudsman and legal advisors of the Ombudsman's Office have conducted lectures and seminars for students on different topics related to human rights, prevention of discrimination, and good governance. Continuous and successful cooperation has also developed with the University of Latvia and Riga Stradins University. The Ombudsman's Office is prepared to continue cooperation aimed at improvement of knowledge of the new specialists.

Lawyers' Days

The Ombudsman's Office organized meetings in 2011 within the framework of the Lawyers' Days to inform the society about human rights, good governance, and the role of Ombudsman in protection of such rights, and also and participated at discussion of the topic "Protection of the rights of children and adolescents in medicine, advertising industries and education system. Are there any other interests and values made available to children, other than sex?"

Conference "The rights of children and their protection"

On 1st June, the International Day for Protection of Children, the Ombudsman and the Faculty of Law of Riga Stradins University conducted joint conference "The rights of children and their protection". The conference served the purpose of identifying the most actual problems related to ensuring the rights of children in Latvia. Results of the conference served as basis for further studies conducted by the Ombudsman's Office in the area of the rights of children in order to identify problems and propose their solutions (see the section "The rights of children"). Topics discussed at the conference included institutional provision of the rights of children, preventive social work with families and children, as well as the role of the State Police and other institutions entrusted with protection of the rights of children in preventive work.

Public Discussion of the Legal Regulation of Partner Relations

The Ombudsman organized exchange of views and opinions on 29 November 2011 at the European Union House – a public discussion of the legal regulation of partner relations. The discussion was intended to enable members of society to express their views on this topic, and therefore participants invited to discussion included experts of law sciences, social anthropologists, representatives of NGOs, experts of culture, as well as each member of society concerned with this issue.

The following topics were discussed:

1. Whether or not the understanding of what is family has changed in Latvia in previous 50 years?
2. Whether or not proposals concerning regulation of homosexual partner relations are consistent with the applicable regulatory acts of Latvia, the traditional values of society, and the concept of family?
3. How to ensure protection of the rights of all social groups in the field of partner relations, including the groups that have not selected the classic form of marriage for provision of legal consequences of their partner relations?

Discussion "The needs of children and their right to appropriate alternative care in family settings"

Discussion "The needs of children and their right to appropriate alternative care in family settings" took place on 21 December 2011 at the Ombudsman's Office. The discussion was organized in cooperation with the Ombudsman's Office by Alternative Child Care Alliance composed of 8 non-governmental organizations experienced in provision of institutional care to children in family settings.

Participants of discussion included Minister of Welfare Ilze Viņķele, the Ombudsman Juris Jansons, Saeima Deputies and professionals in the areas of psychology, psycho-therapy and psychiatrics, as well as representatives of non-governmental organizations, municipalities and governmental institutions.

The discussion was aimed at focusing on the effect of institutional care on development of a child, the child's needs involved in such care, and the need for improvement of institutional care system in order to accelerate placement of children, in particular children under 3 years, in family settings.

In general, all participants of discussion shared the opinion that institutional care was not suitable for children under 3 years because it does not meet the child's need for one particular caretaker. Professionals in the field of psychical health emphasized the importance of personal attachment in healthy development of a child. In case of institutional care, even the most favorable environment is unable to ensure that emotional needs of child are met. The institution of foster families is well-developed in Latvia, and guardians and foster families can ensure care of children in family settings; such types of care, however, also involve risks that should be taken into account when selecting family settings as an alternative to institutional care. Therefore, improvement of education and support system required contribution of certain efforts.

An opinion expressed at discussion focused on the trend to place children in the institutions notwithstanding that foster families were available. The experts also pointed out to lack of foster families available for placement of infants in crisis situations. If, however, a child is placed in an institution the period of placement should not exceed 2 months until suitable family settings are found. In some municipalities, development of the institution of foster families is pursued along with adaptation of the environment and services available in orphanages to those of family settings; experts in the field of psychical health believe, however, that institution, even of improved type, can not substitute family because of turnover of caretakers.

The existing different model of funding institutional care (care of children under 2 years and children with severe health conditions is funded by the State, and care of children from 2 to 18 years is funded by municipalities) and different funding to foster families available from

the budget of municipalities does not encourage municipalities to ensure placement of children in family settings. There are, however, certain municipalities where financial factor is not the decisive criteria when selecting the form of care, yet they lack viable alternatives.

Important issues that require further addressing include preventive work with families and children, and awareness of society.

Taking into consideration the above-described problems, it is necessary to develop strategies of de-institutionalization including specific actions aimed at development of alternative child care services, improvement of funding system, and improvement of education and support to foster families and adoptive parents, as well as to continue focusing on preventive work with families and children.

2.4. Participation at other Events

The Ombudsman's Office has been participating at a number of informative and educational events in 2011.

Opening of the New Academic Year "Under Common Roof"

On 1st September, the Day of Studies, legal advisors of the Ombudsman's Office participated at the annual celebration of the beginning of new academic year titled "Under Common Roof". The event took place at Vērmanes Park in Riga.

During the event, children and their parents were consulted by legal advisors of the Ombudsman's Office on different aspects of human rights; they could also participate at interactive game on the topic of human rights.

European Year of Volunteering

The Ombudsman's Office also participated at thematic journey in Latvia within the framework of European Work of Volunteering during the period from 28 September to 2 October 2011.

The Latvian distance of thematic journey within the framework of European Work of Volunteering lasted five days when each and every inhabitant of Latvia had free access to information about volunteering, meet volunteers who shared their experience, and learn about the opportunities to volunteer in their own country, member states of the European Union, and elsewhere. The stand of Ombudsman's Office was widely visited; people were mainly interested in the protection of their rights in working environment, the rights of children, and the matters of good governance.

Contacts with several schools were established during the event, and such contacts initiated launching of a cycle of lectures on human rights with special focus on the matters of the rights of children.

2.5. Research "Discrimination at Working Place"

Discrimination at working places remains actual reality in Latvia, though even employers manage to disguise it. Discriminating vacancy advertisements with groundless restrictions applicable most frequently to the applicants' gender and age can be still observed.

The Ombudsman's Office has conducted study "Discrimination at working places" in cooperation with Friedrich Ebert Foundation to identify the distribution of discrimination in Latvia and to increase awareness of the forms of discrimination among employees and the

remedies available for protection of their rights. The study was technically arranged by research agency TNS Latvia which conducted study of public opinion in Latvia on distribution of discrimination and the respondents' attitude towards such issues.

Job-seekers unintentionally trend to disclose personal information that may serve as grounds for discrimination against them. Information stated, for example, in CV includes marital status, number of children, or health-related information. Respondents were also asked to specify the scope of information they finds necessary to disclose to employer, and to point out whether or not groundlessly different treatment on part of employers or colleagues has been experienced by themselves of their family members.

Potential employers who seek employees frequently set groundless requirements that pose discriminating restrictions. Following are the examples announced vacancies with identified groundless restrictions (in their original wording).
* By gender: "Job for administrator – a young man. Salary from LVL 350 per month. Work in the office related to papers and computer"; Job for warehouse manager – assembler (man)", or "We are looking for bartender - waitress (woman)"; "Job for salesperson at flower shop (women, 19-30 years old), or "Job for sales manager under 35 years."
• By age: "Job for salesperson at flower shop (women, 19-30 years old), or "Job for sales manager under 35 years"";
• On other grounds: "Soup restaurants "Y" (name changed – edit.) are looking for waiters with high sense of responsibility to work at shopping centers ALFA, Origo, and Riga Plaza. Applicants with limited working-time possibilities (school, etc.) are not welcome"; or "Wholesaler of food and non-food products is looking for Office Administrator residing in Pārdaugava for fixed period (1 year)".

Summary of the results of research

- About one half (30%) of employees in Latvia in the age over 15 have heard that their relatives, friends or acquaintances have experienced discrimination at working place; majority of employees (68%) state, however, they have never heard about discrimination experiences by their relatives, friends or acquaintances at working place.
- Absolute majority (93%) of employees in Latvia state they have never been fired on discriminating grounds; 7% of employees believe, however, they have been fired on some discriminating grounds.
- 14% of employees in Latvia state that some of their fellow workers have been fired on discriminating grounds. Most frequently these are representatives of Russian nationality, and also inhabitants of Riga, and least frequently those employed in the industries of agriculture, forestry and fishery.
- Nearly each sixth employee in Latvia (18%) has relatives, friends or acquaintances fired on some discriminating grounds.
- Majority (72%) of employees in Latvia in the age over 15 have not experienced unfair or offending treatment during the recent 3 years, while 28% believe there has been such treatment (more frequently in terms of language knowledge and other additional skills, age, nationality, previous work experience, as well as health condition or disability).
- The employees in Latvia who have experienced unfair or offending treatment during the recent 3 years most frequently refer to their direct superior (31%), manager of the company (25%), or other colleagues (20%) as source of discrimination.

Further details of research are available on the website of Ombudsman's Office.

2.6. Campaign "Alternative Solutions in Action"

Society of Disabled Persons and their Friends "Apeirons" in cooperation with the Ombudsman's Office launched the campaign "Alternative solutions in operation" in mass media on 3 December 2011.
The campaign was aimed at attracting the opinion of society and preventing situations where alternative solutions are mere formalities, rather than intended to ensure that persons with disabilities have equal opportunities with any other persons. Pharmacies have been chosen as the first subjects for monitoring environment accessibility.

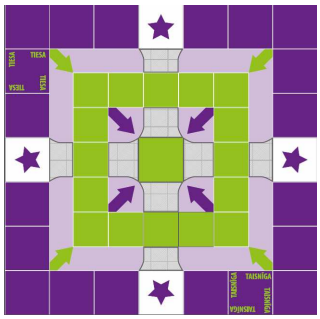
The 3rd day of December is celebrated worldwide as the International Day of People with Disabilities. Though even the Republic of Latvia has acceded to the UN resolution that "urges the Member States to pay attention to the International Day of People with Disabilities, … to achieve that persons with disabilities can fully and equally exercise their human rights and become a part of society,..." the currently observed trend is rather to generate numerous documents to aggravate the situation instead of improving it.

The term "alternative solutions" has started appearing in various legislative initiatives related to improvement of environment accessibility. In the organizers' opinion, however, this indicates rather to creating "holes" in legislation rather than improvement of environment, so that accessibility of environment is not made a mandatory duty.

The campaign launched in 2011 is expected to continue throughout 2012 and include monitoring of the average accessibility of not only pharmacies but also other frequently visited establishments, such as medicinal institutions, governmental and municipal authorities providing social services, and other institutions.

2.7. Educational and Informative Activities for Children
The game generated by the Ombudsman's Office on human rights, in particular the rights of children, has been renovated and supplemented in particular. The game enables children and young people from all age groups to simulate different everyday situations involving the matters of rights and to find answers to their questions.

The game is used not only for entertainment but also for education of children. It is an interactive teaching aid used in visiting lectures or seminars at schools and pre-school educational establishments.



Before, the image of the cat Henry the XIII was used by the Ombudsman's Office with the permit of authors of the cartoon "Fantadroms" to tell children in age-appropriate manner about their rights and proper understanding of such rights. The license to use the image of the cat Henry the XIII expired in 2011, and therefore a new image was created by the Ombudsman's Office in cooperation with the Artist Agnese Bule.

The new image is widely used in all materials intended for children.

3. Cooperation with NGOs

The Ombudsman Juris Jansons invited representatives of NGOs to meeting on 8 April 2011 right after his appointment to the office. The items discussed during the meeting included future cooperation and improvement of public understanding of the matters vested in the Ombudsman's competence. The NGOs outlined during the meeting the actualities in their respective fields in the settlement of which support or actions on part of the Ombudsman would be desirable, and made proposals aimed at further improvement of communication and public awareness and education. Regular topical meetings shall be held in future within the framework of cooperation.

When taking the office of Ombudsman, J. Jansons set among other priorities the promotion of cooperation with non-governmental organizations: the NGOs represent the interests of certain groups of society, compile daily summaries of information in the respective fields, handle problems, and make proposals on improvement of normative regulation in order to eliminate the identified shortcomings.

More than forty non-governmental organizations were invited to the meeting. Participants of the meeting included representatives of the Latvian Society "Chernobyl", Latvian Center for Human Rights, Latvian Confederation of Employers, Latvian Association of Free Trade Unions, Latvian Association of Municipalities, IMKA, and Latvian Cooperation Network of Women's Non-Governmental Organizations.

When the Ombudsman's strategies for 2011 – 2013 had been drafted, the Ombudsman requested experts in human rights and the principle of good governance as well as representatives of NGOs to submit proposals for improvement of the drafted strategies. Proposals were submitted by Public Policy Center "Providus", Latvian Association of Free Trade Unions, Latvian Center for Human Rights, and Association of LGBT and their Friends "Mozaīka".

Council of the Bar Association of Latvia

Cooperation with the Council of the Bar Association of Latvia started in 2011. The Ombudsman held a meeting with the Council of the Bar Association of Latvia on 29 August 2011. The parties reached agreement during the meeting on training arranged for Attorneys-at-Law providing state-funded legal assistance on the occasions specified in Clause 68 of the Law on Medicinal Treatment.

The Ombudsman's Office assessed at their own initiative protection of the rights of persons in respect of whom decisions on psychiatric treatment are made without their consent. A number of problems were identified during assessment, including problems related to the role of defense counsels in the proceedings concerning compulsory treatment.

Problems discussed during the meeting included those identified by the Ombudsman in relation to the role and actions of attorneys assigned by the State to defend persons referred

for compulsory treatment to psycho-neurological hospitals. The meeting resulted in agreement on arranging training seminars and lectures for attorneys and assistant attorneys on the topic of ensuring protection of human rights in the process of making such decisions.

Council of the Bar Association of Latvia also informed that only the attorneys who have attended the above-mentioned seminars and lectures would be assigned to such proceedings. A training seminar for Senior Attorneys-at-Law was conducted at the premises of Ombudsman's Office by staff of the Office with participation of expert in Psychiatrics.

Society of Disabled Persons and their Friends "Apeirons"

The Ombudsman's Office had already been successfully cooperated with the Society of Disabled Persons and their Friends "Apeirons", yet closer cooperation developed in 2011. The Ombudsman is supervising the implementation of the UN Convention for the Rights of Persons with Disabilities, and presentation of the implementation report is scheduled to 2012; the experience of "Apeirons" is therefore highly helpful in performing this voluminous task.

Society of Disabled Persons and their Friends "Apeirons" in cooperation with the Ombudsman's Office presented on 3 December 2011 the campaign "Alternative solutions in operation" intended to attract public attention. The campaign includes distribution of video-clips in mass media on the Internet. "Homo-man", the protagonist of video-clips, shall fearlessly experience different "Alternative solutions in operation". The campaign is aimed at attracting the attention of society and managers of different institutions to the issues of environment accessibility and involvement of society in elimination of different absurdities. Pharmacies have been chosen as the first subjects for monitoring environment accessibility.

3.1. Advisory Councils of the Ombudsman

The Ombudsman encouraged representatives of NGOs in 2011 to participate at the two advisory councils established by the Office: the Ombudsman's Advisory Council for Education Accessibility, and the Ombudsman's Advisory Council for Legal Regulation of Partner Relations.

The Ombudsman's Advisory Council for Education Accessibility

The Ombudsman established advisory council for assessment of education accessibility in 2011. The Council is an advisory institution assigned with the duty to identify the opinion of experts and to draft proposals on the issues related to education accessibility guaranteed by the State in Section 112 of Constitution of the Republic of Latvia. The advisory council for education accessibility is also entrusted with assessing the provision of equality, teaching aids and mandatory nature of basic education.

Education accessibility is viewed in the context with free basic and secondary education guaranteed by the State, i.e., what is understood by the term of free education, and how are distributed the costs born by the State or municipality and those to be covered by parents.

The first meeting of Advisory Council for Education Accessibility was held on 19 August 2011. Experts pointed out at the first meeting already that problems related to education accessibility were affecting first of all children from low income families, children in specialized education establishments, and children in regions. Experts pointed out to essential aspects influencing the accessibility of education including the provision of free lunch at school, provision of text books, and provision of school stationery in the form of a single procurement. The discussed topics also included the way to school or distance to be taken by a school child from home to school, since this aspect is frequently the key factor in selection of school to be attended.

The key tasks of the Council include assessment of education accessibility situation in our country, to identify the opinion of different social groups and opinion of experts on the problems related to the provision of education accessibility, and to make proposals to the Ombudsman for improvement of education accessibility.

Members of the Ombudsman's Advisory Council for Education Accessibility include Ineta Ielīte, Board Chairperson of the Latvian Children's Forum; Vaira Vucāne, Vice-President of the Latvian Children's Fund; Marija Golubeva, Researcher of Public Policy Center "Proviudus"; Gunta Kraģe, Board Member of the Establishment "Fonds VIENS OTRAM"; Andrejs Mūrnieks, Board Chairman of Latvian Council of Pedagogues; Jēkabs Juražs, Chairman of the Council of School Children; Rūta Dimanta, Board Chairperson of the establishment "Fonds „Ziedot""; Kārlis Boldiševics, Board Chairman of Latvian Association of Parents "Vecāki izglītībai, sadarbībai, izaugsmei" (VISI); Aivars Borovkovs, President of Latvian Association of Lawyers.

The work of Advisory Council for Education Accessibility shall be continued in 2012.

Advisory Council for Legal Regulation of Partner Relations

The Ombudsman established Advisory Council for Legal Regulation of Partner Relations in 2011 and invited members of the Council to the first meeting on 15 September. The Advisory Council was formed for identifying the opinion of experts and for assessing proposals concerning legal regulation of partner relations, as well as assessing the need for amendments to regulatory acts in order to prevent hate crimes against homosexual persons.

Pursuant to proposals made by several Council Members, the Ombudsman introduced amendments and supplements to the Rules of the Council to equate the status of Advisory Council to that of task force entrusted with issuing proposals and opinions for handling of certain issues.

The Ombudsman encouraged the Council to expand their approach to the topic so that the matters handled by them extend also to non-registered cohabitation (extra-marital union), thus respecting the interests of wider society. According to statistic data, the number of children in Latvia born in wedlock (non-registered partnerships) is near to 50% (data of CSB), so that eventually the actual number of extra-marital unions is still higher; therefore, this group of people should be also taken into consideration when addressing the matter of partner relations.

Members of the Advisory Council were asked to issue specific proposals or opinions on the following matters:

1. Proposals submitted by the Association of LGBT and their Friends "Mozaīka" (the PAL set) and their adjustment with the applicable legal norms;
2. Amendments and supplements to the Civil Law, Patient Rights' Law and other regulatory acts of the Republic of Latvia required to improve the existing situation;
3. Solutions of the matters related to real estate ownership, the right of inheritance and the duty of financial support.

Proposals concerning legal regulation of partner relations have been made by Ints Ķuzis, Chief of the State Police; Osvalds Joksts, Professor of the Law Faculty of Riga Stradins University; Linda Damane, Lecturer of the Law Faculty of the University of Latvia; Iluta Lāce, Chairperson of the Society Resource Center for Women "Marta"; Jānis Rožkalns,

Board Chairman of the Latvian Brotherhood of Orders; and Linda Freimane, Board Chairperson, and Evita Goša, Board Member of the Association of LGBT and their Friends "Mozaīka"".

Majority of experts – members of the Ombudsman's Advisory Council for Legal Regulation of Partner Relations – pointed out that there was no need for special regulation on cohabitation of homosexual partners. Instead, the experts pointed out to the need for establishing proper regulation of partner relations in the context of child care, financial and health care matters.

The experts also proposed amendments to a number of laws, such as Criminal Procedure Law, Patient Rights' Law, Labor Law, Civil Procedure Law, and other laws, while the Constitution should remain unchanged.

The Ombudsman organized public discussion on 29 November at the EU House for collecting public opinion concerning the proposals aimed to improve legal regulation of partner relations; participants invited to discussion included experts in the area of law and culture, as well as members of society.

The work of the Ombudsman's Advisory Council for Legal Regulation of Partner Relation was concluded by the Ombudsman's opinion that the draft law on registered partner relations and the auxiliary draft projects proposed by Association of LGBT and their Friends "Mozaīka" should not be forwarded. It was proposed instead to amend a number of legal acts so that legal protection of the persons who cohabitate without registration of marriage, including cohabitating homosexual partners, is equated to that available to married couples.

The Ombudsman forwarded his opinion on 26 January 2012 to the Saeima Commission for Human Rights and Public Affairs and to the Saeima Commission for Legal Affairs concerning the legal regulation of partner relations and applied to the Saeima for amending a number of legal norms related to the protection of patients' rights, preventing conflict of interests, procedural legal norms, social rights of persons and their right to information.

3.2. Cooperation with NGO associations

The Ombudsman has developed close cooperation with a number of NGO associations in 2011 to attract the attention of policy-makers, general public and mass media to actual matters of human rights.

Memorandum of Cooperation between the Romani Union and the Ombudsman on Preventing Discrimination of Roma People

Memorandum of Cooperation was signed on 30 August 2011 by Normunds Rudevičs, the High Commissioner of the International Romani Union, and by the Ombudsman. Ceremonial signing of the Memorandum of Cooperation took place at the Ombudsman's Office.

Representatives of Roma NGOs participated at the ceremonial event including: Anatolijs Berezovskis, Chairperson of Latvian Romani Association "Nēvo Drom", Haralds Didžus, Chairperson of Jelgava Society for Roma Culture "Romani čačipen"; Osvalds Jezdovskis, representative of Society "Latvijas Čigānu biedru apvienība un austākā čigānu padome"; Tahīrs Sīmanis, representative of Vidzeme Romani Community, and others.

Representatives of societies informed about actual problems experienced by Roma community in Latvia and the possible solutions, and they noted that Ombudsman would support solution of the identified problems.

Roma people, one of the largest minorities in the EU, are subject to the highest degree of discrimination: they have to face prejudices, intolerance, discrimination, and social exclusion in their everyday life.

European Union has set four priority areas important for integration of Roma people: education accessibility, employment, health care, and housing.

According to the OCMA data as of July of this year, there are 8518 Roma people residing in Latvia.

European Commission has formulated their position in the Framework Program for National Roma Integration Strategies up to 2020: “The Member States shall ensure non-discrimination against and equal treatment of Roma people as any other citizens of the EU with equal access to all fundamental rights, as stipulated in the EU Charter of Fundamental Rights.”

The Ombudsman has had several meetings with Roma communities in various regions of Latvia. Lack of awareness of their own rights and discriminating treatment on labor market is the problem most commonly experienced by Roma people.

The Ombudsman shall continue addressing the Roma issues and minimizing of discrimination of Roma people in 2012.

Alliance for Alternative Child Care

Alliance for Alternative Child Care was formed on 7 September 2011 by several child rights’ protection and support organizations. The Ombudsman Juris Jansons was among those who favored formation of the Alliance.

More than 8 000 parents in Latvia have entrusted relatives or society with care for their children for different reasons. The families taking care of such children get insufficient psychological as well as financial support. Nearly 2 000 children in Latvia are placed into institutions where no family-based care can be ensured, and the children’s emotional development is thereby adversely affected. Children who have on many occasions experienced violence, physical and emotional abuse in their biological families need especial care and concern. The problem is acute in particular with children under 3 years who are placed into orphanages right upon birth or during the first year of their lives. The existing system prevents placement of children into family-based care, and therefore several non-governmental organizations with practical work experience in alternative care of children and protection of their rights have formed the Alliance for Alternative Child Care.

The Alliance has combined the capacity and practical experience of its members to ensure more potent and qualitative cooperation with governmental and municipal institutions responsible for protection of the rights of children. The vision of members of the Alliance is safe, supporting care in family settings ensured to each orphan and child left without parental care, according to their needs. Different experience of the members of Alliance enables specific identification of the weaknesses in decision-making on the fates of children and families, and making recommendations on how to improve support system to biological as

well as foster families. Before, proposals and visions had been separately presented by each involved organization, and they have not always been taken into consideration.

Founders of the Alliance for Alternative Child Care include the Society "Azote", Society "Latvijas SOS – bērnu ciematu asociācija", establishment "Fonds Grašu bērnu ciemats", establishment "Sociālo pakalpojumu aģentūra" and its structural units "Audžuģimeņu centrs" and Association of Professional Foster Families "Terēze"; Society "Zvannieku mājas", Latvian Society of Foster Families; Society "Asociācija „Dzīvesprieks""; and society "Fonds Žubīte". The Ombudsman has been among those favoring the concept of such alliance because protection of the rights of children is among the Ombudsman's priorities. Formation of the Alliance has also been favored by representatives Charity Section of the International Women's Club of Riga – Mariette Kraak and Elisabeth Heatherington. The Law Offices "Tark Grunte Sutkiene" has supported formation of the Alliance by *pro bono* legal services.

Discussion "The needs of children and their right to appropriate alternative care in family settings" was organized by the Ombudsman's Office in cooperation with the Alliance for Alternative Child Care.

4. Conference of the Ombudsman

The Ombudsman Juris Jansons and his colleagues organized annual conference of the Ombudsman from 7 to 9 December to celebrate the International Day of Human Rights and the anniversary of the Universal Declaration of Human Rights.

The following topics were discussed at the conference in 2011:
1) The right to free education;
2) Provision of technical aids for persons with disabilities;
3) Modification of the institute of legal capacity in 2012;
4) Investigation system at prison facilities;
5) Intolerance on social portals and Internet discussions;
6) Identity of minority nations as a part of Latvian nation.

Participants of panel discussions held during the conference included representatives of governmental and municipal authorities, non-governmental organizations, and mass media. Presentations and reports of the conference are available on the website of Ombudsman's Office.

Summary of the opinions expressed at the conference lead to the following conclusions:
1. The right to free education.
    1. Cooperation (understanding of competence) of the Ministry of Education and municipalities should be improved: they both have a common goal.
    2. Different situation in municipalities: provision of the rights is subject to understanding of the meaning of education by management of the respective municipality.
    3. The term *teaching aids* extends beyond textbooks; funding has to be raised appropriately.
    4. Quality control of the contents of textbooks has to be improved on centralized basis.
    5. Persisting problem: limited accessibility of education establishments to children with special needs.
    6. Support to children should be viewed in the context of family support.
2. Provision of technical aids for persons with disabilities.
    1. Demand of all persons for technical aids can not be supplied within the scope of the presently allocated funding.

2. Problems concerning procurement of technical aids are directly related to their quality.
3. Liability of users for use of technical aids has to be increased.
4. Control over the attending family physicians has to be increased because technical aids are occasionally indicated with no reasonable grounds.
5. Not all aids are subject to prescription by doctors; some aids could be made available to individuals, for example, when they reach certain age.
6. The problems related to availability of technical aids are aggravated in case of persons in remote regions.

3. Modification of the institute of legal capacity in 2012

1. Institute of partial incapacity – restricted legal capacity in case of persons with mental impairments.
2. Such modification entails also changes in: legal proceedings, the contents of court ruling, appointment and supervision of guardian, and reviewing of imposed legal capacity restrictions.
3. Amendments to other regulatory acts should also be considered and introduced.
4. Training of the entities entrusted with application of the law is required.
5. Society in general should be educated (change of attitude).
6. Introduction of measures alternative to restriction of legal capacity.

4. Investigation system at prison facilities.

- A number of systemic improvements to prison system are required along with re-distribution of competence for strengthening of the investigation system:
    1. Assessment of human resource policy at prison facilities (training, remuneration),
    2. Improvement of infrastructure: accommodation of large number of prisoners in large residential units should be prevented because it poses excessive risk of violence,
    3. System of prisoners' hierarchy should be eliminated,
    4. Thoughtful day-to-day activities should be made available to prisoners,
    5. Prosecutors' Office has to involve more actively in protection of the rights of prisoners.

5. Intolerance on social portals and Internet discussions.

1. Pecuniary penalty and community service should also be used in regulation of the use of Internet, apart from deprival of liberty.
2. People lack debating and discussion management skills; these should be developed during school years already.
3. Registration on portals may be among solutions to improvement of discussion quality (portals argue that registration would decrease the number of viewers of their pages).
4. Response to awkward or aggressive expressions made by policy-makers and officials on the Internet.
5. Commenting is *transferred* from portals to social networks.
6. Habituating society to responsibility should start from small steps (the button "read and accept the rules").
7. "Internet is a real-life example to what the world would look like if there were no rules."

The conference was concluded with the following considerations: first, secondary education may not be treated as free; second, Parliament trend to ignore the award of constitutional Court; third, provision of human rights in Latvia is subordinated to the budget.

5. International Cooperation

Notwithstanding the notable reduce of financial resources made available to support the functions of the Ombudsman's Office, international cooperation developed in the previous years continued in 2011. Since the compliance with international instruments of human rights is also monitored by international institutions, the Ombudsman cooperates with them by providing different information. Regular cooperation with the institutions of Council of Europe and European Union is also taking place.

The Ombudsman is the national contact of the European Security and Cooperation Organization on the international level in the matters concerning hate crimes, as well as the national Equality Body in the matters concerning combating of discrimination in the European Union. The Ombudsman's Office is a proactive participant of the European Union Agency for Human Rights (FRA) and the European Network of Equality Bodies (EQUINET).

Close cooperation with the Ombudsman of Europe and European Ombudsmen Cooperation Network is also taking place through participation at seminars and meetings for exchange of experience and good practice, and publishing information in newsletters and network discussion forums.

Given the limited financial resources, the Ombudsman and the staff of Ombudsman's Office participated in 2011 only at the events organized abroad if the organizers could bear the participation, accommodation and even travel costs, such practice should not be supported on long-time basis because it prevents the Ombudsman's Office from gaining international experience and improvement of operation of the Office which is crucial in the protection of human rights.

According to the Ombudsman's Strategies for the years 2011 – 2013, the Ombudsman's Office intends to start accreditation with the National Human Rights Institutions International Coordinating Committee (ICC) during that period and to renew the status of member with the European Network of Ombudspersons for Children (ENOC). The Ombudsman Strategies updated in 2011 also include renewal of the status of member of the International Ombudsmen Institution (IOI).

The Ombudsman's Office initiated formal correspondence in 2011 on renewal of the status of member with ENOC and with IOI. Re-admission of the Ombudsman's Office by the above-named organizations may be expected in 2012.

Important conceptual agreement was reached in 2011 with the Saeima Controllers of Lithuania (the Lithuanian Ombudsman institution) on the improvement of bilateral cooperation, including joint monitoring visits to closed-type facilities in Latvia and Lithuania with the view to gain mutual experience.

Preparatory works to the annual Ombudsmen Conference of the Baltic States were started in the end of 2011; according to the agreed rotation procedure, the conference would be held in Latvia in 2012. The Ombudsman conceptually discussed with his colleagues during the meeting of European Network of Ombudsmen the idea of improving regional cooperation by developing the annual Ombudsmen Conference into annual Ombudsmen Forum of Nordic and Baltic states to enable experience of exchange and information with the well-established and experienced Ombudsmen institutions in this region.

Assessment of international cooperation pursued by the Ombudsman's Office in 2007 – 2011, it is obvious that additional financial resources are required for improving international

experience and continued development of cooperation. According to Constitution of the Republic of Latvia and international treaties binding upon Latvia, the Ombudsman's Office has to attend annual meetings and seminars of Ombudsmen in countries worldwide in order to gain operational experience of other Ombudsmen and to discuss strategic matters. Officials of Ombudsman's Office have to participate at 11 – 12 international events per year to ensure efficient participation of Latvia in the handling of human right issues.

6. Statistics of the Ombudsman's Office in the Year 2011

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Received applications from persons													
Civil and political rights	19	25	33	32	45	46	17	38	25	36	22	37	375
Social and economical rights	39	53	69	66	59	56	42	31	56	39	58	47	615
Criminal Law	40	60	68	58	82	73	109	109	74	56	101	63	893
The rights of children	3	3	6	6	10	7	8	12	8	10	8	10	91
Prevention of discrimination	6	3	8	7	6	3	6	8	5	15	1	4	72
Good governance	13	25	10	2	7	10	7	19	11	16	23	17	160
Other employees	0	3	2	3	1	2	3	1	2	6	10	7	40
Total	**120**	**172**	**196**	**174**	**210**	**197**	**192**	**218**	**181**	**178**	**223**	**185**	**2246**
Instituted inspection proceedings													
Civil and political rights	3	6	1	5	6	5	0	3	2	4	2	2	39
Social and economical rights	0	4	15	9	14	15	7	4	13	8	9	10	108
Criminal Law	3	4	3	1	11	12	1	2	3	9	3	3	55
The rights of children	1	1	2	8	5	3	5	7	3	4	2	5	46
Prevention of discrimination	6	1	1	6	4	2	1	5	2	6	5	4	43
Good governance	1	3	3	4	3	4	0	1	4	3	1	10	37
Total	**14**	**19**	**25**	**33**	**43**	**41**	**14**	**22**	**27**	**34**	**22**	**34**	**328**
Declined institution of inspection proceedings													
Civil and political rights	13	10	17	13	14	19	5	11	5	6	7	11	131
Social and economical rights	11	33	31	19	19	20	12	12	10	14	18	19	218
Criminal Law	17	12	26	19	20	15	7	10	10	4	5	11	156
The rights of children	0	2	1	3	2	4	1	2	3	4	3	6	31
Prevention of discrimination	1	1	2	1	3	1	3	2	1	0	3	0	18
Good governance	3	6	29	0	1	6	0	0	11	4	4	11	75
Total	**45**	**64**	**106**	**55**	**59**	**65**	**28**	**37**	**40**	**32**	**40**	**58**	**629**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Kopā
Finalized / dismissed inspection proceedings													
Civil and political rights	3	7	27	4	7	4	5	4	2	0	3	8	74
Social and economical rights	14	10	14	8	8	15	3	3	11	10	8	8	112
Criminal Law	4	12	15	4	7	2	5	5	7	5	5	5	76
The rights of children	1	1	4	5	3	10	2	4	2	2	6	2	42
Prevention of discrimination	3	3	1	3	4	4	3	3	1	0	3	6	34
Good governance	0	2	6	0	1	0	0	3	1	2	1	1	17
Total	**25**	**35**	**67**	**24**	**30**	**35**	**18**	**22**	**24**	**19**	**26**	**30**	**355**

7. Opinions Issued by the Ombudsman's Office to Constitutional Court in 2011

1.	31.01.2011. No 1-5/24	Issued opinion in proceedings No 2010-67-01 Concerning the Compliance of Section 51, Part Thirteen, Paragraph 1 of Penal Enforcement Code of Latvia with Section 107 of Constitution of the Republic of Latvia.	G. Bērziņa
2.	10.02.2011. No 1-5/30	Issued opinion in proceedings No 2010-64-01 Concerning the Compliance of Section 16, Part One of the Law on Identity Documents with the First and Second Sentence of Section 98 of the Constitution.	S. Tivaņenkova
3.	10.03.2011. No 1-5/51	Issued opinion in proceedings No 2010-69-01 Concerning the Compliance of Paragraphs 6 and 7 of Transitional Provisions of the law on Protection of Employees in Case of Insolvency of Employer with Sections 1 and 91 of Constitution of the Republic of Latvia.	A. Putniņa
4.	28.03.2011. 1-5/66	Issued opinion on Compliance of Section 6, Part One of the Law on Saeima Elections, insofar applicable to a judge listed as a candidate deputy, with Section 1 of Constitution of the Republic of Latvia.	S. Saulīte
5.	07.04.2011. 1-5/69	Issued opinion on the matters considered relevant by the Ombudsman to proceedings No 2011-01-01 Concerning the Compliance of Section 1068, Part One of Civil Law with Section 105 of Constitution of the Republic of Latvia.	G. Kukle
6.	14.04.2011. No 1-5/75	Issued motivated opinion in Constitutional Court proceedings No 2010–72–01 Concerning the Compliance of the First Sentence of Section 78, Part Three of Civil Procedure Law with the First Sentence of Section 92 and Section 96 of the Constitution.	S. Tivaņenkova
7.	16.06.2011. No 1-5/127	Issued opinion on the matters considered relevant by the Ombudsman to proceedings No 2011-05-01 Concerning the Compliance of Section 39, Part One, Paragraph 6 of Public Procurement Law with Sections 91 and 105 of Constitution of the Republic of Latvia.	G. Kukle, Š. Bērziņa
8.	05.07.2011. No 1-8/12	Issued opinion on the matters considered relevant by the Ombudsman to proceedings No 2011-03-01 Concerning the Compliance of Section 5, Part Four, and Section 21, Part $2.^1$ of the Law on State Social Insurance with Sections 1 and 109 of Constitution of the Republic of Latvia.	L. Zariņa
9.	29.07.2011. No 1-5/162	Issued opinion concerning the compliance of the second sentence of Section 22, Part One of the Law on Land Reform in Rural Areas of Latvia with Section 91 of the Constitution.	G. Kukle
10.	24.08.2011. No 1-5/182	Issued opinion concerning the compliance of Section 9, Part 9 of Road Traffic Law with Sections 91 and 105 of Constitution of the Republic of Latvia.	G. Kukle
11.	02.11.2011. No 1-5/263	Issued opinion concerning the compliance of Section 9, Part One, Paragraph 19, sub-paragraph "c" (in the wording of 22 November 2001) with the right to equal treatment guaranteed by Section 91 of the Constitution.	N. Vecgaile

12.	16.11.2011. 1-5/281	Issued opinion concerning the compliance of sub-paragraph 3.^{1}5 and paragraph 11 of the Cabinet Regulations No 120 of 13 March 2001 and Paragraph 11 of the Cabinet Regulations No 972 of 25 August 2009 with Sections 91 and 106 of the Constitution.	Z. Krauze
13.	05.12.2011. 1-5/300	Issued opinion concerning the compliance of Section 62, Part One of the Insolvency Law and the norms contained in Section 363.^{2} Part Two of civil Procedure Law with Section 92 of the Constitution.	I. Liepiņa
14.	07.12.2011. 1-5/303	Issued opinion concerning the matters eventually relevant to the proceedings Concerning the Compliance of Paragraphs 2 and 4 of the Cabinet Regulations No 321 of 10 May 2005 Concerning the Amount of Fee Charged on Blank Data Media and Reproduction Devices, and the Procedure for Collecting, Repayment, Distribution, and Payment thereof with Sections 64, 105, and 113 of the Constitution of Latvia".	G. Kukle
15.	22.12.2011. 1-5/319	Issued opinion concerning the compliance of Section 16.^{2}, Part Four and Section 19, Part Five of the Law on Budget and Finance Management with Sections 1, 83, and 87 of the Constitution, and concerning the matters eventually relevant to the above-mentioned proceedings.	I. Dambe, I. Rezevska

Annexes

Annex 1
Opinion in proceedings No 2010-64-01 Concerning the Compliance of Section 16, Part One of the Law on Identity Documents with the First and Second Sentence of Section 98 of the Constitution

OMBUDSMAN OF THE REPUBLIC OF LATVIA

Baznīcas iela 25, Riga, LV- 1010, tel. 67686768, fax 7244074, e-mail tiesibsargs@tiesibsargs.lv

Riga

02 February 2011 Ref. No 1-5/30
To 14.01.2011 Ref. No 1-04/29-pav

Attn. Kaspars Balodis,
Judge of constitutional Court
Jura Alunāna iela 1
Riga, LV-1010

Re: Opinion in proceedings No 2010-64-01

According to your ruling received at the Ombudsman's Office on 17 January 2011, the Ombudsman was joined to proceedings No 2010-64-01 in the capacity of concurrent and asked to issue in writing his motivated opinion concerning the compliance of Section 16, Part One of the Law on Identity Documents with the first and second sentence of Section 98 of the Constitution, namely, to assess whether or not the disputed norm infringed the right of person to leave freely from and return to Latvia. The Ombudsman was also asked by the above-mentioned letter to express opinion concerning whether or not the applicable normative regulation ensures adequate procedure and period for informing addressee of the Cabinet Regulation concerning the change of legal status.

[1] Legal review of the constitutional complaint filed with the Constitutional Court concerning the compliance of Section 16, Part One of the Law on Identity Documents with the first and second sentence of Section 98 of the Constitution should include reference to the normative regulation listing the types of identity

documents, as well as to procedures for determining validity period of such documents and for free movement of persons, in particular crossing of the external border of European Union, in case of the change of status.

[1.1.] Section 98 of the Constitution stipulates: Everyone has the right to freely depart from Latvia. Everyone having a Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia. A citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the Saeima if by the extradition the basic human rights specified in the Constitution are not violated."

[1.2.] Article 7 of the Regulation (Ec) No 562/2006 of the European Parliament and of the Council of 15 March 2006 Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders (Schengen Borders Code) stipulates that cross-border movement at external borders shall be subject to checks by border guards. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the *validity of the document authorizing the legitimate holder to cross the border* and of the presence of signs of falsification or counterfeiting. The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the Community right of free movement.

[1.3.] According to Section 22 of the:
"(1) *Persons crossing the external border* in order to enter or exit the Republic of Latvia, as well as property and goods being moved across the external border by land, by aircraft or vessels in order to bring them into or bring them out of the Republic of Latvia, shall be subject to checks at the border crossing points. The purpose of these checks shall be to confirm the fact of the crossing of the external border and that the persons remain in the Republic of Latvia, and that property and goods are being brought into or brought out of the Republic of Latvia legally.
[...]
(3) The competent authorities shall perform the necessary checks at a border crossing point in order to establish whether persons are fulfilling the provisions of this law and other regulatory enactments regarding the crossing of the external border, as well as the movement of property, goods and vessels across the external border.
[...]
(5) *During a check officials of the competent authorities shall be allowed to restrict* and, if necessary, also *prohibit* persons from leaving or *entering a*

vehicle, aircraft or vessel, as well as to request that persons leave a vehicle, aircraft or vessel."

[1.4.] An identity document valid for crossing the state border shall be a document issued by the competent governmental authority authorized by the Law *to certify not only the identity but also the status of holder thereof.*

According to Section 10, Part Two of the Identity Documents Law[130] (hereinafter - IDL), holders of passport or identity document of citizen or non-citizen shall be entitled to use the identity document/passport as travel document. Section 11 of the IDL prescribes that each citizen and non-citizen who has no valid identity document/passport at their disposal shall apply for identity document/passport.

Since the IDL is the sole regulatory act prescribing the use and validity of identity documents of temporary personal documents Latvian nationals, reviewing of legal aspects of the proceedings pending with the Constitutional Court concerning the right of persons to free movement in case of change of their status should include reference to Sections 13 and 16 of the IDL regulating the validity period and procedure for returning identity documents.

When interpreting systemically Section 16 of the IDL which stipulates that identity document or temporary document shall be rendered invalid if the person's legal status changes, and Section 13, Part Two of the IDL which stipulates that, where legal status of a person changes, holder of the identity document or passport may return the same to the issuing authority or, if situated abroad – to diplomatic or consular mission of the Republic of Latvia within one month from change of the status, reference should be also made to Cabinet Regulations No 878 Concerning the Register of Invalid Documents (hereinafter – the Regulations) issued pursuant to Article 16, Part Two, Paragraph 9 of the IDL. The said paragraph prescribes that a document shall have "invalid" status if notice of event is made by the holder, or the institution or entity entrusted with custody thereof, or competent authority of foreign country, if the document is lost or cancelled, or changes of the original contents thereof have been established; or the document has not been returned in case of death or change of legal status of the holder (provided that regulatory acts governing the issuing of such documents require returning thereof), and on other occasions specified in Paragraph 9 of the Regulations.

Article 13 of the Regulations expressly stipulates that data of events involving documents of the Republic of Latvia, including change of passport and status of a person, shall be entered by the Office for Citizenship and Migration Affairs

[130] The Law on Identity Documents adopted on 23 May 2002 governs the procedure for use, return and seizure of documents and alternative documents certifying the identity and legal status of persons.

(hereinafter – OCMA) promptly upon registration of such event or receipt of the relevant information. Article 8 of the Regulations expressly stipulates that OCMA has the duty to cause registration of event upon lapse of the period prescribed in Section 13 of the IDL. Therefore, an identity document – passport of a person – is invalidated as a traveling document when on month has lapsed from the date of decision on change of status of the person. It does not prevent the person from returning the passport before expiration of the period of one month, and such passport shall be earlier recorded in the Register of Invalid documents.

Another important reference to be made in relation to the proceedings instituted with the Constitutional Court is that, even if Section 16 of the IDL was imperatively interpreted and the normative regulation provided for no transitional period for change of identity document or passport, and therefore validity period of identity document would directly depend on the point of time when decision is made on change of the person's status, the regulation should enable the person to have immediate access to a new document verifying his/her identity and status, which is impracticable. Therefore, application of transitional period in case of change of identity document and longer validity period is a logic solution in the given situation. Taken into consideration the above-stated, it is hereby held that Section 16, Part One, Paragraph 4 of the IDL in the current wording, restricts free movement of persons, unless it is expressly determined that an identity document or temporary document is invalid if the person's legal status has changed and the period prescribed for returning of such document to the competent authority has lapsed.

[2] In addition, I would like to point out to the following in reply to the question asked by the Constitutional Court whether or not the applicable normative regulation enables adequate procedure and period for informing addressee of the Cabinet Regulation concerning the change of legal status.

[2.1.] When assessing the procedure for notification of a person of the change of their status and determining whether or not the period is commensurable so that the right of person to free movement is not restricted, one should take into consideration Section 17 of the Citizenship law which regulates the procedure for the receipt and review of applications for naturalization.

The said Section stipulates that:
"1) Applications for naturalization shall be received by and reviewed by the Naturalization Board.
(2) The procedure and the terms for receipt and review of applications for naturalization shall be determined by the regulations issued by the Cabinet of Ministers. Applications shall be reviewed and the applicant shall be provided with a response no later than one year after the submission date of all documents

required by the Cabinet of Ministers regulations. Decision on naturalization shall be made by the Cabinet of Ministers.
(3) A Ministry of the Interior decision denying naturalization may be appealed to the courts."

[2.2.] According to Paragraphs 33 and 34 of the Cabinet Regulations No 34 Concerning the Procedure for Receipt and Reviewing applications, the Naturalization Board shall:
- Draft a Cabinet Decree on naturalization of a person, based on the documents of the naturalization dossier; and
- Notify the person of the decision made by the Cabinet.

[2.3.] The naturalization procedure and deadlines for making decision prescribed in the Cabinet Regulations No 34 are non-specific, so that involved persons may not be certain they take the appropriate actions in due time to prevent restriction of their free movement. Since the above-mentioned regulation is inadequate, it is my opinion that the same should be amended to specify the procedure and deadlines for notification of the decision so that the term prescribed by law for change of identity document can be duly complied with.

Respectfully submitted by
R.Apsītis,
The Ombudsman

67686780
Tivaņenkova

Annex 2
Opinion in Constitutional Court proceedings No 2010–72–01 Concerning the Compliance of the First Sentence of Section 78, Part Three of Civil Procedure Law with the First Sentence of Section 92 and Section 96 of the Constitution

OMBUDSMAN OF THE REPUBLIC OF LATVIA

Baznīcas iela 25, Riga, LV 1010, tel. 67686768, fax 7244074, e-mail tiesibsargs@tiesibsargs.lv

Riga

14 April 2011 Ref. No 1-5/75
To 22.03.2011 Ref. No 1-04/32-pav

Attn. K. Balodis, Esq.,
Judge of Constitutional Court
J.Alunāna iela 1,
Riga, LV-1010

Re: Opinion in proceedings No 2010–72–01

Your ruling has been received at the Ombudsman's Office (registered on 24.03.2011 with incoming No 90) by which the Ombudsman was joined to proceedings No 2010-72-01 in the capacity of concurrent and asked to issue in writing by 14 April 2011 his motivated opinion in proceedings No 2010-72-01 concerning the compliance of the first sentence of Section 78, Part Three of Civil Procedure Law with the first sentence of Section 92 and Section 96 of the Constitution, and the Ombudsman was also asked to answer the following questions:

1. Whether or not the first sentence of Section 78, Part Three of Civil Procedure Law complies with the first sentence of Section 92 of the Constitution;
2. Whether or not the first sentence of Section 78, Part Three of Civil Procedure Law complies with Section 96 of the Constitution;
3. Whether or not you share the view that joining third parties to civil proceedings concerning the dissolution of marriage and distribution of joint marital property would cause unreasonable delay in hearing of the matter;
4. Whether or not the rights of third party would be infringed if third parties were not permitted to join the proceedings concerning the dissolution of marriage and distribution of joint marital property?

[1] To assess the issue brought in Constitutional Court proceedings No 2010-72-01 and to answer the first and the second question, it is important to note that international treaties binding upon the Republic of Latvia, in particular Article 10 of the UN Universal Declaration of Human Rights, Article 14, Part One of the International Covenant on Civil and Political Rights, Article 6, Part One of the European Convention for the Protection of Human Rights and Fundamental Freedoms, obligate the State to ensure to each and every individual the access to fair, open, impartial and objective court as prescribed by law, and timely hearing of the cases with due respect, among other things, to the right of persons to hearing of matters at a closed court meeting in order to ensure protection of privacy of the parties to proceedings. The minimum procedural rights required to guarantee fair judgment in proceedings should be ensured in order to observe the right to fair court. When defending the case in person or with the help of defense counsel, a party to proceedings may ask to have third parties or witnesses joined to proceedings as well as any parties if their opinion may be relevant to, or their rights may be affected by judgment in the case.

Section 78 of Civil Procedure Law on Participation of Third Persons in the Civil Procedure stipulates that:
“(1) Natural or legal persons whose rights or duties in relation to one of the parties may be affected by the judgment in a matter may be third persons in the civil procedure.
(2) Provisions regarding procedural legal capacity and capacity to act applicable to parties apply to third persons; third persons have the procedural rights and duties of parties with exceptions as laid down in Section 80 of this Law.
(3) Third persons may enter into a matter before the adjudicating of the matter on the merits has been completed in a court of first instance. They may also be invited to participate in the matter pursuant to the petition of a public prosecutor or the parties.”

According to Section 79, Part Two, and Section 80, Part Two of the Civil Procedure Law, respectively, "Third persons with independent claims have the rights and duties of plaintiffs", while "third persons presenting independent claims have the procedural rights and duties of parties, except the rights to vary the basis or the subject-matter of an action, to increase or decrease the amount of a claim, to withdraw from an action, to admit a claim or enter into a settlement, or to demand the execution of a court judgment."

Sections 78 – 80 of civil Procedure Law distinguish between two ways for obtaining the status of third party: a party may be joined to or join proceedings with or without independent claims. Joining of a party upon request of the party or the prosecutor is the passive way for involving a party in settlement of a dispute of civil legal nature. Joining of a third party may be actually based on intention of the joining litigant to protect themselves from recourse. Joining may also be based on the intention to avoid further litigation if the claim is granted in favor of the party and it has to initiate new proceedings because the judgment is not binding upon third party if such party has not been joined to the original proceedings. Joining of a third party is also possible if a conflict of interest is possible between the party requesting it and the party to be joined, i.e., to avoid contesting of the judgment , namely, by filing a claim concerning the judgment on later stage. Joining of a third party to proceedings renders the judgment binding upon the joined party, because the applicant of recourse claim may not question the validity of principal claim filed by the claimant against the regredient; the fact of joining, however, does not prove validity of the recourse claim.

If the interests of third party in any proceedings are wider and different, compared to the proceedings to which he or she is joined as supporting party on the side of either the claimant or the respondent (the so-called supporting third party or *intervenient*), such party may file an independent claim against one or both parties (the principal intervention or *interventio principalis*). In case of principal intervention, a claim may be filed if it is considered independent on the rights of both parties, and it may not be filed if based on the rights derived from those of any party to litigations, such as the right of assignee, for example.[131]

Parties may not be replaced throughout the adjudication process, and they may not be replaced either in appellate or cassation proceedings, in order to ensure impartiality and justice throughout the adjudication. The parties have certain scope of obligations and rights, and therefore joining of a third party prior to completion of hearing on the point of facts before the first instance court presents no infringement of the right to fair court.

[131] Civil Procedure Law with Explanations (compiled by F.Konradi, T.Zvejnieks), Riga, 1939, Edittion of the State Printing House, p.p. 66, 219.-223.

One can drive at just the opposite conclusion, however, if analyzing compliance of the contested norm with Sections 92 and 96 of the Constitution, taking into consideration the intention of legislator when deciding on the category of cases subject to hearing at a closed court meeting.

The right to protection of privacy guaranteed by Article 12 of the UN Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms means the right that requires from the State provision of legal regulation that ensures protection against intervention in or threat to privacy.

The right to protection of privacy means the right that guarantees privacy without intervention and enabling persons to live their own life without public disclosure of details of a person's private life[132]. In case of adjudication, the said obligation of the State means provision of regulation that ensures hearing of a case at closed court meeting in order to prevent the litigants from disclosure of personal and sensitive data to general public.

Section 11 of civil Procedure Law defines the categories of matters that may be adjudicated at closed court meeting, i.e., determination of the parentage of children; approval and setting aside of adoption; annulment or dissolution of marriage; and declaring a person to be lacking capacity to act because of mental illness or mental deficiency. Further, Section 11, Part Three of Civil Procedure Law stipulates that, pursuant to a reasoned request by a participant in the matter or at the discretion of the court the court sitting or part thereof may be declared as closed. The above regulation is cautious in respect of any litigant who would prefer adjudication of his/her case or at least some part thereof at a closed court meeting for privacy or other reasons permitted by law to protect his/her interests or the interests of society.

Section 11 of Civil Procedure Law, assessed in the interconnection with the rights of third parties provided for in Chapter 11 of Civil Procedure Law, leads to conclusion that in case of marriage dissolution proceedings that are frequently merged with proceedings concerning the claims for determination/annulling of parentage, recovery of subsistence, and determining of access rights, the litigants are not protected from disclosure of their private information to third parties, since third parties are entitled not only to familiarize with all evidence in the case and to participate at adjudication, but they also have access to full judgment. Therefore, if a third party is joined to proceedings in accordance with Section 78, Part Three of Civil Procedure Law, the court has to assess the possibility of infringement upon the right to privacy and to pass appropriate

[132] Award made by ECHR in *Van Ostervijk v Belgium,* Comm. Report 1.3.79, 51 para., Series B, No 36, Paragraph 26.

decision to minimize such risk. It should also be pointed out here that joining of a third party may not be permitted if one or both spouses object to such joining, since it may lead to situation where the court is unable to obtain truthful explanations from the litigants who would seek to avoid disclosure of facts related to their private life in the presence of third parties, and therefore the legitimate purpose stipulated in Sections 8 and 11 of Civil Procedure Law – to to clarify the circumstances of the case and to protect privacy and sensitive data of persons – would not be achieved.

Taking into consideration the above-stated, it is my opinion that, insofar the first sentence of Section 78, Part Three of Civil Procedure Law permits joining third parties to proceedings heard at closed court meetings without taking into consideration the opinion of parties on the need for such joining and without giving the opportunity to the parties to appeal according to Section 81 of Civil Procedure Law against the court ruling on joining of a third party, the contested legal norm does not comply either with the first sentence of Section 92 or with Section 96 of the Constitution.

[2] Analysis of the data recorded in Court Information System concerning the civil proceedings heard by the courts of Latvia concerning the dissolution of marriage and distribution of joint marital property, where banks had been joined to proceedings as third parties, was conducted to answer the question whether or not I share the opinion that permitting third parties to be joined in civil proceedings concerning dissolution of marriage and distribution of joint marital property leads to unreasonable delay of adjudication. The cases selected by search in the system included 10 cases proceeding of which throughout all court instances had lasted 3 – 5 years in average. Further review of the identified cases did not lead to conclusion that third parties could be blamed for the lengthy proceedings, because credit institutions in general had been joined to proceedings as third parties, rather than joined their third party claims to existing proceedings;

[3] In reply to the question whether or not the rights of third parties would be infringed if third parties are not permitted to join proceedings concerning dissolution of marriage and distribution of joint marital property, I would like to point out to the following. Even if one of spouses has received loan from credit institution for acquisition of joint housing for family without recording the same as separate property of the spouse in the Land Register, and without entering into marriage agreement with the spouse at a later stage to agree on distribution of property between the spouses, no infringement of the interests of credit institution as the lender would be established, because the obligation assumed and the mortgage established is neither canceled nor altered by distribution of spousal property and classifying part of it as joint marital property; such a

situation would rather involve infringement of interests of the borrower which should be settled in course of adjudication.

Respectfully submitted by
Juris Jansons,
The Ombudsman

Tivaņenkova 67686768

OMBUDSMAN OF THE REPUBLIC OF LATVIA

Baznīcas iela 25, Riga, LV 1010, tel. 67686768, fax 7244074, e-mail tiesibsargs@tiesibsargs.lv

Riga

11 April 2011 Reg. No 6-8/253

To the Ministry of Justice
Brīvības bulvāris 36
Riga, LV – 1536

Opinion
Concerning the Effectiveness of Appealing against Rulings

The issue of effective appealing against disciplinary penalties and decisions of administrative commissions is a topic addressed by Ombudsman's Office for several years already. I have instituted inspection proceedings No 64-31 to address this matter systemically.

Opinions have been obtained in the inspection proceedings from the Ministry of Justice as well as from I. Kronberga and V. Zahars, enforcement experts of criminal penalties. Inspection proceedings also included attending the meeting of administrative commission of the Central Prison of Riga and court meeting at Latgale District Court of Riga, as well as studies of court practice in handling decisions made by administrative commissions, including the materials submitted by the sentenced persons.

The following opinion is hereby issued following assessment of the materials collected and information obtained in the course of inspection proceedings:

[1] Penalty Enforcement Code of Latvia (hereinafter PEC) provides for individual assessment and gradual direction of a sentenced person to "liberty" –

progressive enforcement of penalty based on differentiation of sentenced persons within the framework of each type and regime of imprisonment as well as transfer of sentenced persons from one type of prison to another, subject to the served part of sentence and behavior of the sentenced person. The service regime has to be appropriate to the sentenced person's behavior and degree of re-socialization to facilitate social adaptation of the sentenced person upon release so that his accommodation in prison is gradually approximated to the liberty circumstances.

[2] Administrative prison commission has been established to ensure successful application of progressive penalty enforcement. According to Section 50.[10] of the PEC, the task of administrative commission of prison facility is to facilitate strengthening of progressive penalty enforcement system and proper allocation of sentenced persons to prison facilities in accordance with the classification principles stipulated in the Code.

[3] Paragraph 24 of the Cabinet Regulations No 282 of 31 March 2009 Concerning the Operation of Administrative Commission and Decision-Making Criteria (hereinafter - Regulations), when deciding on aggravation of the service regime applicable to sentenced persons, the commission shall take into consideration the nature of breach of the applicable service requirements. That is, administrative commission has to assess the circumstances in which the breach has been committed; repeated nature of breach, mode of committing, etc. According to Paragraph 25 of the Regulations, when deciding on mitigation of the service regime, the commission shall assess the sentenced person's behavior against a number of criteria: attendance of classes, participation at educational, instructional, sporting and leisure time activities at the prison facility; the achieved results; breaches of regime requirements committed by the sentence person; the applied disciplinary penalties and their nature, as well as other information characterizing the behavior of sentenced person at the facility.

[4] All the above-listed criteria are equally important, and their assessment as a whole describes the personality and degree of re-socialization of the sentenced person. None of the above-listed criteria is prevailing compared to the other criteria, including the breach of regime for which the penalty has been imposed, and which constitutes an element to describe behavior of the sentenced person.

[5] According to the practice of administrative commission, breaches of sentence service regime are treated as the most important criterion characterizing the sentenced person when making decision which is either favorable or unfavorable to such person. Having reviewed the judicial practice in handling appeals against the decisions of administrative commissions, I have found that such situations occur frequently. So, administrative commission has decided that a sentenced person should not be transferred from the highest level

of partially closed-type prison facility to open-type prison. The sentenced person has appealed against such decision, and the court has pointed out in this case that *"it does not follow from the decision that administrative commission has fully assessed the sentenced person's behavior against all criteria stipulated in Section 5.6, Part 1, Paragraph 4 of the PEC, since it follows from the decision that the imposed disciplinary penalties have been assessed, yet without context with the applied stimuli".*[133] In other court ruling on repealing the decision of administrative commission to refuse transfer of a sentenced person from medium level of closed-type prison to the highest regime of closed-type prison, the court has motivated the ruling as follows: *"...the decision made by administrative prison commission is not substantiated and it does not meet the requirements of the above-mentioned Cabinet Regulations, because it may be concluded from the decision that assessment has only be given to breaches of regime committed by the sentenced person, including a (...) breach in respect of which decision on imposing penalty has been repealed; it does not follow from the decision that participation of the sentenced person in employment, educational, instructional, sporting and leisure time activities has been assessed; therefore, the decision may not be treated ad valid and substantiated, and the decision shall be repealed and the claim of the sentenced person shall be granted."*[134] It may be concluded that in practice administrative commissions frequently make decisions unfavorable to sentenced persons on the grounds of committed breaches of regime.

[6] Pursuant to Section 81, Part Five of the PEC, a sentenced person on whom disciplinary penalty is imposed may appeal against such penalty to the Chief of Prison Department in accordance with the procedure prescribed by Administrative Procedure Law. Decision of the Chief of Prison Department may also be appealed against in accordance with the procedure prescribed by Administrative Procedure Law to the court. Therefore, even if penalty for breach of regime is appealed against according to the applicable procedure, administrative commission may take such penalty into account in decision-making process. As a consequence, the decision is unfavorable to the sentenced person, though it is possible that superior authority (Prison Department) or court finds out that penalty for breach of regime has been imposed without legitimate grounds. This gives raise to the question how effective is the vehicle for appealing against disciplinary penalties and what goal does it serve. Disciplinary penalty is imposed on sentenced person with immediate effect, while appealing against it is a lengthy process and administrative commission can still take the penalty into consideration when deciding on change of regime.

[7] Pursuant to Section 50.[11], Part Six of the PEC, a decision of administrative commission is valid and subject to enforcement with immediate effect. The

[133] Judgment made on 13 November 2010 by Jēkabpils District Court in proceedings No 4.1.-1/0283
[134] Judgment made on 22 March 2010 by Latgale District Court of Riga City in proceedings No 4-12/156/10

decision may also appealed against. Complaints or protests are handled by the district (city) court of jurisdiction on the territory where the prison facility is situated, in accordance with the procedure prescribed by Criminal Procedure Law (hereinafter – CPL).

[7.1.] It is therefore possible that decision appealed against to the court and eventually repealed has already been enforced in respect of the sentenced person. Ministry of Justice has pointed out to this effect that *"the applicable procedure that prescribes immediate enforcement of decisions of the commission should be maintained in effect since the purpose of such procedure is effective system for progressive enforcement of penalties to ensure adequate transfer of a sentenced person to mitigated penalty service regime (or aggravated regime in case of breach of the penalty service regime) appropriate to the degree of re-socialization).*

[7.2.] I. Kronberga, Researcher of criminal penalty policy and penitenciary system of Public Policy Center "Providus", utters that *"it is permissible (and even desirable" from the view of progressive enforcement of penalty that administrative commissions promptly decide on aggravating of penalty enforcement regime – in a possibly short period of time, in order to reach the objective of penalty which is special prevention on the given occasion. Decision of the administrative commission, however, has to be based on assessment of the progress of service enforcement rather than imposed (or not imposed) penalties for breaches of regime. The fact that disciplinary penalty is appealed against in accordance with the procedure prescribed by Administrative Procedure Law only means that such penalty may not be effective (the grounds of breach are not legitimate), and no decisions and their implementation may be based solely on such fact. Administrative commission may therefore decide on aggravating of regime if the need for such decision is proven by earlier committed other breaches that are not subject to contestation any more."*

[8] As mentioned before, penalties imposed for breaches of regime may be appealed against in accordance with the procedure prescribed by APL, and hearing of such cases by administrative court takes a year or two. Decisions of administrative commissions, on their turn, are appealed against to the general jurisdiction courts in accordance with the procedure prescribed by CPL. Hearing of the matters concerning decisions of administrative prison commissions at general jurisdiction courts takes notably shorter period of time, that is, a few months. The two issues are closely interrelated, and therefore hearing of them within single proceedings should be considered as these matters supplement rather than exclude each other. Administrative commission should only pass decision if it is absolutely clear whether application of the element describing the sentenced person – penalty for breach of regime – has been legitimate.

Appealing against decision of administrative commission would then be based on substantiated facts subject to no legal contesting, rather than formal.

[9.] Pursuant to Section 654, Part Three of Criminal Procedure Law, such complaints and protests shall be adjudicated, in accordance with the procedures specified in Section 651 of this Law, by a judge of the district (city) court according to the location of the prison. Section 651, Part Seven of this Law stipulates that *"All court decisions stipulated in Section 651, Part One, and Sections 643 and 654 of this Law may only be appealed in case of non-compliance with the procedural requirements prescribed in this Section. Filing of a complaint does not suspend enforcement of decision. (...)"*

[9.1.] It may be concluded that the legislator has not delegated to courts the right to decide on point of facts the matters concerning the decisions of administrative commissions. Such competence is vested exclusively in administrative commission. The court is competent to verify in respect of decisions made by administrative commissions whether or not they have been made in compliance with procedural legal norms and in accordance with the criteria prescribed by the Regulations.

[9.2.] If the court has repealed a decision made by administrative commission the commission is not thereby obligated to make different decision in respect of the sentenced person in question on any subsequent occasion. Section 50.[13], Part Four of the PEC only prescribes that, if decision of administrative commission is repealed by court, the matter is subject to new hearing at the next scheduled meeting of administrative commission.

[9.3.] Applications have been received from sentenced persons during several years regarding the fact that rulings of court are not taken into consideration by administrative commission that passed identical decisions again. Such process may be endless.

[10.] When assessing whether or not a decision made by administrative commission meets the criteria prescribed by the PEC and the Regulations, the court indirectly refers to merits of the case. If the formal criteria prescribed by legislator were objectively assessed in their interconnection, the decision of administrative commission would be eventually different in its merits. For example, the court deciding on repealing of decision made by administrative commission to deny transfer of a sentenced person from serving sentence at medium level of closed-type prison facility to a higher degree, points out to following in their ruling: "*The court, having reviewed the matter, established that assessment of personality of the sentenced person had been one-sided and biased. The requirements prescribed by Section 50.[11] of Penal Enforcement Code of Latvia (Decisions of administrative commission) were not complied with (...). The court established circumstances of which the Administrative Commission was aware when making the decision yet such circumstances had not been assessed and reflected in the decision. (...). (...) were not established, as well as any information provided to the court to prove that attitude of the sentenced person towards the imposed penalty and the regime of service had*

adversely changed from the above-mentioned date. The court established the contrary, that after... a year ... refusal to transfer the sentenced person... to mitigated level of regime the sentenced person's behavior had changed: he asked to provide paid job to him, and he was seeking consultation with psychologist and re-socialization specialist in order to get prepared to releasing from prison. The court finds in the above-described circumstances that the opinion of administrative commission concerning inefficiency of transferring the sentenced person to higher level of regime is not substantiated, and such opinion has been formulated without taking into account the above-described circumstances or making any reference to them in the decision. Taking into consideration the above-stated, the court holds that decision made by administrative commission is not legitimate since it has been made without comprehensive assessment of personality of the sentenced person and his behavior during the sentence service period, in particular during the period of transfer from the lowest to medium level of regime; the decision is therefore repealed."[135] Having reviewed a number of judgments rendered by courts, I find that on most occasions the court has very precisely pointed out to material shortcomings in the work of administrative commissions. Such opinions, however, are left without consideration. It is my opinion that similar situation is not permissible in a law-based state and that obligation to comply with court ruling derives from Constitution of the Republic of Latvia as well as from the Law on Judiciary.

[11] With the present practice of handling the matters concerning decisions of administrative commissions, resources are inefficiently applied and capacity of courts is compromised. Court rulings do not result in change of decision by administrative commissions, and the sentenced person in fact does not benefit from repealing by court of the administrative commission's decision. The ruling only means that the commission has the duty to review the decision at the next scheduled meeting, yet it does not impose the duty to make positive decision.

[11.1.] I. Kronberga, Researcher of Public Policy Center "Providus", also points out in her reply to the Ombudsman that "It means in fact that the applicable legal norms[136] only create the illusion in sentenced persons on the mechanism of appealing, while the mechanism as such brings no benefit in terms of legality; on the contrary, it adds unreasonable load on courts."

Summarizing the above-mentioned, it is my opinion that the mechanism for appealing decisions on imposing disciplinary penalties on sentenced persons and decisions made by administrative commissions is ineffective. Procedure for appealing against penalties for breach of regime and against decisions of administrative commission has to be systemic and uniform; it has to serve the

[135] Judgment made on 19 October 2010 by Daugavpils Court in proceedings No 4.1-1/187
[136] Sections 651 and 654 of Criminal Procedure Law; Section 50.[13] of the PEC;

common goal and ensure protection of the rights of sentenced persons as well as enforcement of the progressive penalty system.

I therefore propose to initiate discussion of the issues highlighted in this opinion with participation of specialists from different fields of law. I am also willing to take part at such discussion to seek the most optimum solution to this problem.

J.Jansons,
The Ombudsman

Anskaite 67686768

Annex 4
Opinion issued to the Constitutional Court in proceedings No 2011-05-01 Concerning the Compliance of Section 39, Part One, Paragraph 6 of Public Procurement Law with Sections 91 and 105 of Constitution of the Republic of Latvia

OMBUDSMAN OF THE REPUBLIC OF LATVIA

Baznīcas iela 25, Riga, LV- 1010, tel. 67686768, fax 7244074, e-mail tiesibsargs@tiesibsargs.lv

Rīgā

16.06.2011. Ref. No 1-5/127
To 23.05.2011 Ref. No 1-04/212-pav

Attn. Uldis Ķinis, Judge of
Constitutional Court of the Republic of Latvia
Jura Alunāna iela 1, Riga, LV-1010

Re: Opinion in proceedings No 2011-05-01

The Ombudsman's Office has received on 25 May your ruling on joining Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) in the capacity of concurrent to proceedings No 2011-05-01 Concerning the Compliance of Section 39, Part One, Paragraph 6 of Public Procurement Law with Sections 91 and 105 of Constitution of the Republic of Latvia. The ruling contains request for expressing position on the matters relevant, in the Ombudsman's opinion, in proceedings No 2011-05-01, including the following matters:

1) The Ombudsman's assessment of the fact that fundamental rights of applicant are restricted on the grounds of presumption contained in the contested norm concerning the eventual relation of low average salary, compared to other business in the given industry, to avoidance of paying tax;

2) Whether or not presumption concerning eventual avoidance of paying tax can be subject to no contestation? How can the disputed norm be assessed in the interconnection with Section 38 of the Law on Taxes and Duties according to which a person is permitted to submit evidence to proper fulfillment of his/hr obligations in the matters concerning the amount of payable tax?

Section 39, Part One, Paragraph 6 of Public Procurement Law stipulates that the customer shall disqualify an applicant or tenderer from further participation at procurement procedure and without reviewing the tender of applicant if the average income from employed work gained by the applicant/tendered in three of four most recent quarters prior to submitting of the application/tender are below 70 per cent of the average income gained by employees on national level in the industry concerned corresponding to the two-digits classification NACE rev. 2, according to the data summarized by the State Revenue Service and published on the Internet website of State Revenue Service. If the applicant/tendered has been registered as a tax payer during the period of four most recent quarters prior to the date of submitting the application/tender, the average income from employment gained during the period from the month next following the month of registration to the date of submitting the application/proposal is taken into account (hereinafter – the contested norm).

To establish that the contested norm restricts the right of applicant – SIA "HansaWorld Latvia" to property guaranteed by Section 105 of Constitution of the Republic of Latvia (hereinafter – the Constitution), it has to be established that the concerned applicant owns property within the meaning of Section 105 of the Constitution.

When interpreting Section 105 of the Constitution in the interconnection with Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), it should be taken into account that the right to property is intended to protect the property already owned by person as well as any assets "lawfully expected" by person (Paragraph 74 of the award made by European Court of Human Rights on 2 March 2005 concerning admissibility of applications No 71916/01, 71917/01, and 10260/02 in *Maltzan and Others v. Germany*, www.echr.coe.int). "Lawful expectations" should be based on something more than mere expectation; they have to be based on legal norms or legal acts such as court ruling (Article 73 of the award made by European Court of Human Rights on 10 July 2002 concerning admissibility of application No 39794/98 in *Gratzinger and Gratzingerova v. the Czech Republic*, www.echr.coe.int). If "lawful expectations" are not based on effective law, administrative act or court ruling, protection is provided to already existing economical interests, such as customer base established by persons, or a license granted to commercial company (see, respectively, Paragraphs 39 and 41 of the Award made by European Court of

Human Rights on 3 June 1986 in *Van Marle and Others v. the Netherlands* and Paragraph 53 of the award made on 21 June 1989 in *Tre Traktörer Aktiebolag v. Sweden*, www.echr.coe.int).

European Court of Human Rights constantly holds in their practice that Article 1 of the First Protocol to the Convention does not guarantee the right to acquire property (see for example Paragraph 121 of the award made by European Court of Human Rights on 23 January 2002 on admissibility of application No 48321/99 in *Slivenko and Others v. Latvia*, www.echr.coe.int).

In the given occasion, the person who has filed constitutional complaint believes that the contested norm has the effect of restricting her economical interest in pursuing commercial activity and gaining profit on public and municipal procurement market.

Section 105 of the constitution does not guarantee protection of any economical interests; it only protects the interests that are lawfully and certainly expected. Moreover, the said Section, if interpreted in the interconnection with Article 1 of the First Protocol to the Convention, does not extend to protection of the right to acquire property.

The contested norm as such does not provide either the right to awarding a public procurement contract or the guarantee to gain any tangible benefit. Even without the contested norm, Public Procurement Law would not guarantee to the person who has filed constitutional complaint the right to awarding of the public procurement contract in question. Therefore, the currently effective legal norms do not provide to the person any legal grounds to expect that public procurement contract would be awarded to her and she would gain any tangible benefit as a result thereof.

Given the above-stated, it may be hold that the regulation referred to in the contested norm does not constitute "property" within the meaning of Section 105 of the Constitution and Article 1 of the First Protocol to the Convention. Therefore compliance of the contested norm with Section 105 of the Constitution is subject to no assessment.

Section 91 of the Constitution stipulates that "*All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind*". According to the practice of Constitutional Court, the principle of legal equality prevents governmental institutions from issuing norms that permit unreasonably different treatment of persons in similar, comparable conditions. The principle of equality permits and even requires different treatment of persons in different circumstances if there are objective and reasonable grounds for such different treatment (*see Paragraph 1 of*

conclusions in the Award made by Constitutional Court on 03.04.2001 in proceedings No 2000-07-0409).

Constitutional Court has recognized that members of the same market are in similar and comparable conditions (*see Paragraph 9.2 of the Award made by Constitutional Court on 9 February 2004 in proceedings No 2003-21-0306*). In the given occasion, if legal entities incorporated in Latvia intend to participate at public procurement tender, they are in similar and comparable conditions. Section 39, Part One, Paragraph 6 of Public Procurement Law differentiates the applicants in public procurement tender depending on the average income of the applicant's employees; therefore, if the average income from employed work gained by the applicant/tendered in three of four most recent quarters prior to submitting of the application/tender are below 70 per cent of the average income gained by employees on national level in the industry concerned corresponding to the two-digits classification NACE rev. 2, according to the data summarized by the State Revenue Service and published on the Internet website of State Revenue Service, such tenderers are disqualified from participation at public procurement procedure. According to the explanation 1-1-n/109-2011 issued by the Saeima on 16 May 2011, the legitimate purpose of the contested norm is fostering public welfare and protecting the rights of other persons, because such norm promotes payment of tax, registered and legitimate employment, as well as fair competition.

In the Ombudsman's opinion, the above assumptions are insufficient to substantiate the legitimate purpose. Regulatory acts may prescribe the right to disqualify from participation at public procurement tenders the legal entities incorporated in Latvia if the competent public authorities have established breaches committed by them in relation to payment of tax, or illegal employment, unfair competition or other breaches of regulatory acts. Commercial Law, Civil Law and other regulatory acts of the Republic of Latvia applicable to commercial activities contain no prohibition to pay salary below the average in the given industry and to outsource specialists and experts with higher qualification on contractual basis; therefore, no legitimate purpose can be identified in disqualification from participation at public procurement procedure in case of entrepreneurs complying with the regulatory acts in the area of business activities if the average income of their employees in three of four most recent quarters prior to submitting of the application/tender are below 70 per cent of the average income gained by employees on national level in the industry concerned corresponding to the two-digits classification NACE rev. 2, according to the data summarized by the State Revenue Service. Such disqualification constitutes incommensurable restriction on the right of choice in private legal relations, and it does not ensure protection of public interest in terms of tax payment and fair competition.

Taking into consideration the above-mentioned, it should be acknowledged that Section 39, Part One, Paragraph 6 of Public Procurement Law does not comply with Section 91 of the Constitution.

Respectfully submitted by
Juris Jansons,
The Ombudsman

Kukle, Bērziņa 67686768

Annex 5
Opinion issued to the Constitutional Court in proceedings No 2011-14-03 Concerning the Compliance of Sub-paragraph 3.15 and Paragraph 11 of the Cabinet Regulations No 120 of 13 March 2001 and Paragraph 11 of the Cabinet Regulations No 972 of 25 August 2009 with Sections 91 and 106 of the Constitution

OMBUDSMAN OF THE REPUBLIC OF LATVIA

Baznīcas iela 25, Riga, LV- 1010, tel. 67686768, fax 7244074, e-mail tiesibsargs@tiesibsargs.lv

Riga

16. 11.2011. Ref. No 1-5/281
To 07.10.2011. Ref. No 1-04/341-pav

Attn. Aija Branta,
Judge of Constitutional Court
of the Republic of Latvia
Jura Alunāna iela 1, Riga, LV-1010

Re: Opinion in proceedings No 2011-14-03

Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) has received your request for issuing opinion on the Constitutional Court proceedings No 2011-14-03 Concerning the Compliance of Sub-paragraph 3.^{1}5 and Paragraph 11 of the Cabinet Regulations No 120 of 13 March 2001 (effective before 03.09.2009) and Paragraph 1 of the Cabinet Regulations No 972 of 25 August 2009 Concerning the Procedure for Distribution of Medicine Residents and Funding of Resident Studies with Sections 91 and 106 of Constitution of the Republic of Latvia.

Sub-paragraph 3.^{1}5 of the Cabinet (hereinafter – the Cabinet) Regulations No 120 of 13 March 2001 Concerning the Procedure for Distribution of Medicine Residents and Funding of Resident Studies stipulated: “The Center for Professional Medicinal Education shall make agreements with the persons

enrolled to resident studies in accordance with the procedure prescribed by Subparagraph 3.[1]3 of the Regulations; such agreement shall determine the resident's obligation of employment pursuant to assignment by the Center with a certain medicinal institution approved by the Minister of Health in accordance needs of the region in question." Paragraph 11 of the said Regulations stipulated that: "If a resident fails to meet the provisions of agreement stipulated in Subparagraph 3.[1]5 of the regulations after the completion of studies or fails to succeed in completion of educational program, or discontinues the studies for any reason independent on the medicinal institution qualified for providing studies, or on the higher educational establishment, such resident shall repay the costs of resident studies within five years. Repayment shall be made by monthly installments so that one fifth of the total amount of the study costs funded from the State budget is repaid every year."

Article 11 of the Cabinet Regulations No 972 of 25 August 2009 Concerning the Procedure for Distribution of Medicine Residents and Funding of Resident Studies stipulated:
"If a resident fails to meet the provisions of agreement stipulated in Subparagraph 5.4.1 of the regulations after the completion of studies or fails to succeed in completion of educational program, or discontinues the studies for any reason independent on the higher educational establishment, Ministry of Health shall decide on repayment of the study costs allocated from the State budget for such resident studies in accordance with the procedure prescribed by Subparagraph 5.4.2 of the Regulations." Subparagraph 5.4.2 of the said Regulations stipulated: "The programs of resident studies shall be made available by higher educational establishments on the grounds of agreements made with the persons enrolled to resident studies determining the resident's obligation of employment with a medicinal institution on the territory of the Republic of Latvia that has a valid agreement with the Health Settlement Center on the provision of paid health care services, or an institution providing health care services outside the city off Riga."

Administrative District Court points out that the norms referred to above provide for different treatment. In the court's opinion, the conditions of resident students who have their educational costs funded from the State budget, and those of students of any other higher educational establishment who have their educational costs funded from the State budget, are similar and comparable. All the above-described students are pursuing university degree, and their studies are funded by the State. Yet, unlike resident students, the other students who have their studies funded from the State budget have no obligation to pursue employment instructed by the State or to repay the costs related to their studies. Administrative District Court points out that different treatment is therefore present in respect of resident students and other students who have their studies funded from the State budget.

The Cabinet points out in reply No 18/TA-1768 issued on 12.09.2011 to the Constitutional Court that "resident studies constitute post-diploma professional education of a medicine professional who has valid legal employment relations with the institution responsible for the curriculum. Therefore, conditions of resident students are comparable yet not similar to those of students in case of academic of professional higher education who complete their study programs at higher educational establishment, while resident studies mean education within the framework of legal employment relations. If may be therefore compared rather to training or improvement of qualification of employees, because resident studies are pursued by persons who have already completed education of medicine professional (and who have received diploma) and continue resident education for gaining the necessary practical work experience."

[1] The first sentence of Section 91 of the Constitution stipulates that: "All human beings in Latvia shall be equal before the law and the courts." Interpreting the first sentence of Section 91 of the Constitution, the Constitutional Court has held that the principle of equality prevents governmental institutions from issuing norms that permit unreasonably different treatment of persons in similar, comparable conditions. The principle of equality permits and even requires different treatment of persons in different circumstances if there are objective and reasonable grounds for such different treatment. Different treatment has no objective and reasonable grounds if it is not aimed at legitimate purpose, or if proportion of the selected means and the set goals is not commensurable. Therefore, the following has to be identified to assess whether or not the contested norms comply with the first sentence of Section 91 of the Constitution: 1) whether or not, and which persons (or groups of persons) are in similar conditions comparable according to specific criteria; 2) whether or not the contested norms provide for similar or different treatment of such persons; and 3) whether or not such treatment has objective and reasonable grounds, that is, whether it is aimed at legitimate purpose, and whether the principle of commensurability is observed.[137]

It should be assessed whether or not the conditions of resident students and other students who have their studies funded from the State budget are similar and comparable. The conjunctive feature of this group has to be identified in order to determine the persons or groups of persons who have similar conditions comparable according to specific criteria.[138] Legal regulation of resident studies has to be analyzed in order to determine whether or not there is a conjunctive feature equally applicable to resident students and other students who have their studies funded from the State budget.

[137] See Paragraphs 9 – 10 of the Award made by Constitutional Court on 10.06.2011 in proceedings No 2010-6901.
[138] See Paragraph 14 of the Award made by Constitutional Court on 14.06.2007 in proceedings No 2006-31-01.

Section 44 of the Law on Institutions of Higher Education defines the groups of persons treated as students of the institutions of higher education and colleges. Students of higher educational establishments shall be: 1) students for bachelor's degree; 2) students in professional study programs; 3) students for master's degree; 4) residents in the medical profession and in dentistry; 5) students for doctor's degree. Therefore, resident students are classified as a separate group of medicine students. The purpose of resident studies and their importance in medicine profession have to be assessed to understand whether or not resident students are reasonably separated from other groups of students.

Definition of resident studies is provided in Section 1, Paragraph 19 of Medicine Treatment Law: "Residency means employment legal relations with a medical treatment institution that provides educational program available to medicine students in the official language for completing special education in accordance with accredited professional resident education in medicine profession." According to the definition of resident studies, Article 1.4 of Regulations on Resident Studies of the University of Latvia[139] stipulated that "the purpose of resident studies is to provide knowledge and practical skills that give the right to pass certification examination when full resident curriculum is completed." The purpose of resident studies specified on the Internet website of Riga Stradins University[140] is to provide acquisition and improvement of theoretical knowledge and practical skills in accordance with the requirements of national legislation to prepare a medicine professional for certification in the selected specialty.

Analysis of the purpose and legal regulation of resident studies shows that the process of resident studies notably differs from educational processes of other groups of students. Knowledge and practical skills are equally important in resident studies, yet the key purpose of resident studies is completion of studies in the specialty of medicine professional to acquire the certificate of medicine professional. Resident studies are only available to medicine professionals who have already completed their diploma in medicinal education. It means that resident students are treated as medicine professionals who have already completed medicinal education, rather than students. Pursuant to Section 28 of the Law on Medicinal Treatment: "Completion of medicinal education and acquisition of diploma gives the right to medicine professional before registration in the Register of Medicine Professionals to pursue medicinal practice only under the supervision or guidance of certified medicine professional who is registered in accordance with the procedure prescribed by

[139] Regulations on Resident Studies of the University of Latvia, approved on 28.11.2005 by the UL Council decision No 134.
[140] Internet website of Riga Stradins University; http://www.rsu.lv/studiju-iespejas/rezidentura, viewed on 27.10.2011.

regulatory acts concerning the Register of Medicine Professionals." Therefore, a medicine professional may pursue medicinal practice, subject to the above-listed conditions, even without resident studies. It may be therefore concluded that medicine professional has already completed his or her professional qualification prior to enrollment to resident studies.

Unlike other forms of studies, resident studies take place within the framework of employment relations. Resident students are employed and remunerated by certain treatment institutions to complete their specialization. Educational process in case of resident studies is essentially different from the process of any other students who have their studies funded from the State budget.

It may be therefore concluded from the above-stated that resident medicine students are properly separated from other groups of students. Given the different conditions of resident studies and the manner of training of resident medicine students, it has to be concluded that resident students and other students whose studies are funded from the State budget may not be compared. In the Ombudsman's opinion, the conditions of resident students and other students who have their studies funded from the State budget are different and incomparable. The principle of equality permits and even requires different treatment of persons in different conditions[141]. It is therefore the Ombudsman's opinion that the contested norm complies with the first sentence of Section 91 of the Constitution.

[2] Administrative District Court notes that the contested norm does not comply with the first sentence of Section 106 of the Constitution. The first sentence of Section 106 of the Constitution stipulates: "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications". Administrative District Court points out that the right guaranteed by Section 106 to freely chose the employment and workplace means that a person has the right not only to make free decision on engagement in any employment but also the right to decide freely on termination of such employment and resigning from the workplace.

The Cabinet points out in their reply 18/TA-1768 issued on 12.09.2011 to the Constitutional Court that the contested norms in fact have no effect of restricting the persons' right to choose freely their employment and workplace according to their abilities and qualifications. (..). Agreements with the persons enrolled to resident studies funded from the State budget are made on voluntary grounds (..). The Cabinet of Latvia notes: "(..) When assessing the contested norms, it should be taken into account that, according to the Constitution, the State has the duty to provide the possibility to complete free basic and secondary education,

[141] See the Award made by Constitutional Court on 3 April 2001 in proceedings No 2000-07-0409, Paragraph of Conclusions.

while higher education or post-diploma professional (resident) studies are funded from the State budget if training of the relevant specialists is socially important, and the specialists are trained for provision of services that are vital to society." The Cabinet further points out that the obligation imposed on medicine professionals to continue employment with a specific medicinal institution at least three years after completion of their resident studies is a tool used to ensure distribution of medicine professionals according to the regional needs. The said approach is aimed at ensuring equal access to health care services at different regions and preventing concentration of medicine professionals in the region of Riga.

Cabinet Regulations[142] governing the distribution and funding of resident studies stipulate that funding of resident studies may have two forms: from the State budget and from the assets of a natural or legal entity. In case of resident studies funded from the assets of a natural or legal entity, the residents have no obligations towards the State upon completion of their resident studies.

If a medicine professional wants to have their resident medicinal studies funded from the State budget, they have to make agreement with the educational establishment. Such agreement shall determine the resident's obligation of employment with a certain medicinal institution during three years from completion of resident studies as well as the obligation to repay costs of resident studies to the State if the resident fails to meet the first above-mentioned obligation. It should be assessed whether or not in the given situation the above-mentioned obligations of residents towards the State are commensurable, and whether they are relevant to achievement of the State's objectives.

The principle of commensurability is defined in Section 13 of Administrative Procedure Law: "The benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society." To assess compliance with the principle of commensurability, it has to be analyzed whether or not the resulting benefit to society from the residents' obligation of employment with a certain medicinal institution during three years exceeds the restriction imposed on residents' rights.

Section 111 of the Constitution stipulates that the State shall protect human health and guarantee a basic level of medical assistance for everyone. The State

[142] Cabinet Regulations No 120 of 13.03.2001 Concerning the Distribution and Funding of Resident Medicine Studies; Cabinet Regulations No 972 of 25.08.2009 Concerning the Distribution and Funding of Resident Medicine Studies; Cabinet Regulations No 685 of 30.08.2011 Concerning the Distribution and Funding of Resident Medicine Studies.

therefore has the duty to ensure access to qualitative and comprehensive health care to all inhabitants of Latvia.

Regulations governing the distribution and funding of resident studies stipulate that resident studies funded from the State budget shall be subject to public order. Ministry of Health estimates the number of resident student units funded from the State budget according to the following data: "1) Information provided by medicinal institutions about the required number of medicine professionals; 2) the number of medicine professionals not employed on full-time basis; 3) the number of unemployed medicine professionals; 4) the estimated number of medicine professionals who would reach the retirement age within the nearest five years; 5) comparative analysis of statistic data concerning the provision of medicinal staff in the Member States of European Union; 6) demographic situation and forecasted development trends."[143] The Ministry of Health estimates the annual public order for resident studies every year. The above-described criteria enable comprehensive estimation of the number of residents actually required for society. Therefore, public order of specific annual number of resident study units serves the interests of society.

Restriction of rights imposed on resident students is aimed at ensuring the protection of public health. Therefore, contractual obligations of resident students are necessary for fulfillment of the State's duty. In the Ombudsman's opinion, if resident studies are funded from the State budget, the State has the right to impose obligation to work for the State. Moreover, resident students have the choice of contractual obligations prior to enrollment to resident studies: whether their resident studies would be funded by natural or legal entities, without assuming obligation of employment with certain medicinal institutions during three years after completion of resident studies, or they would funded from the State budget pursuant to public order, subject to compliance with the respective contractual obligations. Comparison of the restrictions imposed on residents if their studies are funded by the state and the resulting benefit to society shows that such restriction is commensurable. The Ombudsman therefore finds that the contested norm complies with the first sentence of Section 106 of the Constitution.

Respectfully submitted by
J. Jansons, The Ombudsman

Krauze 67686768

[143] Paragraph 3 of Cabinet Regulations No 685 of 30.08.2011 Concerning the Distribution and Funding of Resident Medicine Studies.