



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

**THE 26th ANNUAL REPORT
OF THE HUMAN RIGHTS
OMBUDSMAN OF THE
REPUBLIC OF SLOVENIA
FOR 2020**

2020



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

THE 26th ANNUAL REPORT OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA FOR 2020

Ljubljana, June 2021





REPUBLIKA
SLOVENIJA



VARUH
ČLOVEKOVIH
PRAVIC

Varuh človekovih pravic
Dunajska cesta 56
1109 Ljubljana

DRŽAVNI ZBOR REPUBLIKE SLOVENIJE
Predsednik Igor ZORČIČ
Šubičeva 4
1102 Ljubljana

Številka: 0106-3/2021-4-MAZ
Datum: 16/06/2021

Spoštovani gospod predsednik Igor Zorčič,

v skladu s 43. členom Zakona o varuhu človekovih pravic vam pošiljam šestindvajseto redno letno poročilo, ki se nanaša na delo Varuha človekovih pravic Republike Slovenije v letu 2020. Del poročila je tudi Poročilo o izvajanju nalog in pooblastil državnega preventivnega mehanizma po Zakonu o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, ki je tiskano v ločeni publikaciji. Leto 2020 je v veliki meri zaznamovala epidemija bolezni covid-19, zato smo se odločili, da v letno poročilo letos vključimo posebno tretje poglavje, v katerem so ločeno predstavljene naše aktivnosti in prizadevanja v zvezi z epidemijo bolezni covid-19.

Povzetek poročila in svoje ugotovitve o stanju človekovih pravic v Republiki Sloveniji bi želel osebno predstaviti na seji Državnega zbora ob obravnavi rednega letnega poročila na podlagi 44. člena Zakona o varuhu človekovih pravic.

S spoštovanjem,



Peter Svetina
varuh človekovih pravic

www.varuh-rs.si

☎ 080 15 30



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

Human Rights Ombudsman
of Republic of Slovenia
Dunajska cesta 56,
1000 Ljubljana



Legend:



Ombudsman's commendations



Ombudsman's warnings

TABLE OF CONTENTS

1. INTRODUCTION BY THE OMBUDSMAN AND PRESENTATION OF THE OMBUDSMAN'S WORK IN 2020	11
1.1 INTRODUCTION BY THE HUMAN RIGHTS OMBUDSMAN	11
1.2. THE HEAD OFFICE OF THE HUMAN RIGHTS OMBUDSMAN OF THE REP. OF SLO.	33
1.3 THE OMBUDSMAN, HIS DEPUTIES, SECRETARY GENERAL AND EMPLOYEES IN 2019 ..	34
1.4 ACCESS TO THE OMBUDSMAN IN 2020	37
1.4.1 Single entry point	38
1.5 STATISTICS FOR 2020	46
1.6 COMMUNICATION ACTIVITIES IN 2020	48
1.7. THE OMBUDSMAN AS THE NATIONAL INSTITUTION FOR HUMAN RIGHTS – INTERNATIONAL OPERATING STANDARDS	50
1.8 HUMAN RIGHTS COUNCIL	55
1.9 CENTER FOR HUMAN RIGHTS	60
1.9.1 Promotion, information, and education and providing general information about types and forms of complaints to international bodies	61
1.9.2 Preparation of analysis and reports from individual fields of promoting and protecting human rights and fundamental freedoms	63
1.9.3 Preparation of international reports from individual fields of promoting and protecting human rights and fundamental freedoms	66
1.9.4 Cooperation with civil society, trade unions, and other state bodies	68
1.9.5 Participation in international organisations and associations on the European and world levels	69
1.10 INTERNATIONAL COOPERATION	72
1.11 THE OMBUDSMAN AS THE NATIONAL PREVENTIVE MECHANISM.....	82
1.12 CHILD ADVOCACY.....	85
1.12.1 General findings and assessment of the situation.....	85
1.12.2 Child (un)friendly judiciary.....	88
1.12.3 Conflicting relationship between parents and the child's distress – experience from advocacy examples	90
1.12.4 When is the right time to appoint a child's advocate?.....	90
1.12.5 Unrealised past recommendations	92
1.12.6 Advocacy examples	93
1.13 LEGAL BASES OF THE OMBUDSMAN'S OPERATION	95
1.14 FINANCE.....	99

2. CONTENT OF WORK AND REVIEW OF CASES HANDLED	103
A. Vulnerable groups	104
2.1 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES	104
2.2 NATIONAL AND ETHNIC COMMUNITIES	107
2.2.1 Will we ever get an immigration home for housing repatriated persons?	107
2.2.2 About the Italian and Hungarian national communities or their members	110
2.2.3 About the Roma community or its members	111
2.3 EMPLOYED AND UNEMPLOYED PERSONS	118
2.3.1 Employed persons	118
2.3.2 Unemployed persons	119
2.4 WOMEN	120
2.5 CHILDREN	123
2.5.1 Child's best interests	123
2.5.2 The significance of civil society for the realisation of children's rights	125
2.5.3 The Ombudsman's project "Če vidiš krivice, uporabi pravice!" (If you see injustice, use justice!)	127
2.5.4 The Ombudsman's international activities in the field of children's rights	127
2.6 PERSONS WITH DISABILITIES	129
2.7 THE ELDERLY	134
2.8 LGBTI+	136
2.9 FOREIGNERS	138
B. Substantive fields discussed	152
2.10 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION	152
2.11 PROTECTION OF DIGNITY, PERSONAL RIGHTS, SAFETY AND PRIVACY	156
2.11.1 About the field of personal data protection	157
2.11.2 Specifically on the issue of human trafficking	161
2.11.3 There is a long shadow of events related to the Second World War	170
2.12 FREEDOM OF EXPRESSION	174
2.13 ASSEMBLY, ASSOCIATION AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS	179
2.14 RESTRICTION OF PERSONAL LIBERTY	182
2.14.1 Detainees and convicted persons	182
2.14.2 Unit for Forensic Psychiatry	183
2.14.3 Persons with restricted movement in psychiatric hospitals and social care institutions	185

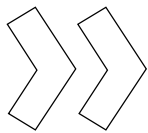
2.14.4 Minors in residential treatment institutions and special education institutes	187
2.14.5 Foreigners and applicants for international protection	187
2.15 PENSION AND DISABILITY INSURANCE	189
2.15.1 Pension insurance	189
2.15.2 Disability insurance	189
2.16 HEALTH CARE	191
2.16.1 Health insurance	191
2.16.2 Healthcare	191
2.17 SOCIAL MATTERS.....	194
2.18 OTHER ADMINISTRATIVE MATTERS	201
2.19 JUDICIAL SYSTEM	205
2.20 POLICE PROCEEDINGS, PRIVATE SECURITY SERVICE, DETECTIVES AND TRAFFIC WARDENS	212
2.20.1 Police proceedings	212
2.20.2 Private security service, detectives, and traffic wardens	213
2.21 ENVIRONMENT AND SPATIAL PLANNING	215
2.22 REGULATED ACTIVITIES	216
2.23 SOCIAL ACTIVITIES	219
2.24 HOUSING MATTERS.....	221
3. WORK CONTENT AND AN OVERVIEW OF MATTERS DISCUSSED CONNECTED TO THE COVID-19 EPIDEMIC	225
3.1 STATISTICS OF DISCUSSED MATTERS CONNECTED TO THE COVID-19 EPIDEMIC	226
3.2 ACTIVITY OF INTERNAL ORGANISATIONAL UNITS IN CONNECTION WITH THE COVID-19 EPIDEMIC	227
3.2.1 Review of the Center for Human Rights' work in connection to the COVID-19 epidemic	227
3.2.2 Review of the work of Child Advocacy related to the COVID-19 epidemic	236
A. Vulnerable groups	239
3.3 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES DURING THE COVID-19 EPIDEMIC	239
3.3.1 The operation of religious communities in the Republic of Slovenia during the epidemic	240
3.4 NATIONAL AND ETHNIC COMMUNITIES DURING THE COVID-19 EPIDEMIC	246
3.4.1 Informing the autochthonous Italian and Hungarian national communities about COVID-19	246
3.4.2 Informing (especially older) Roma about COVID-19	247

3.5 THE EMPLOYED AND UNEMPLOYED DURING THE COVID-19 EPIDEMIC	249
3.5.1 THE EMPLOYED	249
3.5.2 THE UNEMPLOYED	251
3.6 WOMEN AND GENDER EQUALITY DURING THE COVID-19 EPIDEMIC	252
3.7 CHILDREN DURING THE COVID-19 EPIDEMIC	253
3.8 PEOPLE WITH DISABILITIES DURING THE COVID-19 EPIDEMIC	257
3.9 THE ELDERLY DURING THE COVID-19 EPIDEMIC	259
3.10 THE HOMELESS DURING THE COVID-19 EPIDEMIC	260
3.11 FOREIGNERS DURING THE COVID-19 EPIDEMIC	261
B. Subject areas discussed	263
3.12 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION AND THE COVID-19 EPIDEMIC	263
3.13 PROTECTION OF DIGNITY, PERSONAL RIGHTS, AND SECURITY AND PRIVACY	275
3.14 FREEDOM OF EXPRESSION AND THE EPIDEMIC OF COVID-19 DISEASE	285
3.15 ASSEMBLY, ASSOCIATION, AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS CONNECTED TO THE COVID-19 EPIDEMIC	286
3.16 RESTRICTION OF PERSONAL LIBERTY DURING THE COVID-19 EPIDEMIC	292
3.16.1 Detainees and convicted persons	294
3.16.2 Persons with restricted movement in psychiatric hospitals and social care institutions	298
3.16.3 Persons with restricted movement in psychiatric hospitals and social care in stitutions	299
3.16.4 Minors in residential treatment and other institutions	309
3.16.5 Foreigners and applicants for international protection	312
3.17 HEALTH CARE AND THE COVID-19 EPIDEMIC	314
3.17.1. Health insurance	314
3.17.2 Health care	314
3.18 SOCIAL MATTERS AND THE COVID-19 EPIDEMIC	319
3.19 OTHER ADMINISTRATIVE MATTERS RELATED TO COVID-19 EPIDEMICS	323
3.20 JUDICIAL SYSTEM DURING THE COVID-19 EPIDEMIC	325
3.21 POLICE PROCEEDINGS, PRIVATE SECURITY, DETECTIVES AND TRAFFIC WARDENS IN CONNECTION TO THE COVID-19 EPIDEMIC	328
3.22 ENVIRONMENT AND SPATIAL PLANNING CONNECTED TO THE COVID-19 EPIDEMIC.	339
3.23 SOCIAL MATTERS DURING THE COVID-19 EPIDEMIC	340
4. LIST OF USEFUL ABBREVIATIONS AND ACRONYMS	353

The terms used in this Report expressed by means of the masculine gender shall be deemed neutral and applicable to both men and women.

1.

INTRODUCTION BY THE OMBUDSMAN AND PRESENTATION OF THE OMBUDSMAN'S WORK IN 2020



Much like COVID-19 vaccines, human rights will not lead to a healthier world if they are only available to the privileged few.

(António Guterres, Secretary General of the United Nations, address to the United Nations General Assembly on 24 February 2021)

1.1

INTRODUCTION BY THE HUMAN RIGHTS OMBUDSMAN

Dear Reader,

Before you is my second Annual Report, which is more generally the 26th Human Rights Ombudsman of the Republic of Slovenia Annual Report. In accordance with the Human Rights Ombudsman Act, the Ombudsman reports to the National Assembly with regular and special reports about his work, findings about the level of respect of human rights and fundamental freedoms, and the state of legal certainty of citizens in the Republic of Slovenia.

After just over two years of my term that I am carrying out as the fifth Human Rights Ombudsperson of the Republic of Slovenia, I am all the more convinced about the importance of independent institutions for the operation of a democratic state and society in the system of checks and balances, which are outside the traditional three branches of power. The institutions of the Ombudsman, which I lead, and the Constitutional Court, Court of Auditors, Commission for the Prevention of Corruption, Advocate of the Principle of Equality, and the Information Commissioner are without a doubt those institutions acknowledged as indispensable for the operation of a contemporary state.

The year 2020, to which the Annual Report before you pertains, was completely unexpectedly, brutally, and mercilessly marked by the COVID-19 epidemic. For almost the whole year we faced measures for the protection of lives and health which strongly interfered with our lives, our way of living, and, last but not least, with our rights and freedoms and severely limited them. Considering the calls and initiatives of individuals, which in 2020 were more numerous than in years past, I would like to highlight that both as individuals and as a society, we had difficulty accepting social change and change occurring in our lives. The Government of the Republic of Slovenia had to react as quickly as possible, where measures were frequently adopted without an in-depth assessment of their influence in the respect of human rights and fundamental freedoms, the rule of law, and democratic standards. Hence, from the very beginning of the epidemic, we emphasised and raised awareness about the fact that it **is essential to face the epidemic with the respect of certain standards and in a manner which makes adopted measures legitimate, i.e. that they are I) proportionate, II) non-discriminatory, III) necessary to achieve**

goals, IV) expertly founded, V) legitimate (and adopted transparently and according to the appropriate procedure), and VI) time-limited – therefore legitimate. At the beginning of the epidemic, in March 2020, we stressed the importance of establishing general trust in the actions of the authorities and that the measures implemented must be appropriately explained and widely accessible. Most certainly the special time we are living in brings about a moment of reflection, not only about the significance and understanding of our rights, but also about our values and our culture associated with them. Here, I refer primarily to the significance of the culture of tolerance, the culture of acceptance and dialogue, the culture of inclusion, and last but not least, the culture of mutual communication. Therefore, in 2020 too, much attention was devoted to various vulnerable groups, such as children, the elderly, women, national and ethnic communities, the employed, the unemployed, and foreigners.

At the end of 2020, we at the institution of the Ombudsman found that consequences of this health crisis are also revealed in the epidemic of distress due to COVID-19 disease or others, the loss of our loved ones, the lack of social contact, isolation, and loss of jobs or work overload, as well as distress connected to distance learning and family life. As the year was drawing to a close, we emphasised that what I would like to reiterate again here: many people are now even closer to the edge than before; poverty has increased, violence is rising, and inequality and discrimination are going up, while this global crisis has brought about additional gaps eating away at the realisation of human rights. I have set out that it is important to understand that human rights are not some distant or theoretical, legal concept. Perpetually current are the words of Eleanor Roosevelt, co-author of the General Declaration and the first chairperson of the United Nations Commission on Human Rights: “Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. ... Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”¹ It is thus important that **human rights are accessible to everyone and that individuals have appropriate mechanisms and legal means at their disposal for violations to be eliminated.** As stressed by the European Commission, in addition to the judicial system in Slovenia, an important role in the checks and balances system is also played by numerous other institutions, especially the Human Rights Ombudsman and the Advocate of the Principle of Equality.²

1 See <https://unfoundation.org/blog/post/10-inspiring-eleanor-roosevelt-quotes/> (1.12.2020).

2 Rule of Law Report for 2020, Chapter on the Rule of Law in Slovenia, accompanying document to the Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Rule of Law Report 2020, Rule of Law in the European Union, SWD, (2020) 323 final, Brussels, 30 September 2020, <https://eur-lex.europa.eu/legal-content/SL/TXT/HTML/?uri=CELEX:52020SC0323&from=SL>, p. 1, 14, and 15.

To recuperate completely and build the world we want to live in – more resistant, just, and sustainable –, we all will have to continue to actively invest in the measures to eliminate these gaps and finally put tolerance, respect, compassion, and humanity first. Even though we occasionally feel alone in this experience, we are not separated and isolated but are a part of a greater human experience, which I heartily desire would not divide us so much but bind us together. That we would see in each other equal partners and not adversaries, that we would respect each other more and listen to each other more, hear each other, and connect and collaborate for the achievement of common goals. Because social partnership is today more important than ever before.

To avoid also wandering into the crisis of values, it is essential that active bi-directional communication and dialogue are developed in all fields. It is only thus that we can achieve agreements and overcome conflicts, disagreements, and intolerance. No crisis can be an excuse for a lack of dialogue, arbitrary decision-making or interventions in these decisions from the position of power. After all, it is a socially responsible community that contributes to the co-creation of a positive social climate and a culture of dialogue. This way alone, the process of healing after the coronavirus pandemic can be efficient. Unfortunately, we have missed that too frequently in the last year.

In 2020, my colleagues and I often deliberated and acted in the interest of people who got sick, of their relatives, of all those who departed this world. In the name of all our loved ones who reside in retirement homes or elsewhere in institutional care, about individuals who are the most vulnerable. Yet it is essential that we preserve the optimism that we can do it. We have been through many a trial and face many more on the road ahead; therefore, it is immensely important to realise that we are all in the same boat and that we have to collaborate in overcoming different storms. I believe that now, even more than before, people and human rights have to be at the heart of our endeavours for a speedier, better, and higher quality recovery of society as a whole and the formation of a more just future for all.

First and foremost, 2020 was marked by the COVID-19 epidemic. It marked the work of every corner of our society, hence also the institution of the Ombudsman. To curb the spread of infections and act responsibly, the institution to a great extent (although not entirely) stopped physical contacts. Thus, it ceased welcoming complainants and performing field work, and was instead available via e-mail, post, free telephone number, and social media. The majority of employees started working from home. Not only did we have to adapt our working environment and the manner of work, under such circumstances we **received one third more matters for treatment than in previous years. We dealt with 6,852 matters, while in 2019 there were 4,600, which means a 33% rise in the number of matters.** The matters discussed pertained both to the measures and questions connected to the COVID-19 epidemic and to other aspects of human rights. **Pertaining directly to COVID-19 were a total of 1,414 matters, indirectly many more.**

A total of 504 initiatives were justified, among them 140 from the field of child advocacy, which generally represents 15% of all initiatives. **Among 364 other justified initiatives we found 473 violations** of human rights and fundamental freedoms and other irregularities, such as the violation of equality before the law and violations of the principle of good administration.

Considering all this, we decided that the Annual Report **should this year include a special third chapter, which separately presents our activities and endeavours related to the COVID-19 epidemic**. This way, we strive to present in one place as comprehensively and transparently as possible the state of human rights in the country in the year discussed as seen by the institution of the Ombudsman; namely, the questions not directly pertaining to the measures of COVID-19 can still indirectly indicate the possible new problems individuals or various groups had to face. In this introductory part, too, I devote the most attention to our activities in connection with the COVID-19 epidemic, which strongly marked our lives as well as rights and freedoms in 2020. Other work content and the review of matters handled are presented in the Report itself.

As the Ombudsman, in this demanding and simultaneously sensitive year, I was personally in constant contact with holders of different powers of authority, warning them about the significance of respecting international and constitutional standards of human rights during the epidemic, too. Naturally, we are aware that numerous rights and freedoms are not absolute; nevertheless, we emphasised that they can only be limited if the procedure according to which they are restricted is legitimate and if restrictions are substantially proportionate, non-discriminatory, of limited duration, indispensable, and expert-based. We highlighted this in communication with the Government, other state authorities, and individuals who turned to us. **In 2020, I addressed to the Government of the Republic of Slovenia or its President alone no fewer than 43 various letters** (inquiries, opinions, propositions, calls, critiques, and recommendations). Many more various letters were sent to different ministries, which almost all pertained to the measures connected to COVID-19.

In 2020, despite numerous restrictions, the Ombudsman performed tasks and competences of the National Preventive Mechanism (NPM). In 2020 anew, crisis centres for young people were added to previously known places of deprivation of liberty within the meaning of Article 4 of the Optional Protocol. **In 2020, we visited 51 places of deprivation of liberty and conducted two escorts of the return of foreigners (53 in total); the places of deprivation of liberty included 18 police stations, ten social care institutions (retirement homes), seven different locations of educational institutions, five prisons, five special social care institutions, three psychiatric hospitals, premises for detention operated by the military police, a youth crisis centre, and an occupational activity centre.** All visits (with the exception of two escorts of the return of foreigners due to the very nature of these activities) were **conducted without prior notice**. Eight visits were follow-up visits (which mostly checked the realisation of NPM recommendations from previous visits) and five were topical (which focused on a specific, previously chosen topic). From

these visits, the **NPM made 329 recommendations in total**. Of these, 163 have already been realised, 125 accepted yet unrealised, and 15 recommendations were not accepted, while those remaining are awaiting a reply.

The Human Rights Council, which is the Ombudsman's consultative body, comprising different experts, members of civil society, and representatives of state institutions, devoted the second of its three meetings in 2020 to the discussion of various aspects of the COVID-19 epidemic. The Council members **discussed the state measures for the preparation for the potential second wave of the COVID-19 epidemic**. The Minister of Work, Family, Social Affairs and Equal Opportunities Janez Cigler Kralj participated at the meeting, where the Ombudsman presented its operation and activities during the first wave of the epidemic.

In its first year of operation, the **Centre for Human Rights** had to adapt quickly to new requests for international reports connected to the state of human rights and measures adopted to curb the COVID-19 epidemic. In this sense, it regularly reported to various international organisations and institutions about the state of human rights in connection to the COVID-19 measures in Slovenia. It informed and promoted human rights and performed analyses. It prepared, e.g., the alternative report on the state of the rule of law in Slovenia for the European Commission, which also included a part about COVID-19 measures, the analyses of COVID-19 and violence against women during the COVID-19 epidemic, an inquiry about the schooling of Roma children during the first wave of the epidemic, and it prepared several calls and a review of the treatment of matters connected to COVID-19. In 2020, we also submitted our alternative report about the state of the rule of law in Slovenia, which, through the European Network of Human Rights Institutions, was presented to the European Commission, which in 2020 prepared its first report about the state of the rule of law in the European Union and its member states.

The declaration of the epidemic in March also demanded adjustments to our work in **the field of child advocacy**. Children for whom their family does not present a safe environment pulled the shortest straw during this time and experience in advocacy confirmed that. In the middle of March, the implementation of all advocacy activities was temporarily stopped, including meetings of advocates with children. Almost 30 children were then left without an advocate. After a few weeks, in agreement with regional coordinators and advocates, we informed parents of children participating in advocacy that we would like to try distance meetings. We allowed for the possibility that not all advocates, parents, and children have the desire and possibilities to carry out distance confidential discussions, hence the decision for such a manner was voluntary. However, each and every one agreed on re-establishing contact. The previously opened cases of advocacy that had been temporarily stopped by the epidemic and also the majority of new proposals for the appointment of the advocate in 2020 revealed consequences of the epidemic. In the field of advocacy, the most problems were noticed in contacts with children. According to the reports of the courts, the number of proposals for the issuing

of an interim injunction about contacts in this time doubled and the Supreme Court published a clarification for the public that there are no reasons to prevent contacts between children and parents. The Ombudsman supported the position of the Supreme Court. **The advocacy primarily revealed that parents who had difficulty maintaining contacts before only deepened the conflict, while children consequently remained for a longer period of time (or even throughout the epidemic) with only one parent and had no contact with the other or any other relatives.** Supervised contacts were also not possible in this time. Court settlements of the problem naturally did not bring the expected help, since CSDs also worked in a limited extent and the courts were swamped with proposals. During the second wave of the epidemic, it can be noticed that the contacts between children and parents are indeed better than in the first wave, while the institutions also did not completely close their doors.

The position of children in general was extremely sensitive, since for the most part of the first and second waves of the epidemic in 2020 all educational institutions were closed. **We proposed that contacts between parents and children who live in different municipalities is not in conflict with the purpose of restricting movement to the municipality of residence, since the supposed purpose of the measure was to prevent movement and assembly of people in public places and areas to curb the spread of an infectious disease.** In principle we emphasised that **the measure of restricting movement to the municipality of residence should not limit the family life of a parent and a child who live in different municipalities.** In addition to not going to school or kindergarten and extracurricular and leisure activities, children and adolescents were restricted in movement and socialising, both with their peers and members of the extended family as well as family friends. Many cases involved children with special needs. We also dealt with the question of vulnerable groups of children during schooling from home (distance learning). We encouraged the application of an individualised approach to children (pupils), especially for those from families with social needs and other vulnerable groups. At its own initiative, the Human Rights Ombudsman made an inquiry about the schooling of Roma children during the epidemic at relevant primary schools. The reason for this inquiry was the fact that the situation of home schooling brings new challenges to the educational system and requires additional efforts and new solutions and adjustments. **Regarding the position of children with special needs,** we emphasised that a specific deviation from the principle of equality or non-discrimination is the so-called principle of positive discrimination, ensured also by Article 7 of the Convention on the Rights of Persons with Disabilities. In accordance with Article 1 of the Protection Against Discrimination Act, disability is also one of the circumstances. With this in mind, we adopted a position that the prohibition of discrimination of children with special needs in relation to the right to education be regulated on the legal level, too. It is the Ombudsman's belief that parents of children with special needs who need more expensive masks or use more of them than the general population should be at least (partly) co-financed for them, if the costs of the purchase of preventive equipment put them in a less favourable position than other families.

Regarding national and ethnic communities, special care was devoted to informing, caring, and helping Slovenians abroad and just over the state borders, as well as informing the Italian and Hungarian national communities about COVID-19. We also drew attention to informing (primarily the elderly) Roma, since a non-negligible obstacle in familiarising the members of the Roma community with vital information is also frequent illiteracy and lack of knowledge of the Slovenian language; within the Roma community, the elderly present an especially vulnerable group.

In the field of freedom of conscience and religious communities the Ombudsman primarily operated at its own initiative. Few initiatives were received from others directly connected to this field, were received, while at the same time we believe that it is precisely the dire times of the epidemic when religious care can be especially important for many a person. Therefore, on our own initiative we checked the situation with religious communities themselves, with the police, army, prisons, and social security institutions. At the beginning of April, on its own initiative, the Ombudsman thus invited all religious communities entered in the Register of churches and other religious communities in the Republic of Slovenia to present the influence of epidemic-related measures on their operation. **Of 56 registered religious communities, 18 responded.** As could be discerned from the responses received, communities **opted for various self-restricting measures (some of them even prior to the governmental measures)** with the purpose of supporting the healthcare system and measures of the Government of the Republic of Slovenia to curb the spread of the epidemic.

Undoubtedly, the outbreak of the COVID-19 epidemic greatly influenced the **area of employment relationships**. Through adopting the “anti-COVID legislation”, the government also strived to ease the consequences of the epidemic in the field of labour law. On 29.3.2020, the **Act Determining the Intervention Measures on Salaries and Contributions** (Ur. l. RS no. 36/2020, ZIU PPP) came into force which regulated the partial reimbursement of the compensation of salary for employees who were unable to work due to COVID-related measures. However, not all employers were eligible for this partial compensation but only those that met legal requirements and acted in accordance with the procedure governed by the law. Namely, the law provided for the compensation of salaries to employers for those workers who did not work for business reasons or due to ordered quarantine, if they were not enabled to work from home. According to the intervention law, the self-employed were only entitled to a deferral of the payment of contributions. Seven packages of mitigation measures were adopted in 2020 (hereon: PKP). Due to rapidly changing legislation and measures, employees as well as employers turned to the Ombudsman with numerous questions concerning labour law and connected to the epidemic, especially on the topic of the protection of workers against infection in the workplace and measures of the employer related to this, temporary lay-off, instruction by the employer to take annual leave, and allowance for work in risky situations. A significant rise in the number of **unemployed** in Slovenia in 2020, which was shaped by the COVID-19 epidemic, is worrying, while their

situation was to a certain extent eased primarily by the temporary monetary compensation, implemented by the ZIUZEOP-A.

Concerning the **obligation to wear protective equipment** at work, the violation could also be considered a serious breach of employment obligations, which could lead to termination of the employment contract. The Ombudsman further emphasised that the employer must ensure such protective equipment that corresponds to the specific health situation of an individual employee. Employees and their representatives have the right to cooperate with an employer in the discussion of all questions pertaining to the use of personal protective equipment, on which their safety and health at work depends; therefore, it is essential to create a beneficial environment for the establishment of a constructive dialogue, and in cases when protective equipment causes health difficulties for workers, an appropriate solution should be sought jointly. Regarding testing for the presence of SARS-CoV-2 virus, which is organised by employers in work organisations, we warned that employers also have to abide by the General Data Protection Regulation. In connection with absence from work due to force majeure, the Ombudsman adopted a position that for the employer **a statement from the worker**, in which the worker states the circumstances that represent force majeure due to the duty of child care, should suffice; otherwise, a disproportionate intervention into the worker's right to privacy could occur, the protection of which belongs among the employer's basic obligations arising from employment (Article 46, ZDR-1) and is also a constitutionally protected category. Concerning foreigners, we warned that after the implementation of legal measures according to the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ), which, among others, also prescribed special measures in administrative and other public law matters, international protection procedures were not considered urgent. **In procedures according to the International Protection Act (ZMZ-1), especially in the procedure of informing and accepting an application for recognition of international protection, it could be an urgent administrative matter since, with the acceptance of an application, the foreigner's status changes in a manner which, in the Ombudsman's opinion, significantly influences the foreigner's position.** We assessed that this is a broader question important for the protection of human rights and fundamental freedoms as well as legal safety in the Republic of Slovenia. The Ombudsman also highlighted that on 16.4.2020 the European Commission adopted guidelines for the implementation of EU regulations in the field of asylum and return as well as relocation, from which it ensues that **fundamental principles of the asylum procedure need to be used and assured that during the COVID-19 pandemic access to the asylum procedure is possible to the greatest possible extent.** The Ombudsman also emphasised the importance of informing international protection seekers about the outbreak of the COVID-19 epidemic in a manner they understand.

In the field of **equality before the law and prohibition of discrimination**, in 2020 the Ombudsman received extremely many initiatives connected to COV-

ID-19. This was mostly the consequence of the fact that people frequently perceived measures from government ordinances, as well as the so-called anti-corona measures, as unjust in comparison to those they, for one reason or another, participated in in a different manner or not at all. Numerous topical initiatives were also identical but were received from different addresses.

In regards to measures connected to the wearing of protective masks, the Ombudsman has never called on anyone not to wear masks; on the contrary, we have always stressed that justifying the need for a measure of wearing protective masks is primarily a professional epidemiological issue and that the judgement of the experts must be trusted. However, this cannot mean that the Ombudsman should therefore not expect the authorities to implement the measures on an appropriate legal basis, taking into account human rights and fundamental freedoms. The Ombudsman is of the opinion that the obligation to wear a mask is an interference with the general freedom of action, which is one of the personal rights guaranteed by Article 35 of the URS. This important constitutional right also includes the principle that in a state governed by the rule of law, a person is allowed everything that is not forbidden – and not the other way around. If something is forbidden, it is an interference with the mentioned constitutional right or freedom. Any such interference is not constitutionally inadmissible if it is lawful (Article 15 of the URS) and, in accordance with the principle of proportionality, necessary for the protection of the rights of others (for example, for the protection of the health and life of others). An Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19, which prescribed the use of a protective mask or other form of protection of the oral and nasal areas of the face in a closed public space and mandatory hand disinfection, was adopted on the basis of the first paragraph of Article 4 of Communicable Diseases Act (ZNB). The Ombudsman assessed that it was an incomplete legal norm that stipulated the obligation to wear a mask in enclosed public spaces, but not also a sanction for violators under the ZNB.

Later, the Government adopted a new (eponymous) Ordinance, which was adopted on the basis of point 2 of the first paragraph of Article 39 and for the implementation of the first paragraph of Article 4 of the ZNB. The Government seemed to have opted for a more coercive way to enforce the obligation to wear masks indoors and to disinfect hands because, presumably on the basis of analyses and assessments by the medical experts, it had considered that the approach so far was insufficient to manage the epidemiological risks. As a fine is envisaged for violating the first paragraph of Article 39 of the ZNB (Article 57 of the ZNB), the obligation to wear a mask is no longer an incomplete legal norm under the new Ordinance. The Ombudsman assessed that Article 39 of the ZNB does not provide a clear and unambiguous basis for interference with general freedom of action, and therefore not specifically for the obligation to wear masks and disinfect hands in closed public places, even if these measures could be considered appropriate, necessary and proportionate in the given circumstances, calling for effective ways to limit the spread of COVID-19. The Ordinance is a general regulation of the executive branch, and the

constitutional review states that it follows from the principles of the rule of law (Article 2 of the URS) that it must be clear or at least predictable from the law what restrictions the individual must reckon. According to the principle of legality, the law must be the basis for the issuance of implementing regulations and individual acts of the executive authority (second paragraph of Article 120 of the URS). In order to meet this requirement, the law must determine all the essential components for the functioning of administrative bodies in organisational, procedural, and substantive terms, so that the victim can determine their legal position on the basis of law and the legality of an administrative act in an administrative dispute before a court, where the victim may seek judicial protection of their rights and interests.

Related to this, in the field of **healthcare**, at our own initiative, we **studied the proposal of the Communicable Diseases Act** (Proposal of the ZNB, EVA 2019-2711-0001), which was under public discussion. We submitted comments and recommendations to the Ministry of Health (MZ), the most crucial of which are summarised in part 3 of this Annual Report, in Chapter 3.16; it mostly involves the issues of legal means, the vagueness of the proposed arrangement, and respect for the principle of publicity. In our comments and recommendations we focused primarily on those parts of the proposed legislative regulation which we estimated (considering the discussion of initiatives at the Ombudsman from this field so far) may have a greater influence on the protection of human rights and fundamental freedoms and for legal security in the Republic of Slovenia. The adoption of the new ZNB is certainly a must, also due to the elimination of deficiencies of the existing legal arrangement, to which the Ombudsman has been drawing attention for several years. We expect the Ministry of Health and the Government to prepare amendments and supplements of the ZNB or a new act, which will also consider those proposals submitted in writing to the Ministry of the Government by the Ombudsman. The Ombudsman also warns about the fact that, in their preparation of measures connected to COVID-19, all authoritative bodies must consider and separately assess aspects of respecting human rights and fundamental freedoms.

However, in its adoption of (two) ordinances on temporary measures to reduce the risk of infection and the spread of SARS-CoV-2 virus, the Government complied with the Ombudsman's proposals about the need to adjust the obligation to wear masks for people with hearing loss.

The Ombudsman also discussed the measure which, due to curbing the spread of COVID-19, prohibited older people and people over 65 years of age from purchasing provisions outside the time designated for shopping for vulnerable groups. The Ombudsman addressed criticism of this measure to the Government, in which the insufficient legal basis of the personal data processing about age and vulnerability of shoppers in stores was highlighted. In substance, this measure was a restriction of freedom of movement applied to the social group of the elderly such that at certain times they were prohibited movement around places which are generally open for the rest of the public for shopping for provisions. The measure thus established shopping for pro-

visions segregated by age, hence we also inspected it from the perspective of the prohibition of discrimination from the first paragraph of Article 14 of the URS, which stipulates that everyone is guaranteed equal human rights and fundamental freedoms (including the freedom of movement) regardless of personal circumstances. Differentiation between individuals according to age (which is a personal circumstance) in guaranteeing human rights is admissible solely if it corresponds to the so-called strict test of proportionality, encompassing an assessment of three aspects of the interference: appropriateness, necessity, and proportionality in the strict sense. In the end of April 2020, the Government abolished said measure.

In the **field of social security**, we addressed the issue of government measures aimed at mitigating the consequences of the epidemic, cautioning that the measures taken should not unduly treat or even exclude individuals or groups unequivocally due to their personal circumstances, such as disability or social status. We also pointed out that recipients of disability benefits under the Social Inclusion of Disabled Persons Act (ZSVI) and family assistants should be included among the “most vulnerable groups of the population”, to whom a one-off solidarity allowance is granted. Our voice was heard and taken into account regarding the basic monthly income according to the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP), which tied the right to specific months, which put the self-employed, whose volume of operations was significantly reduced due to COVID-19, in an unequal position compared to other persons in a substantially similar position. In the field of social services, we noticed a problem when the MDDCZ did not want to conclude contracts for the implementation of personal assistance, allegedly due to the measure of the Government of the Republic of Slovenia to suspend the implementation of the budget of the Republic of Slovenia, adopted at the session of the Government of the Republic of Slovenia on 11.4.2020 and which restricts the conclusion of new contracts, which would create new financial obligations for the state budget.

In the field of **institutional care**, in connection with COVID-19, most initiatives were on the topic of disabling contact with relatives, and we assessed that the level of awareness of all the negative consequences of such isolation was too low, and in our opinion, they were also not properly considered in terms of proportionality of the measures. Many problems have also been identified due to inadequate staffing norms, which could have been avoided if our recommendations, which we have been repeating for many years, had been heard. Inadequate facilities to provide different zones, lack of protection at the beginning of the epidemic, and unclear and uncoordinated instructions for action, as well as the inability or unwillingness of certain people (people with dementia, people with mental health problems, etc.) to comply with protection measures were messages we received from various social welfare institutions. The initiatives also drew attention to the unavailability of many services and the unequal treatment of individuals in different institutions.

In the field of **freedom of expression**, the Ombudsman strongly condemned the events when anonymous individuals branded a number of prominent representatives of the medical profession in the fight against the COVID-19 epidemic as murderers of the Slovenian nation. The Ombudsman also called on law enforcement agencies to curb the epidemic of intolerance and hostility. It was noted with concern that intolerance has also become widespread during the time of restrictive measures to curb the coronavirus disease. There was an increasing number of verbal attacks, incitements, and intimidation, as well as direct death threats, which were directed not only at representatives of the profession, politics, or the media, but also at individuals with different political views or worldviews.

Immediately after the COVID-19 epidemic broke out, the Ombudsman recognised the **significance of informing people as a broader question that is important for the protection of human rights or rather, for legal security in the country**. We believed that in order to curb and control the spread of coronavirus epidemic, informing residents comprehensively is of great importance, particularly with regard to preventive measures intended to prevent the spread of infections (hand, premises, cough, and shopping hygiene, self-isolation, conduct upon suspicion of infection, etc.) and measures taken by competent institutions for curbing the spread of disease (restrictions of movement, prescribed use of protective masks and gloves, restriction of association, specific time period for shopping, etc.). From the perspective of protection and provision of rights to all inhabitants, providing comprehensive information about the COVID-19 epidemic in a manner understandable and accessible to all proved to be key in the given situation. The Ombudsman particularly emphasised the importance of informing various vulnerable groups, including the deaf and hard of hearing, blind and partially sighted, and deafblind.

Special attention was devoted to restrictions of the **freedom of assembly and association** due to curbing the spread of the epidemic or in connection to it. The situation connected to the so-called anti-government protests or the restriction of assembly proved to be very polarising. Relating to this, we received various writings – both by those who problematised such restrictions and those who expected more radical interventions by the authorities. The issue connected to the so-called right to protest remained current and is also discussed 2021. **We emphasised that the freedom of (peaceful) assembly and association – together with the freedom of expression – is considered to be an essential building block of a democratic society**. This fundamental freedom is guaranteed to everyone by Article 42 of the URS (and, e.g., also by Article 11 of the ECHR). We highlighted that the European Court for Human Rights (ECtHR) stands on the position that the freedom of assembly and association should not be interpreted strictly.³ The freedom of assembly and association does not protect protests in which organisers and participants have violent

3 See the judgement of the Great Chamber of the ECtHR in the matter of Kudrevičius and others versus Lithuania (appeal no. 37553/05) from 15.10.2015, para. 91.

intentions; The essence of the freedom is thus in the peaceful expression of opinion and the provision of a forum for public debate and open expression of views. The freedom of assembly and association is connected to the freedom of expression (Article 39, URS, or Article 10, ECHR); however, the freedom of assembly and association is about expressing opinion and views together with others. Considering the initiator's statements and also media releases about the protest with cars at the end of November 2020, the Ombudsman did not have any doubts that it was a peaceful exercise of the freedom described.

The freedom of assembly and association is a relative right; meaning that it may be restricted. However, possible restrictions have to be in accordance with the second paragraph of Article 11 of the ECHR, according to which the freedom of assembly and association may be restricted only by law, if it is necessary in a democratic society due to national or public safety, to prevent riots or criminal offences, due to the protection of health or morale, or to protect the rights and freedoms of other people. Restrictions on the right to assemble and associate have to always be proportional to the goal pursued or tailored narrowly to achieve the intended purpose. We have further emphasised that it is pursuant from the ECtHR's case law that **the right to spontaneous demonstrating outweighs the obligation to register the assembly when the demonstration is a direct response to a certain event or fact.**

In the field of **restriction of personal liberty**, we handled a total of no less than 85 matters connected to the COVID-19 epidemic. From these, most matters were from convicts serving a prison sentence, while two additional matters were from detainees. The Ombudsman agreed in the treatment of matters in this field that in the situation of viral infection epidemic and spread of an infectious COVID-19 disease, it is essential to observe the principles of protection of public health and, with the aim of controlling the spread of COVID-19 and protecting people's health and lives, take numerous measures; at the same time the Ombudsman **pointed out that this should be approached in a manner that respects human rights and fundamental freedoms.** In the Republic of Slovenia, during the declared epidemic the majority of social care institutions (especially retirement homes and special social welfare institutions), as well as psychiatric hospitals, decided to **ban relatives and other persons from visiting** patients to prevent the introduction of infection with said virus. For the same reason, a number of the above-mentioned institutions decided to prohibit exits to persons in care and patients, although freedom of movement or possibly even personal liberty was not restricted (they were not confined to "closed" wards). But, as already stated, after reviewing the legislation regulating measures to prevent the spread of infections, especially the ZNB, the Ombudsman did not find any legal basis for such measures in retirement homes. The Ombudsman could not establish that a total ban was ordered on any other basis for restriction of movement (e.g. Article 39 of the ZNB) pursuant to a corresponding legal act of the Government of the Republic of Slovenia or the MZ. The Ombudsman mainly came across two questions. The first was the legal basis for the above-mentioned measures in social care institutions,

which was, in the Ombudsman's opinion, insufficient or even non-existent. The question of whether these measures were adequate also arises, particularly in relation to the negative consequences they have on both physical and especially mental health.

Inside prison walls the epidemiological situation was changing day to day and it was followed by measures taken by the Prison Administration of the Republic of Slovenia (URSIKS). We welcomed the speedy response of URSIKS to the occurrence of the novel coronavirus. Understanding the necessity to limit visits to prisoners, we emphasised that, along with the restriction of contacts the prisoners have with the outside world, it is also essential to alleviate the distress that may arise from these measures. We stressed that in the time of emergency due to the coronavirus disease epidemic, too, suitable living conditions for mobility impaired and other vulnerable groups of prisoners should be ensured, while suspensions of imprisonment in such cases should be planned considering the circumstances of every convicted person individually.

Judicial proceedings according to the Mental Health Act (ZDZdr) during the epidemic should also be emphasised. We pointed out that in judicial proceedings under the ZDZdr the courts decide on restriction of an individual's right to personal liberty, and it is mainly a matter of deciding on individuals from the most vulnerable groups (persons with mental health disorders). In accordance with the second paragraph of Article 46 of the ZDZdr, in these proceedings the courts decide on the basis of direct contact with the person, where the judge sees the person before issuing the decision and talks to him or her if his or her health condition allows it. This is one of the fundamental procedural guarantees which ensure effective protection of the constitutional right to personal liberty. **We were notified that during the epidemic many judicial proceedings under the ZDZdr were conducted via videoconference.** We proposed to the Supreme Court that they should pass our recommendation to courts deciding in proceedings under the ZDZdr, and **the President of the Supreme Court promptly informed us that he had forwarded it to lower instance courts and recommended special attention and respect of the dignity of detained persons in videoconference hearings.** We also contacted the Bar Association of Slovenia and proposed they forward our recommendation to all their members who represent persons in judicial proceedings under the ZDZdr.

We also highlighted that **social welfare institutions** (with appropriate professional support and in an appropriate manner regarding the protection of public health) should be ready to admit persons for whom the courts, in accordance with the ZDZdr, have determined that they meet the criteria for admission to the secure ward or need treatment and protection on a secure ward of a social welfare institution.

After two visits (31.7. and 3.9.2020) carried out in Postojna in the Centre for Foreigners by the Ombudsman's assistants, the Ombudsman informed the

MNZ of the findings and, after receiving their response, prepared a final report, which was published on the Ombudsman's website on 10.11.2020. Based on on-site visits, we found that the containers were placed in a covered concrete building, with little daylight, and the detainees did not have access to daily exits and outdoor movement. The Ombudsman believes that containers are unsuitable for long-term housing of detained persons. The Ombudsman advised the MNZ to omit the use of service dogs in the Centre (e.g. when distributing meals) during tasks involving contact with the detainees. The Ombudsman also learned that too much time passes from the moment a person in the Centre for Foreigners declares the intention to file an application for international protection in Slovenia to the time when a personal interview is conducted on the basis of the application (up to several weeks), even though EU law requires that the application be recorded in no more than six days. The Ombudsman recommends that the MNZ follow the provided recommendations from the visits to the Centre for Foreigners and adopt necessary measures for the elimination of determined irregularities.

Regarding **other administrative matters**, the Ombudsman pointed out that emergency situation should not result in the oversight of fundamental procedural guarantees.

In the field of the **judicial system**, it should be emphasised that the judiciary was no exception to the (temporary) measures for curbing the spread of COVID-19, which has left an indelible mark on virtually all areas of social life. Due to closure of courts in the spring and autumn their regular work was limited, which also hampered access to judicial protection to a certain extent. Based on the received initiatives, it is not (yet) possible to assess the impact of the adopted measures in the field of judiciary on individual proceedings in individual court cases, especially not by how long the expected time for resolving individual court cases will be extended. This raises the question of the extent to which the consequences of this state of emergency will actually affect the planned duration of individual proceedings and whether the prolongation of court proceedings may even (again) become a systemic problem within a reasonable time and thereby present an additional challenge for the judiciary.

Regarding **police proceedings** we have to once more commend the cooperation and responsiveness of the MNZ and the Police to our interventions within various inquiries and interventions with criticisms, opinions, and proposals. In this area also, numerous activities of the Ombudsman were directed towards questions connected to the measures in relation to the COVID-19 epidemic. Police proceedings during the declared epidemic were closely monitored. We advised that even in such a time, the police must remain **independent, impartial, and professional**. Some of the allegations against police proceedings which appeared in the media could not be verified more thoroughly, as the affected individuals did not contact us. In this regard, it should be clarified that the Ombudsman can mostly respond on its own initiative in cases that raise broader issues or point to certain systemic irregularities.

Regarding the actions of police officers during control of how measures for curbing the spread of COVID-19 virus were respected, we have found articles in several media publications about the actions of police officers in addressing violations which supposedly occurred during protests on 27.4.2020 in Ljubljana and some other towns in Slovenia, and the instructions of the Minister of the Interior connected to them. It seemed that the actions of the police (restriction of movement at Trg republike with the purpose of protecting the National Assembly, of ensuring and maintaining law and order, preventing the execution of punishable offences, ensuring traffic safety, and complying with the Ordinance on the temporary general prohibition of movement and gathering of people in public places and areas on the basis of Article 56 of the ZNPPol) had the consequence of the protest not being carried out at Trg republike, in front of the National Assembly (at the location a zone was actually established in which assembly and association was temporarily prohibited due to the restriction of movement in the area), while the protest itself was not dispersed or prevented, nor does it appear that the scope of the protest was significantly infringed due to this.

In regards to determining the identity of protesters or persons moving in the direction of the protest, we could accept the explanation of the MNZ that establishing identity for preventive purposes can also have a preventive function, because, for example, the person in question is aware that it will be easier for the police to track them down, which may deter them from committing a prohibited act; however, we believe that for deterrence from violations of the ordinance regarding the restriction of gathering in public places, a milder and often more appropriate police power is a warning (Article 38 of the ZNPPol) and an order (Article 39 of the ZNPPol). Such identification procedures may in general not be used as a way of establishing public order, but can only be used if the already mentioned legal conditions are met, which prevent the arbitrary conduct of police officers. The police must employ all powers lawfully, under the conditions and in the manner specified in the ZNPPol and other regulations. This also applies to the power of establishing identity. Taking into account the aforementioned views on the issue under consideration, the Ombudsman again recommended that police officers always exercise a careful assessment of the conditions laid down by law and other regulations for the exercise of police powers in order to exercise their power of establishing identity.

In the field of environment and spatial planning we warned against the **discrepancy between the ZIUZEOP-A with the constitution and the Aarhus Convention regarding the appropriate and efficient collaboration of the public in all administrative and judicial proceedings that have or could have any influence on the environment.** Relating to the initiatives received and at its own thorough professional discretion, the Ombudsman identified a number of irregularities and constitutional contentiousness. Therefore, it addressed to the MOP an extensive opinion including a proposition for the elimination of the identified irregularities, while the MOP did not accept the Ombudsman's

proposition. The Ombudsman will, taking into account the fact that the Constitutional Court of the RS with decision no. U-I-184/20-27 from 2.7.2020 accepted for consideration the initiative to launch proceedings to assess the constitutionality of the disputed intervention legislation and withheld the implementation of Article 2 of the ZIUZEO until the final decision, continue to follow the procedure before the Constitutional Court of the RS. Following the final decision of the Constitutional Court of the RS, the Ombudsman will decide on potential further action. Further activities of the MOP in the preparation of legislative amendments (ZON, ZVO-1) indicate an alarming trend of complete exclusion of the non-governmental sector from the proceedings, the result of which could have an impact on the environment. Hence, in regards to this, we give a special recommendation (recommendation (COVID-19) no. 15).

In reference to **social matters**, the field of **education** dominated the discussion of COVID-19-related matters. Association in all educational institutions in the country (kindergartens, primary schools, secondary schools, and universities) was prohibited with several executive acts of the executive branch of power. Classes were replaced by distance learning. The temporary ban on the gathering of people in institutions in the field of education is a quarantine measure pursuant to Article 39 of the Infectious Diseases Act (ZBN). The stated measures represent a constitutional tort in the freedom of movement granted by Article 32 of the Constitution of the Republic of Slovenia. But since freedom of movement is a predisposition for the realisation of many other rights, freedoms, and legally protected interests, the measure impedes on those as well. In this case, it applies to education and schooling, since in accordance with Article 57 of the Constitution of the Republic of Slovenia, the state provides its citizens the opportunity to attain an appropriate education. As previously mentioned, we emphasised that the principle of non-discrimination (as a fundamental element of the principle of equality) taken from Article 14 of the Constitution of the Republic of Slovenia demands not only the need for formally equal treatment but also for principles equivalent in substance. This makes both direct and indirect discrimination constitutionally inadmissible. The latter is treated as such when an individual or social group is formally granted equal rights or the same scope of rights, yet in so doing individuals are actually in a disadvantaged position or are deprived in the view of realisation of said rights or in the fulfilment of obligations. At a time when, due to the coronavirus, Slovenia implemented distance learning, the Human Rights Ombudsman warned that all students do not by far have equal opportunities for learning. In general, we also noticed that measures foreseen for curbing the coronavirus disease can largely hurt socially excluded vulnerable groups. **We stressed that solutions for an individualised approach towards children who require special attention need to be urgently sought.**

The Ombudsman agrees that, given the current epidemiological situation, certain measures are surely mandatory and that a great deal of caution is needed when relaxing the measures. However, the measures need to be of the sort that make life bearable – given each epidemiological situation –, which is why

we advised the MŠZŠ to thoroughly consider when planning and implementing each measure whether the measure is necessary and appropriate for the achievement of the goal and whether the necessity of the measure is proportionate with the weight of the inflicted consequences. Vulnerable groups, which include children, of which especially those with special needs or those coming from socially deprived backgrounds, require the highest level of attention.

In the autumn 2020, the Ombudsman received several suggestions regarding the provision of hot meals for pupils during distance learning. We directed two inquiries to the Ministry of Education, Science and Sport, which explained to us that they took active steps in the problem of supplying hot meals in times of distance learning and, all the while, followed the goal of equal treatment of all pupils, especially those who, because of socio-economic circumstances, need a hot meal the most. They followed the principle of social solidarity with the socially weakest groups of the population. The Ministry of Education, Science and Sport committed itself to cover the expenses of meal preparation, which include the raw materials and workforce, as well as packaging and the cost of delivery in cases when it proves to be mandatory.

In 2020, the Ombudsman discussed numerous and very diverse initiatives and broader questions of respecting human rights, including in regards to individual vulnerable groups and according to individual fields of the institution's work not related to (or not directly related) the COVID-19 epidemic. These matters are handled in the second part of the Annual Report and pertain to numerous systemic shortcomings or arrangements interfering with the respect of human rights and fundamental freedoms of individuals in Slovenia, and are consequently very important for the further development of our society. For every discussed field we give:

- general findings and assessment of the situation,
- a review of the realisation of the Ombudsman's past recommendations, and
- new recommendations and activities of the Ombudsman.

Along with additional expert clarifications, detailed activities of the Ombudsman according to fields is are, just as the previous year considering the amount of content covered and the great number of matters handled, **presented in detail in the extended online version of the Annual Report.**

Based on the Ombudsman's activities in 2020, i.e. dealing with initiatives, opening broader substantial questions, operation of different organisational units, visits, preparation of expert analyses, studies, and detections, we give a total of 128 new recommendations, of these:

- **85 recommendations which in general, frequently also on the systemic level,** concern society and the respect of human rights in it;

- An additional **27 recommendations**, which represent **permanent tasks** of different bodies, and
- **16 COVID-19 recommendations** – i.e. recommendations directly pertaining to the COVID-19 epidemic (numerous recommendations given during the year in regards to measures connected to COVID-19 are no longer relevant since regulations and measures regarding the containment and control of the COVID-19 epidemic have changed very rapidly and are thus not presented again).

This year, we focus only on new recommendations; especially and slightly separately we emphasise recommendations pertaining to permanent tasks of the authorities and those connected to the COVID-19 epidemic. **Additionally, several past unrealised recommendations are repeated. Given the very large number of unfulfilled recommendations of the Ombudsman by the competent authorities, we have reviewed all past recommendations and now highlight only those that remain relevant and which we believe would be essential to increase respect for human rights and fundamental freedoms in Slovenia. Thus, instead of more than 300 unfulfilled Ombudsman's recommendations from the Annual Reports for 2013 to 2019, we highlight "only" 156 of the Ombudsman's most relevant past recommendations, which remain either unfulfilled or partially unfulfilled – from which 101 recommendations are from the 2019 Annual Report and 55 from 2018 or earlier.**



Hence, this year again the Ombudsman repeats or slightly upgrades and specifies last year's **recommendation no. 1 (2019)** regarding the realisation of past recommendations. This year the recommendation is emphasised as a **permanent task and is focused only on relevant or highlighted unrealised or partly unrealised recommendations**:

The Ombudsman proposes that the Government of the Republic of Slovenia in its response report examine and explain why the Ombudsman's past recommendations highlighted in this Annual Report were not realised. The Government of the Republic of Slovenia should ensure that the competent authorities begin effectively realising substantively unrealised recommendations which the Ombudsman has been emphasising for several years, and to this end, the authorities will cooperate if necessary.



We also point out the significance of realising or implementing judgements of the Constitutional Court of the Republic of Slovenia and the European Court of Human Rights. As has been written in previous recommendations, visible progress has been made in recent years regarding the realisation of judgements of the European Court of Human Rights (ECtHR). In 2020, the Committee of Ministers of the Council of Europe adopted only two final resolutions on the enforcement of judgements from Slovenia, leaving eight ECtHR judgements



unenforced at the end of 2020. **We welcome the fact that from these, an action report has been prepared in five cases, and an action plan in three. The Ministry of Justice should be primarily complemented for coordination of work of various government (and other) bodies regarding the enforcement of the ECtHR judgements as well as transparent informing of the public about this through a special website.** However, we expect the Government to establish a special mechanism modelled on the one mentioned previously for the realisation of decisions of the Constitutional Court, since **the Constitutional Court counts that until the end of 2020, 18 so-called declaratory decisions of the Constitutional Court remain unrealised. Seventeen unrealised decisions pertain to legislative provisions and one to a bylaw. The declaratory decisions stipulate a deadline for the elimination of determined unconstitutionality or illegality and it would be expected that competent bodies realise the decisions of the Constitutional Court, which are final and binding, in due time. Therefore, the state of unrealised decision has worsened since 2019, since 13 declaratory decisions of the Constitutional Court remained at the end of 2019.** Respect for the decisions of the Constitutional Court is also an important indicator of the state of the rule of law, so this year we are giving the following more concrete recommendation in this regard:



Respect for the decisions of the Constitutional Court is also an important indicator of the state of the rule of law, so this year we are giving the following more concrete recommendation in this regard:



The Ombudsman recommends that the competent authorities eliminate unconstitutionality established in the decisions of the Constitutional Court of the Republic of Slovenia on a timely basis or as soon as possible, and promptly implement the judgements of the European Court of Human Rights against Slovenia. We recommend to the Government of the Republic of Slovenia that it establish a mechanism modelled on the mechanism established for the realisation of judgements of the European Court of Human Rights, which will offer expert support concerning the realisation of the so-called declaratory decisions of the Constitutional Court and will inform the public in a transparent manner about the state of realised decisions, including about the activities of competent authorities for their realisation.

I have to highlight that 2020 was also special or even historic for the Ombudsman because it was this year that saw the conclusion of the final actions of about three years of efforts for the Ombudsman to acquire Status A according to the Paris Principles about the status of national institutions for human rights. In early 2021, following the successful oral defence, which was conducted before the Accreditation Subcommittee of the Global Alliance of National Human Rights Institutions (GANHRI) on International Human Rights Day, on 10 December 2020, the Ombudsman acquired Status A according to the Paris Principles, and with this full rights in international associations, such as GANHRI and ENNHRI (European Network of National Human Rights Institutions), as well as a greater possibility to cooperate within the United Nations and on the regional level. **In its recommendation, the Accreditation Subcom-**

mittee, as is customary, highlighted some suggestions for the improvement of the existing arrangement, which are supported by the Ombudsman. We also support the principle that the competent authorities approach the implementation of Venice Principles on the protection and promotion of the Human Rights Ombudsman institution, which, on 2 May 2019, were adopted by the European Commission for Democracy through Law (Venice Commission), working within the Council of Europe.

It is impossible to bring attention to all substantive fields and determined shortcomings as well as violations of human rights and fundamental freedoms in the introduction. From the report before you, the state of human rights and fundamental freedoms as well as the rule of law in the country can be discerned. The first chapter is devoted to a review of the work and description of operation of different organisational units of the Ombudsman. The second chapter depicts the content of the work and an overview of substance discussed – first the position of discussed vulnerable groups followed by substantive fields. This year, the third part is dedicated to the presentation of the content of the work and the overview of content connected to the COVID-19 epidemic. A part of the Ombudsman's Annual Report is the Ombudsman's Report on the Implementation of the National Preventive Mechanism against torture and other cruel, inhuman, or degrading treatment or punishment, which appears as a separate publication.

In Slovenia, the Human Rights Ombudsman is a recognised and esteemed institution. That is the merit of all past ombudspersons as well as the dedicated work of all associates of the Ombudsman's institution, whom I would here like to thank for their contribution. I must especially draw attention to the importance of the independence and autonomy of the Ombudsman's operation, which includes financial and substantive independence. As the Ombudsman and as the national institution for human rights, we are a national institution with its mandate founded in the Constitution and the law. We are a kind of a bridge between the state and civil society. After the second year of my term, I can also conclude on the basis of what is written here, that we all face a significantly higher amount of work than I had anticipated at the beginning of 2020. My colleagues and I strive to contribute to the best of our abilities to changes for the better and be a strong voice of all those who are not heard. I repeat that the attitude of a society towards its most vulnerable members is its best mirror.

The Ombudsman joins the efforts of the Organization of the United Nations that **human rights must be in the centre of the post-COVID-19 world.**⁴ The crisis brought about by the coronavirus has deepened poverty, increasing inequalities, structural and entrenched discrimination, and caused other gaps in the respect for human rights. Only measures for the elimination of these gaps and progress in the field of human rights can thus guarantee that we recover completely and build a world that is better, more resistant, more just, and

more sustainable. I would like to highlight that the following should be at the forefront of all future measures:

- **Elimination of any kind of discrimination:** structural discrimination and racism have deepened during COVID-19, thus equality and non-discrimination have to be fundamental demands for the post-COVID-19 world;
- **Solving inequality:** to overcome the crisis, we have to face the epidemic of inequality, which means promoting and protecting economic, social, and cultural rights;
- **Encouraging collaboration and solidarity:** from individuals to governments, from civil society to local communities and the private sector, we all have a role in constructing a world that will be better for present and future generations, while we have to ensure that the voice of the most affected and vulnerable groups is heard;
- **Promotion of sustainable development:** we need sustainable development for people and the planet, in which human rights, Agenda 2030, and the Paris Agreement are the foundations of recovery, which should not leave anybody behind.

To sum up: measures to prevent the spread and ensure the containment of the COVID-19 epidemic undoubtedly interfered and still interfere in our human rights and fundamental freedoms as well as our established way of life. After the end of the epidemic, it will be crucial that the (negative) practices of quick legislation adoption and fast and to a great extent untransparent adoption and amendment of secondary legislation, which are mostly the consequence of the emergency situation connected to curbing the epidemic, do not continue and that the measures adopted eliminate to the greatest possible extent the negative consequences of measures adopted due to the epidemic.

Finally, I would like to thank all who collaborated with us in any way in the past year. I hope for continued good cooperation in the future, particularly regarding the realisation of our recommendations, for which I hope to be able to say in the 2021 Annual Report they have been realised successfully. As I wrote in last year's Annual Report, I am still convinced that if our guideline at work and generally in life is to be more humane to one another, then with joint efforts we will also move the functioning of the state apparatus closer to the individual. Let us put people, their dignity and their problems at the centre. We are all in the service of people and we carry great responsibility towards them, each in our own respective field, so let us consider that in all our endeavours.

Peter Svetina

Human Rights Ombudsman

4 <<https://www.un.org/en/observances/human-rights-day>> (1.12.2020).

1.2

THE HEAD OFFICE OF THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA



HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA

Dunajska 56, 1109 Ljubljana
Republic of Slovenia

Phone: +386 1 475 00 50

Fax: +386 1 475 00 40

Toll-free number: 080 15 30

E-mail: info@varuh-rs.si

Website: www.varuh-rs.si

1.3

THE OMBUDSMAN, HIS DEPUTIES, SECRETARY GENERAL AND EMPLOYEES IN 2019



PETER SVETINA

Human Rights Ombudsman
(24 February 2019 –)



IVAN ŠELIH
BA in Law
Deputy Ombudsman
(17 June 2015 -)

Deputy
Ombudspersons



MIHA HORVAT
MA in Law and BA in Political Science
Deputy Ombudsman
(29 March 2016 -)



MARJETA COTMAN
BA in Law
Deputy Ombudsman
(6 March 2020 -)



Dr JOŽE RUPARČIČ
PhD in Legal Sciences
(1 April 2020 -)



URŠKA NARDONI
BA in Law
Secretary General of
the Ombudsman
(1 July 2020 -)

The Ombudsman's Office
is comprised of the Expert
Service and the Secretariat. It
is managed by the Secretary
General of the Ombudsman.



MARTINA OČEPEK
BA in Law
Director of the
Ombudsman's
Expert Service

**The Director of the
Ombudsman's Expert Service**
organises and manages the work
of public employees in the Expert
Service in accordance with the
instructions of the Ombudsman
and Deputy Ombudsmen.

As at 31.12.2020, the institute of the Ombudsman had 53 employees. Among them six are public office holders (the Ombudsman, four deputies, and the Secretary General), 36 officials, two trainees in official posts, and nine professional-technical public servants.

Thirty-six employees have a university degree; among them are five with a PhD and three with an MSc, and 11 employees have graduate qualifications, of whom two have a specialisation after graduation. Two public servants have higher education and two high school education.

As at 31.12.2020, the **expert service** included 30 public servants, among them 28 permanently employed officials and two fixed-term trainees, for the traineeship time in official posts.

A total of 26 public servants in the expert service have a university degree, of whom four have a PhD, three have an MSc, one public servant has a Bologna master's degree, and three have a professional education, one of whom has a specialisation after graduation.

As at 31.12.2020, the **Office of the Secretary General** had 12 permanently employed public servants, of whom three are officials and nine professional-technical public servants. One public servant has a university degree, eight have graduate qualifications, of whom one has a specialisation after graduation, one public servant has higher education, and two high school education.

As at 31.12.2020, the **Ombudsman's Cabinet** had five permanently employed officials. Four of them have a university degree and one a Bologna master's degree.

In 2020, four public servants were promoted to a higher pay grade, of these three public servants by two pay grades and one by one pay grade. Two officials were promoted to a higher official title.

1.4

ACCESS TO THE OMBUDSMAN IN 2020

2
0
2
0

IN 2020, WE RECEIVED
24,885
INCOMING DOCUMENTS
(21,628 in 2019)

WE GENERATED
9,323
OUTGOING DOCUMENTS
(9,631 in 2019)

Data on the Ombudsman's visits in the role of the National Preventive Mechanism (hereinafter: NPM) are provided in the chapter on the NPM.

1.4.1 Single entry point

FIELD OF WORK	MATTERS DEALT WITH AT THE SEP	SOLVED MATTERS AT THE SEP	PERCENTAGE OF MATTERS SOLVED AT THE SEP	INTERVIEWS AT THE SEP (IN PERSON OR OVER THE TELEPHONE)
1. Equality before the law and prohibition of discrimination	33	31	93,94	68
2. Protection of dignity, personal rights, safety and privacy	80	74	92,50	106
3. Freedom of conscience and religious communities	3	3	100,00	0
4.1 Freedom of expression	0	0	0,00	2
5. Assembly, association and participation in the management of public affairs	3	3	100,00	3
6. National and ethnic communities	6	6	100,00	22
7. Foreigners	13	13	100,00	34
8. Restriction of personal liberty	12	11	91,67	228
Pension and disability insurance	13	11	84,62	49
Health care and health insurance	126	116	92,06	208
9. Social security	112	103	91,96	271
10. Labour law matters	103	89	86,41	120
11. Unemployment	8	8	100,00	20
14. Other administrative matters	64	59	92,19	97
15. Judicial system	140	124	88,57	279
16 Police proceedings, private security service, detectives and traffic wardens	40	38	95,00	73
17. Environment and spatial planning	39	35	89,74	42
18. Regulated activities	37	33	89,19	48
19. Social matters	43	43	100,00	50
20. Housing matters	31	28	90,32	64
21. Protection of children's rights	38	37	97,37	162
22. Other	115	107	93,04	874
23. National preventive mechanism	1	1	100,00	0
24. Child advocacy	0	0	0,00	99
TOTAL	1085	994		2831

Introduction

Individuals turn to the Ombudsman with initiatives connected to claimed violations of human rights and freedoms as well as with general questions and problems that only require an explanation or a referral to another (competent) authority, which represents a large part of the tasks of associates and staff in the secretariat-general.

With the purpose of addressing this type of questions and problems and simultaneously optimise the work throughout the institution, the so-called single entry point (SEP) started operating in 2020. It strives to raise the quality of the work and ensure even greater openness and accessibility of the Ombudsman. Another of the goals we set is to improve the mechanisms of traceability, transparency, and unity for all interactions of initiators with the Ombudsman, i.e. all calls, personal discourse, and all written explanations the initiators receive.

The work of the single entry point includes:

- the classification of initiatives,
- taking all telephone calls for specialist services (during the epidemic also for the secretariat general),
- welcoming all previously announced and unannounced individuals who visit the institution of the Ombudsman in person,
- writing responses to requests for information, clarifications, and anonymous initiatives.

Assigning initiatives to work fields

The introduction of the single entry point optimised the **classification of initiatives** (assigning the received initiatives to work fields) received by the Ombudsman from initiators via classic mail or e-mail, since as a rule they are classified and assigned to expert workers on the day they are received.

Unified criteria for the assignment of initiatives that remain at the single entry point and those that are discussed in detail by the Ombudsman at individual topical work fields were also created.

The received initiatives are assigned to the single entry point if:

- the received message was sent to the Ombudsman as information and it does not contain a matter demanding any kind of intervention from the Ombudsman,
- it is an anonymous message and not a matter demanding any kind of intervention from the Ombudsman,

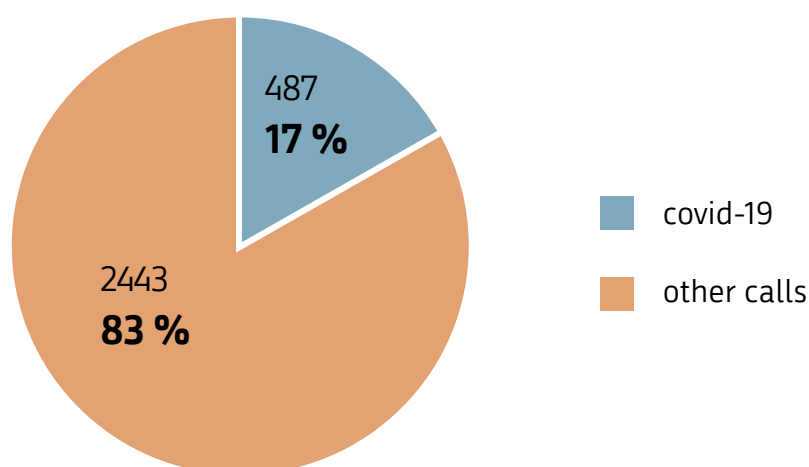
- it is an obvious lack of competence of the Ombudsman,
- it is evident from the initiative that the initiator has not yet turned to competent authorities,
- the initiator only seeks advice,
- it involves hypothetical questions,
- it involves unclear initiatives,
- it is an inquiry into the Ombudsman's position (e.g. what was done in this field in recent years, etc.),
- the Ombudsman's standpoint about a certain matter has previously been made clear.

Telephone calls and discourse in person

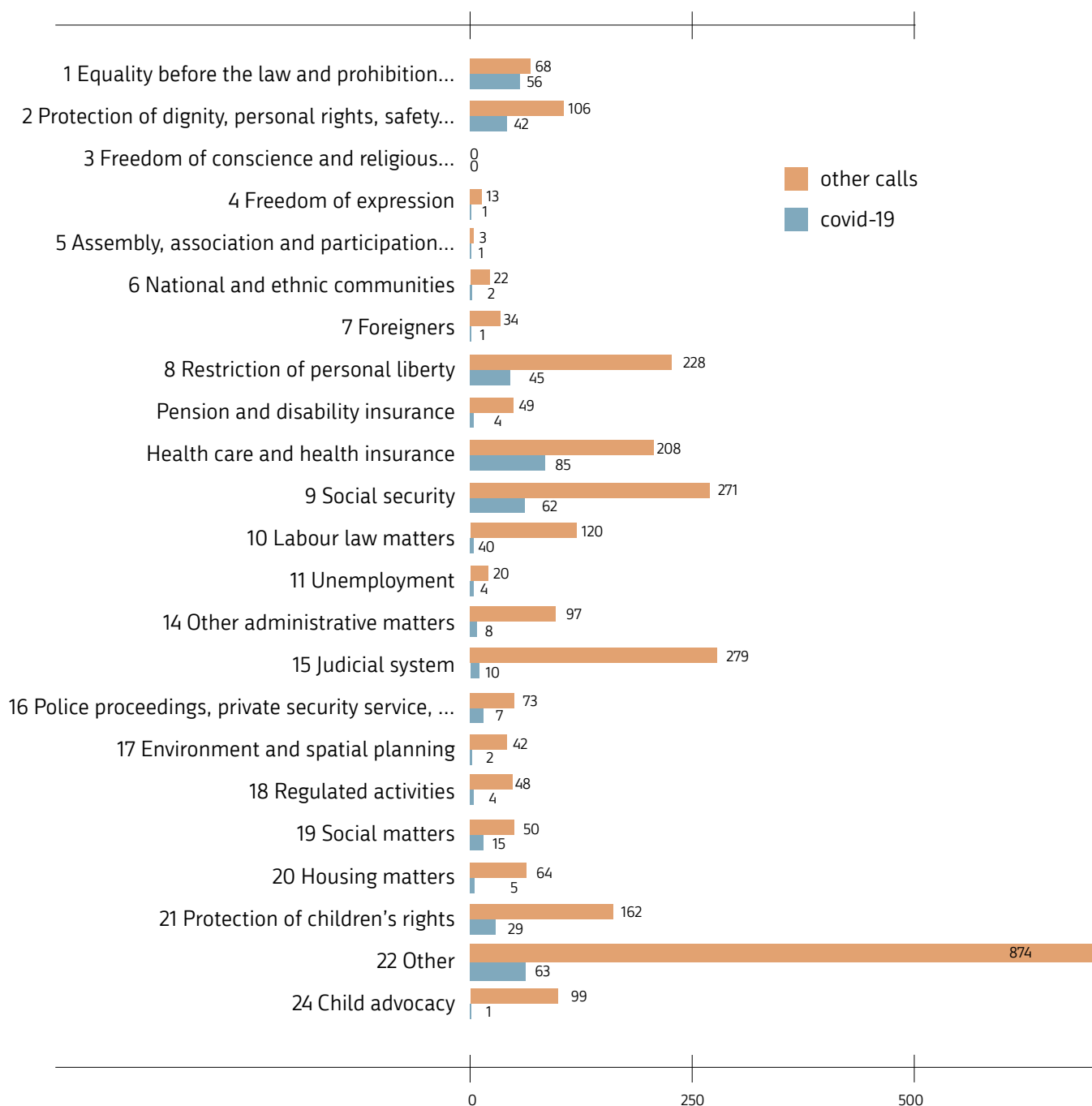
The SEP in telephone calls and discourse in person provides clarifications about the Ombudsman's competencies, the manner of submitting the initiative, and general clarifications about options available to a person in connection to the issue regarding which they called or visited us. Official notes are kept about all telephone calls and discourses in person, which are presented to the management of the Ombudsman.

In 2020, the SEP received 2,930 calls, of which 487 were connected to the issue of COVID-19. It needs to be emphasised, however, that during the epidemic all calls were redirected to the free telephone number meaning that the number of received calls was significantly larger.

All calls to the SEP and of those calls to the SEP concerning COVID-19



All calls regarding substantive fields of work to the SEP and of those calls to the SEP concerning COVID-19



The chart depicts the telephone calls received at the SEP according to the Ombudsman's fields of work, where calls connected to the COVID-19 epidemic are marked separately for every field.

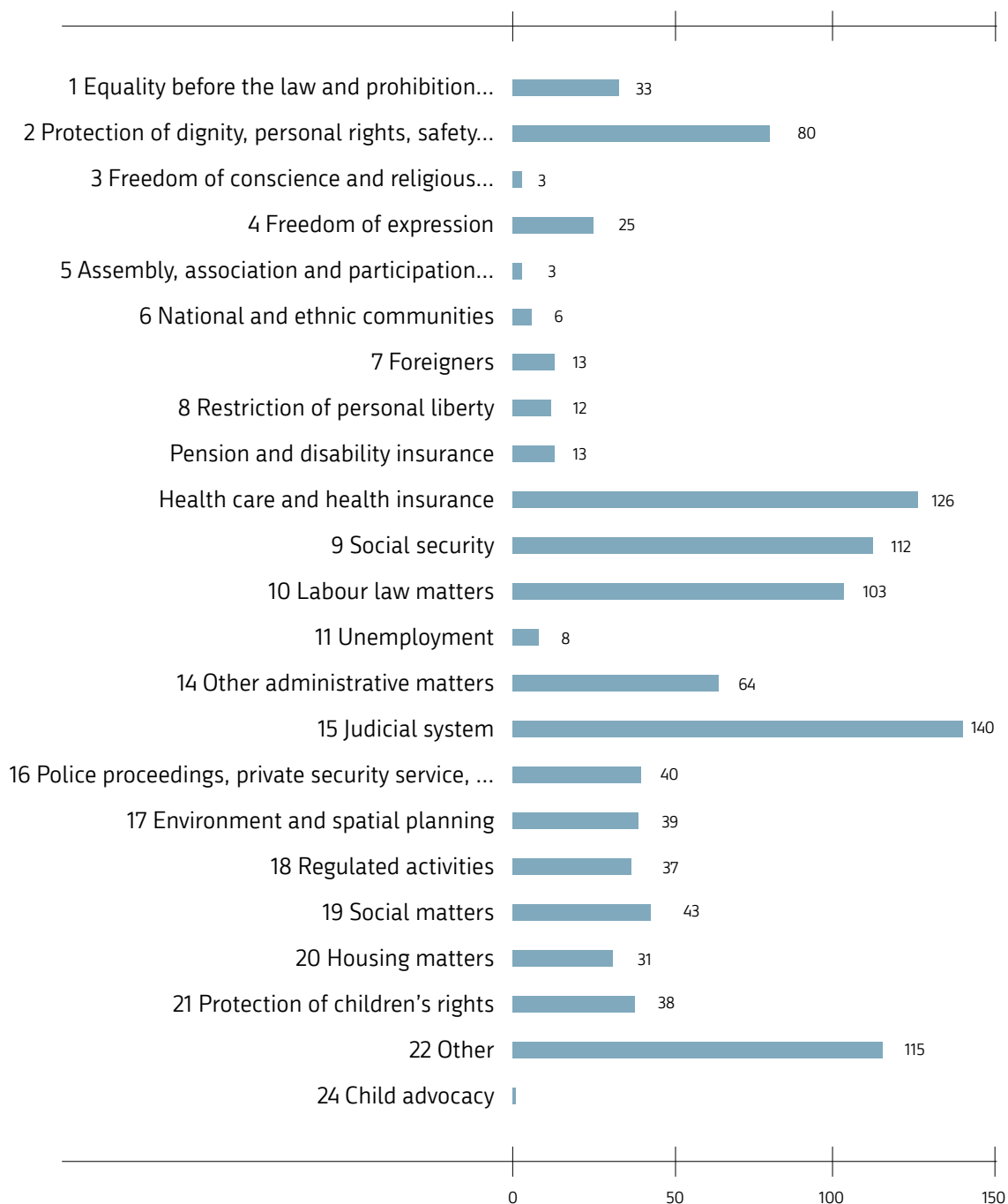
By far the greatest share of calls fall under the chapter Others, which encompasses general clarifications about the work of the Ombudsman and redirections to competent authorities. Among calls pertaining to individual fields of the Ombudsman's work, the restriction of personal liberty, social security, health care, and the judicial system stand out. This can be ascribed to the adopted intervention measures and questions and presumed violations connected to that. Calls pertaining to social security were mainly connected to the issue of restrictions in retirement homes, social transfers, and other measures predicted by the so-called anti-corona legislation. In the field of restricting personal liberty, the content of the calls pertained to the restriction of movement and ordering of quarantine. As to health care and healthcare insurance, the greater part of calls were about questions pertaining to the proposal of the Communicable Diseases Act (ZNB) and issues connected to it. We primarily answered questions about vaccination and testing for COVID-19. Callers also highlighted the problem of waiting periods, the inaccessibility of family doctors, and problems connected to sick leave. A great share of the work of the SEP are calls pertaining to the work of the courts, but among these there were almost none that related to the COVID-19 epidemic. Namely, the callers primarily wanted legal advice or help or posed questions pertaining to the withholding of the statute of limitations in judicial proceedings during the time of adopted measures.

The institution's openness

The Single Entry Point (SEP) ensures the openness of the institution, since every day associates at the SEP receive (except during the epidemic when visitors were not received) **every unannounced and announced individual** and provide them with clarifications about the Ombudsman's competencies, how to submit an initiative, and general clarifications about the legal options available to a person, where it should be emphasised that the Ombudsman welcomes initiators every work day between 9am and 3pm, except on Fridays when initiatives are received until 2.30pm. Access for clients was also provided prior to the implementation of the SEP, but since the implementation of the SEP, initiators are received by SEP associates, which alleviates the workload of other associates and employees of the secretariat-general.

Through the SEP, the initiators receive written explanations of matters the Ombudsman is informed about, asked for clarifications, advice, and viewpoints. All answers prepared in the SEP also have a unified, previously agreed structure, in which first the initiator's statements are summarised and then the relevant competencies of the Ombudsman are clarified which in the matter at hand do not provide a legal basis for further treatment. Nevertheless, in accordance with the ZVarCP, all initiators are provided with the possibilities available to a person for the protection of their rights.

Dealing with the content of initiatives



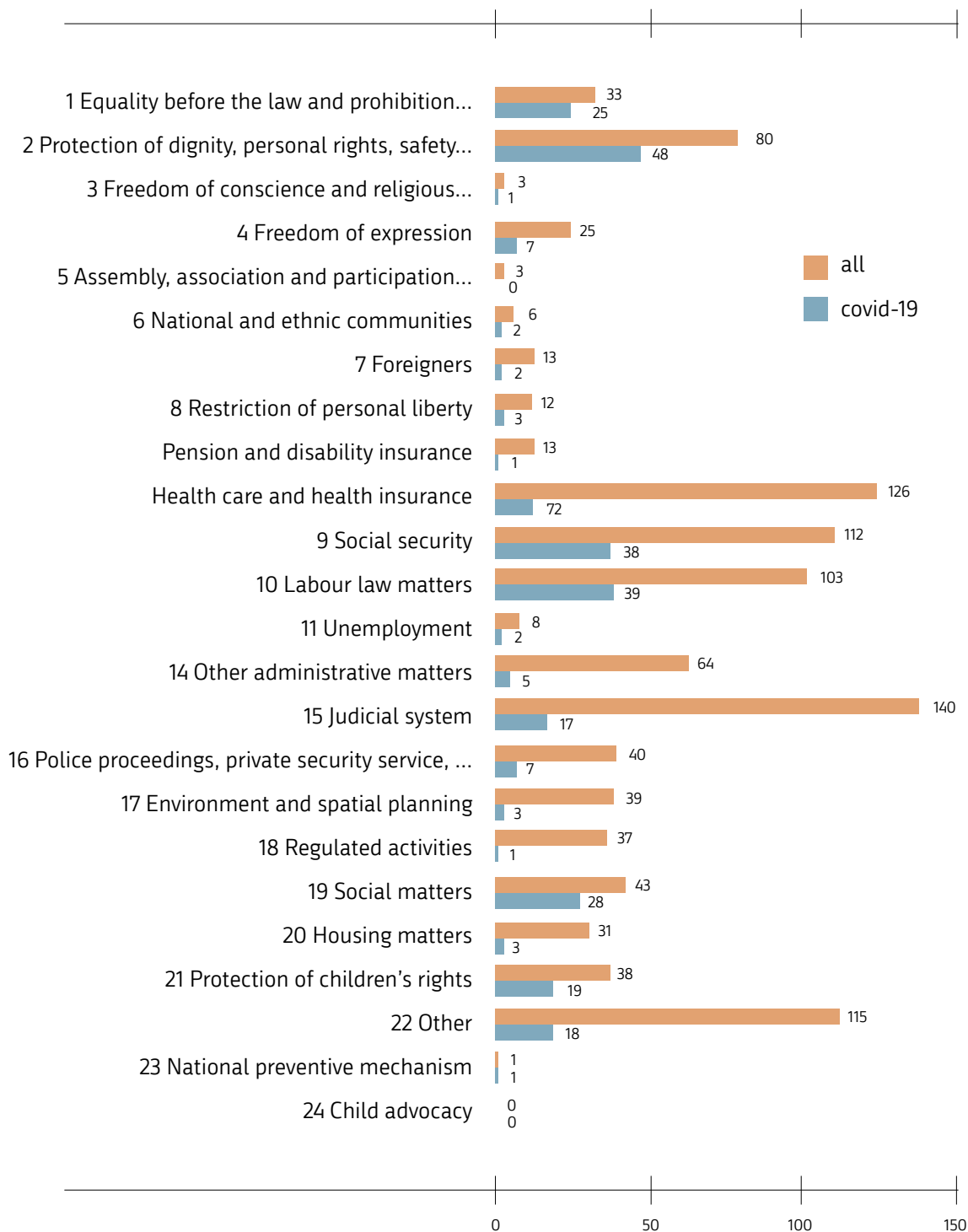
The chart depicts the number of initiatives dealt with in the SEP according to the Ombudsman's fields of work.

The chart depicts the number of initiatives dealt with in the SEP according to the Ombudsman's fields of work.

The content of the initiatives does not differ significantly from the trend in telephone calls described above. A larger number of hypothetical questions was posed in the field of health care; initiators were, for example, interested in whether mandatory vaccination against COVID-19 can be perceived as a violation of human rights.

Such questions also occurred in other areas of the Ombudsman's work, which can be ascribed to the fast-changing measures. As expected, the SEP handled a great number of initiatives in the field of social security. Here, initiators were primarily informed about the previously formed positions of the Ombudsman that are presented in detail in individual chapters of the Annual Report, and directed them to the competent bodies. In the field of labour law, in which the Ombudsman generally has restricted competence, initiators were primarily alarmed about the measures in the field of health and safety at work, fear of losing a job, and the options that are available to a person who has lost a job.

The most initiatives were handled in the field of the judicial system, which includes civil liability relationships in the broadest sense. Such initiatives primarily demanded general clarifications about the legal options available to enforce an individual's interests in various court proceedings.

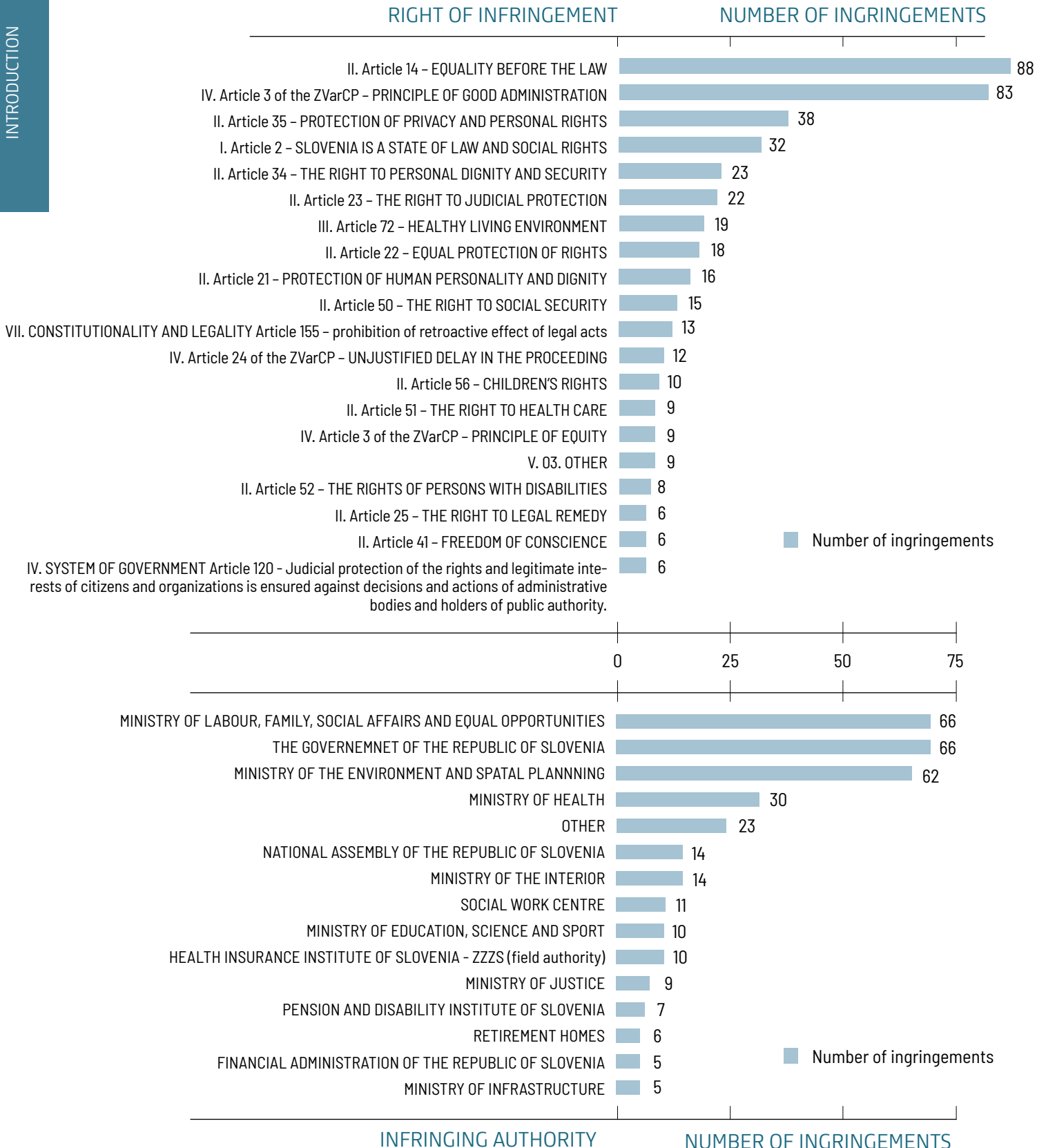


All initiatives in the SEP and of these initiatives in the SEP regarding COVID-19

The chart depicts the initiatives received in the SEP according to the Ombudsman's fields of work, where initiatives connected to COVID-19 are marked separately for every field.

1.5

STATISTICS FOR 2020



6.852

CASES WERE DEALT WITH BY THE OMBUDSMAN IN 2019.

In 2018, we dealt with 4,719 cases which denotes a 2.52-per cent decrease in 2019

3.054

INTERVIEWS

with callers who had not (yet) submitted their complaints

28

INTERVIEW

during meetings held outside the head office, which were recorded in official minutes as the complainants received clarifications and the issue did not require further treatment by the Ombudsman

3.217

newly opened complaints

553

complaints carried forward from 2018

3.302 or 87,7 %

complaints were completed

3.770

COMPLAINTS

were discussed by the Ombudsman in 2019 of which, as of 31 December 2019:

440 or 11,6 %

were being dealt with

28 or 0,7 %

were reactivated.

504

or 15,3 %

were justified; 140 of these were from the field of advocacy

420

or 12,7 %

were unfounded

1.915

or 57,9 %

provided no further conditions for discussion

461 or

14,0 %

did not fall under the Ombudsman's jurisdiction

3 or

0,1 %

denoted a withdrawal of consent in the field of advocacy

The Ombudsman found that the claims concerning the violations of human rights and fundamental freedoms were **well-founded in 364 complaints**, and that at least one (or more) fundamental human right or freedom (according to the Constitution of the Republic of Slovenia) had been violated, and that the principles of equity and good administration were not observed.

Among 364 justified complaints, the Ombudsman **established 473 violations of human rights** and fundamental freedoms (determined in the Constitution of the Republic of Slovenia) and other irregularities, such as the violation of the principles of equity and good administration, undue delay in proceedings and evident abuse of authority as per the ZVarCP.

To these 473 violations, **140 cases regarding child advocacy** must be added, in which no concrete violations were established, but which were treated as justified and thus also included among the 346 justified complaints.

A higher number of rights violations in comparison with the number of justified complaints is the result of a higher number of established concrete violations in an individual complaint. Among the complaints discussed, we thus determined two or more violations of human rights and fundamental freedoms or other irregularities in several cases.

1.6

COMMUNICATION ACTIVITIES IN 2020

Just like in all other fields, in communication activities the institution of the Human Rights Ombudsman (the Ombudsman) is directed towards the user. Our goal is to be an efficient service centre for all who seek information about our work or are interested in our views or standpoints on current questions. The media are certainly one of our most important publics, since they often represent the link with the people who we address with our messages. The style and manner of communicating strongly mark every organisation and influence its public image and that is why we at the Ombudsman strive for proactive, planned, thought-through, and goal-oriented communication activities. We ensure our active role in debates discussing topics from the field of human rights, strengthen the significance and recognisability of the institution as a credible interlocutor, and raise awareness about the meaning of respecting human rights and fundamental freedoms with the help of different communication approaches, tools, and communication channels.

In comparison to previous years, the team of colleagues has been strengthened by the mandate of Ombudsman Peter Svetina, who is in charge of active ties with the editorial boards of the Slovenian media. In 2020, the media reported on our work in **1,499 articles and programmes** and we recorded a total of **5,314 online posts and mentions**. In addition to interviews and media releases from Human Rights Ombudsman Peter Svetina and other representatives of the institution, made in response to invitations we are always glad to respond to, we also addressed the public with other messages. We communicated recommendations to different bodies, highlighted **58 cases from our work**, and presented **116 press releases** to the media. Furthermore, we regularly ensure the public nature of our work with posts on our webpage www.varuh-rs.si or www.ombudsman.si, as well as on the social networks [Facebook](#) and [Twitter](#).

Despite the COVID-19 epidemic, due to which we were unable to organise events and a large number of activities directly in the field (out-of-office operations, announced and unannounced visits to various institutions, work meetings with ministries, non-governmental organisations, municipalities, and other stakeholders), we directed our efforts into promotional and educational activities¹. Among others, on the World Children's Day, 20 November, in collaboration with the [Human Rights Center](#) we prepared the [If you see injustice, use justice! project](#), within which we encourage children and adolescents to turn to the Human Rights Ombudsman if they feel their rights have been violated, while at the same time raising awareness about their rights. In addition

¹ More about this in Chapter 1.9 discussing the work of the Center for Human Rights.

to online communication activities, we provided posters to primary schools and other institutions and opened a free telephone number 080 36 86 and e-mail address otroci@varuh-rs.si for children and adolescents.

On the eve of Human Rights Day, marked on 10 December, we prepared an [online talk with Human Rights Ombudsman Peter Svetina](#) and broadcast it live on social media, RTV Slovenija's multimedia portal, and via the Slovenian Press Agency. We also participated in the campaign of the United Nations and the High Commissioner for Human Rights Michelle Bachelet on social networks #RecoverBetter #StandUp4HumanRights. Together with other participants from all over the world, we underlined the urgent need to put human rights at the centre of efforts for faster, better, and higher quality recovery of society as a whole after the pandemic and the building of a fairer future for all. Ombudsman Peter Svetina invited the President of the Republic of Slovenia Borut Pahor, the President of the National Assembly of the Republic of Slovenia Igor Zorčič, and the European Commissioner for Crisis Management Janez Lenarčič to participate, all of whom accepted and spread these noble messages among their online followers.

As active members of the work group for communication we also participated at meetings of communicators of the European Network of National Human Rights Institutions (ENNHRI) and shared the experience of Slovenia with our European colleagues.

We regularly collaborate with the International Ombudsman Institute (IOI). We participated in on-line training dealing with the topic of the media, which brought together representatives of ombudsman organisations from around the world with the purpose to strengthen communication skills for even better presentation of messages, which is of immense importance in the unpredictable and demanding circumstances of the COVID-19 pandemic.²

² More about this in Chapter 1.10 discussing international affairs.

1.7

THE OMBUDSMAN AS THE NATIONAL INSTITUTION FOR HUMAN RIGHTS – INTERNATIONAL OPERATING STANDARDS

In 2020, the procedure for renewing the Ombudsman's accreditation as the national institution for human rights conducted by the Global Alliance of National Human Rights Institutions (GANHRI) has continued. Until 2020, the Ombudsman was twice accredited with Status B (2000 and 2010), meaning that it partly met the standards of the **Principles on the status and functioning of national human rights institutions (Paris Principles) adopted by the General Assembly of the United Nations on 20 December 1993 with Resolution 48/134**. The meeting of the Accreditation Subcommittee (SCA) GANHRI, at which the oral presentation of the Ombudsman was expected, was rescheduled from March to December due to the occurrence of COVID-19 epidemic. **On 10 December**, the Head of the Center, Deputy Miha Horvat, **participated at a virtual defence of the institution of the Human Rights Ombudsman in front of the SCA GANHRI**. All Ombudsman's activities and the manner of work as well as the principles of its operation were successfully presented. In January 2021, GANHRI revealed their accreditation assessment confirming that the Ombudsman meets the Paris Principles and that **the Ombudsman is awarded Status A according to the Paris Principles for the first time**. Thus, the Ombudsman acquired the highest status which is an important recognition of the Ombudsman's operation as well as of the environment in which it works. Namely, during the accreditation process, the GANHRI evaluates both the formal conditions (the legal framework which was appropriately supplemented in 2017) and the actual implementation of competences on the side of the national institution. The accreditation procedure took place over more than two years, since the Ombudsman submitted the application in 2018, and had strived intensely for the acquisition of Status A since 2015. The appropriate legislative base was established with the amended Human Rights Ombudsman Act (ZVarCP-B) from 2017, which extended the Ombudsman's competences in the fields of education and promotion of human rights, and appointed the establishment of the Center for Human Rights at the Human Rights Ombudsman and the Human Rights Council as a consultive body.

A demanding GANHRI accreditation procedure lasted more than two years, which included a detailed inspection of the Ombudsman's operation both on the national and international levels since 2010, primarily in the light of its credibility, independence, and efficiency (what are its competences for the handling of matters in the field of human rights and fundamental freedoms; transparency of the selection procedure and appointing leadership; plurality of representation of parts of society


in influencing the management of the institution; its independence; and access to sufficient financial means and appropriate number of staff). Also important is the wide and general mandate and the institution's competence both regarding the protection of human rights and their promotion. First, the Ombudsman had to submit a detailed written statement of all the above-mentioned aspects and in December also had to defend the meeting of the demanded standards orally. The SCA then recommended that the Ombudsman be accredited with Status A, and with the recent expiration of the appeal period this recommendation was considered accepted.

Therefore, in January 2021, the Ombudsman officially managed to achieve the Status A accreditation – this is the highest status possible to achieve according to the principles adopted by the General Assembly of the United Nations in 1993. It was hence also confirmed officially and on the international level that the Ombudsman achieves the highest standards of operation of an independent national institution for the protection and promotion of human rights. The awarding of this status is simultaneously a signal to the state of Slovenia that the respect of the Ombudsman as the national institution for human rights and its strengthening is the right way to go. As for the Ombudsman itself, the newly acquired status primarily represents a great recognition and confirmation of its previous work, and it will from now on enable it to fully participate at various meetings of the United Nations and on the regional level as well as in bodies of the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI), in which the Ombudsman also acquired the right to vote.

It needs to be accentuated that for the institution, the award of Status A means everything but an opportunity to lay back and rest on its laurels. The GANHRI accreditation subcommittee regularly stresses – as it did this time, too – that institution accredited with Status A should continue to strive to strengthen their efficiency and independence and for the realisation of their recommendations. Therefore, it first encouraged the Ombudsman to continue its efforts for the most comprehensive possible treatment of issues connected to human rights in the Slovenian society, including the rights of the disabled, migrants, and refugees and human trafficking (e.g. in Annual Report for 2019 the Ombudsman clearly stated that it is prepared to assume responsibility and the mission of an independent body for the promotion, protection, and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities in accordance with the second paragraph of Article 33 of this convention); and secondly the GANHRI recommended that the entire procedure of the selection and appointment of the ombudsman and their deputies should be defined in even more detail; furthermore, the financial autonomy of the institution and its sufficient and independent financing should be determined; and the competence of ratification promotion and admittance to international instruments of human rights should be explicitly defined in the legislative mandate of the Ombudsman.¹

¹ Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7-18 December 2020, 2.5 Slovenia Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman), pp. 22-24. Available at: <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf>.

The Ombudsman joins these comments of the SCA, while their realisation will undoubtedly need the appropriate ear and actual support of the authorities, primarily the government and legislature. **In accordance with the established system, in five years' time it will be checked again whether the Ombudsman (still) meets the requirements for the (re)accreditation with Status A according to the Paris Principles.** The Ombudsman pledges to keep doing its job as enthusiastically and professionally as possible.



The ombudsman recommends to the Ministry of Justice and the Government of the Republic of Slovenia to prepare in collaboration with the Ombudsman, and the National Assembly to adopt the suitable legislative amendments, the purpose of which is to strengthen the position of the Ombudsman as the national institution for human rights with Status A according to the Paris Principles about the position and operation of national institutions for human rights (1993) in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020.

In the field of the state of national institutions for human rights in the European Union, it is important to draw attention to the **report of the European Union Agency for Fundamental Rights (FRA) "Strong and effective national human rights institutions: challenges, promising practices and opportunities", published on 3 September 2020.** Namely, after ten years, the FRA published its new report on the state of national institutions for human rights in the European Union, which is based on the latest research of the state in the European Union. It was also published in Slovenian.² For example, it derives from the report that among all member states Slovenia has the highest awareness about the existence of the national institution (no less than 96% of the respondents), yet the FRA still reports that the Ombudsman holds Status B according to the Paris Principles (which was the actual state in 2020). The report also reveals that numerous national institutions, especially those with Status A according to the Paris Principles, hold several international mandates, such as Slovenia the mandate of the National Preventive Mechanism according to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and some others also the mandate of the advocate of the principle of equality or the monitoring body under the Convention on the Rights of Persons with Disabilities. The Ombudsman also strives for the latter, especially since it can be discerned from the report that 17 of the 30 national institutions for human rights encompassed in the report (more about this in Chapter 2.9. The Rights of People with Disabilities of this report) already perform this task.

² See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-strong-effective-nhris-summary_sl.pdf in <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-pozdravlja-porocilo-agencije-eu-za-temeljne-pravice-o-pomenu-nacionalnih-institucij-za-cloveko/>.

Regarding the issue of meeting international standards, the **Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles)** should here be brought to the forefront, which on 3 May 2019 were adopted by the European Commission for Democracy through Law (the Venice Commission) operating within the framework of the Council of Europe. The Venice Principles include 25 principles, standards of operation of the institution of the human rights ombudsman and mediator. An outstanding achievement and shift was achieved in regard to the international recognition of these principles on **16 December 2020, when the UN General Assembly confirmed them with its Resolution (A/RES/75/186) on The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law as the international standard.** For the operation of the human rights ombudsmen, the resolution has a comparable significance to the adoption of the Paris Principles in the UN General Assembly in 1993, for it sets international standards of operation for the institution based on the Venice Principles – therefore separate from the national institution for human rights. The resolution strongly encourages the member states to consider the foundation or strengthening of the independent and autonomous institution of the human rights ombudsman and mediators on the national level and, where appropriate, on the regional or local level, in accordance with the principles concerning the protection and strengthening of the institution of the human rights ombudsman (the Venice Principles), either as a national institution for human rights or together with them. Simultaneously, the resolution encourages institutions of the human rights ombudsman and mediators to act in accordance with all appropriate international instruments, including the Paris and Venice Principles, with the aim of strengthening their independence and autonomy and their ability to help member states in encouraging and protection of human rights and encouraging good management and respect of the rule of law. The resolution thus reinforces the role of the human rights ombudsmen and mediators both in the system of the United Nations and on the national level. Unfortunately, we have to determine that Slovenia has not cosponsored³ this resolution, despite the fact that in May the Ombudsman sent a request for support to the International Organization of Ombudsmen (IOI) to the Ministry of Foreign Affairs (MZZ) concerning their efforts to acquire the appropriate status in the United Nations through the activities of our ministry in New York. The Ombudsman received no response from the MZZ regarding this request. The ombudsman also supports future efforts of the IOI within the United Nations for the acquisition of a comparable status in the World Organization as the GANHRI has. We hope that Slovenian diplomacy will also suitably support these efforts on the international level.

³ See Seventy-fifth session of the Third Committee, Agenda item 72(b), document of the UN no. A /C.3/75/L.38 from 30 October 2020, available at <https://undocs.org/A/C.3/75/L.38>.

Hence, the Ombudsman welcomes the adoption of the Resolution of the United Nations General Assembly 75/186 and the internationalisation of the Venice Principles (2019). At the same time, we strive for the Human Rights Ombudsman Act to be revised and if needed upgraded so that the Venice Principles are appropriately implemented into the Slovenian legal order.



The Ombudsman recommends to the Ministry of Justice and the Government of the Republic of Slovenia that in collaboration with the Ombudsman they prepare and the National Assembly adopt appropriate legislative amendments that will reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, which were adopted by the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020.

1.8

HUMAN RIGHTS COUNCIL

About Human Rights Council

The Human Rights Council is on the basis of Article 50 of the Human Rights Ombudsman Act (Uradni list RS, no. 69/2017, official consolidated version, ZVarCP-UPB2) the Ombudsman's consultative body to promote and protect human rights and fundamental freedoms and to enhance legal certainty. **The Council functions according to the principle of professional autonomy.** With the decisions of the Human Rights Ombudsman from 10.5.2019 and 3.6.2020 the following members work in the Council: Margerita Jurkovič, Dr Robert Masten, Žiga Vavpotič, Neli Dimc, MSc Lea Benedejčič, MSc Nataša Briški, Darja Groznik, Dr Patrick Vlačič, Dr Vasilka Sancin, Dr Sara Ahlin Doljak, Aldijana Ahmetović, Samo Novak, Peter Pavlin, Dr Marko Rakovec, and Nataša Voršič.

Plural representation enables the establishment of an effective cooperation of civil society, science, and public authority bodies when drafting the Ombudsman's findings about the level of observance of human rights, fundamental freedoms, and legal certainty in the Republic of Slovenia.

The Council implements the following consultative tasks:

- participates in the preparation of the Ombudsman's findings about the level of observance of human rights, fundamental freedoms, and legal certainty in the Republic of Slovenia;
- proposes to the Ombudsman the instigation of a procedure regarding possible violations of human rights and fundamental freedoms;
- discusses broader issues of promoting, protecting and monitoring of human rights and fundamental freedoms at the proposal of the Ombudsman;
- discusses reports of the Republic of Slovenia submitted to international organisations regarding human rights, and participates in preparing the Ombudsman's independent reports about the realisation of international commitments of the Republic of Slovenia in the field of human rights;
- forms positions on development policies regarding human rights and fundamental freedoms;
- raises awareness of the public and experts about the importance and development of human rights and fundamental freedoms.

The Ombudsman's mission is complemented significantly with the Council's discussion of broader issues of promoting, protecting, and supervising the observance of human rights and fundamental freedoms, and the provision of opinions regarding development policies of human rights.

The term of the Council's members depends on the Ombudsman's term. Thus the second mandate will end on 23 February 2025, when the six-year mandate of the Human Rights Ombudsman Peter Svetina ceases.

The Council's work is regulated by its rules of procedure adopted by the Ombudsman after prior consultation with the Council's members and are then published in the Official Gazette of the Republic of Slovenia.

The work of the Council in 2020

In 2020, the Human Rights Council, which operates as a consultative body to the Human Rights Ombudsman, met for three meetings. Both the number of meetings and the topics discussed were influenced by the general situation in the country connected to the COVID-19 epidemic.

The first Human Rights Council meeting (the third meeting during the 2019–2025 mandate)

The meeting discussed the climate, climate policies, and their influence on human rights. In addition to the members of the Human Rights Council (hereon: Council members) the following guests were present: Marko Maver, Secretary of State from the Ministry of the Environment and Spatial Planning, Katarina Trstenjak from the Jožef Stefan Institute, and Kristina Lopert from the Ministry of the Environment and Spatial Planning (hereon: the MOP).

The Human Rights Ombudsman Peter Svetina (hereon: the Ombudsman) presented the work of the Human Rights Ombudsman Institution in the field of the environment and spatial planning, which annually deals with about 170 initiatives on average, either individual or general. The degree of justification of matters in which the Ombudsman finds violations of authoritative bodies is high in comparison to other discussed fields. The rights of people in the field of the environment and spatial planning are frequently violated, most often the right to a healthy living environment and health. **The crucial finding of the Ombudsman here is that the attitude of the state towards this issue urgently needs to change.** The state must take the side of people and not capital. It should be a role model for individuals and not vice versa, when we do not see concrete results of what the state has done for the solution of, for example, environmental problems. As another critical issue the Ombudsman mentions the frequent changes of leadership at the MOP, while strategies and

programmes are being written, yet not even a small step forward has been made in the near past in this field.

At the meeting, the MOP representatives presented *The National Long-Term Strategy Until 2050 and the Law on climate policy of Slovenia with the goal of ensuring carbon neutrality*, while the establishment of a Climate Council is supposed which would operate as the Government's consultative body for the field of climate policy, and a Directorate for Climate Change is being founded at the MOP.

The Council members were unanimous that climate policy must follow the goals of the Paris Agreement ratified by Slovenia and valid since the beginning of 2017. In accordance with this, The National Long-Term Climate Strategy Until 2050 needs to be prepared and the question of energy poverty addressed in it, before the strategy is submitted to the European Union.

The Ombudsman called on the MOP to include the wider public in the preparation of this strategy, both expert and lay on the national and regional levels. The Council members agreed that collaboration of local communities and companies is essential and that they must all strive to reduce greenhouse gas emissions and act for greater protection from the consequences of climate change.

In a debate, the Council members highlighted that we will all have to change our habits and adapt to the effects of climate change; hence, we have to allocate more public funds to raising awareness and education now. The climate strategy until 2050 is very distant but we need to start acting now and transform our mentality so that every individual can make a positive change for themselves. The Council members made it clear that climate-related topics are demanding, global, and complex. While the topic may seem remote, both in time and geography, this may be deceiving. **The actions of the state must be immediate or the future will bring brutal consequences for all of us, our lives, and our rights, is what the Council members emphasised in the press release.**

The second Human Rights Council meeting (the fourth during the 2019–2025 mandate)

At this meeting, **the Council members discussed the state measures for the preparations for a possible second wave of the COVID-19 epidemic.** The Minister of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) Janez Cigler Kralj participated at the meeting. The Ombudsman presented the operation of the institution and activities during the first wave of the epidemic. Until the end of April 2020, 324 matters connected to this issue were discussed. A total of 182 telephone calls were made, while the majority of matters dealt with pertained to the field of social security, equality before the

law, protection from discrimination, personal liberty restrictions, protection of children's rights, and labour law matters.

The Minister presented the measures imposed by the Republic of Slovenia to eliminate and curb the consequences of the epidemic and stressed that the common goal of the measures taken to date was the alleviation of social distress of the inhabitants and to provide help to the economy, while the MDDSZ mostly focused on retirement homes during this time. While adopting measures the principle of proportionality was complied with, added the Minister.

The Council members were unanimous in their discussion that we had to be even more careful about the measures in the potential second wave. Interferences into human rights and fundamental freedoms, which epidemiological reasons would indicate necessary, have to be thought out and well considered as well as duly substantiated by law. **When adopting new measures, both on the statutory and executive levels, human rights and fundamental freedoms, proportionality, non-discrimination, and primarily the need for transparent regulation adoption have to be respected.** It is essential that, in cooperation with key stakeholders, the Government prepares suitable action plans and protocols.

The Council members suggested that, prior to the adoption of any measure for the curbing of the epidemic, the Ombudsman should invite the Government to make a preliminary assessment of the consequences of measures on human rights and fundamental freedoms. The above-stated should become a standard in adopting regulations. The Government responded that the Republic of Slovenia already has mechanisms in place for the assessment of consequences of regulation proposals on human rights and fundamental freedoms, but will nevertheless be active in 2021 and 2022 in the preparation of a comprehensive package of methodologies for the assessment of consequences of regulations on an individual social field, which will alleviate the work of those who prepare the assessment of consequences – all with the goal of preparing even better regulations. This way, the knowledge of regulation drafters will deepen, with the help of additional tools and aids, and the awareness and monitoring of good regulation preparation will be raised, as well as the importance of respecting human rights and fundamental freedoms in the legislation preparation. This response has not yet been discussed by the Human Rights Council.

The third Human Rights Council meeting (the fifth during the 2019–2025 mandate)

At the third meeting, **the Council members discussed the Report about the Ombudsman's work for 2019.** Upon its presentation, the Ombudsman stated that the report highlights in particular all Ombudsman's recommendations, current and past. **We cannot be satisfied with the approximately 200**

still unrealised recommendations today. In general, the report for 2019 is in a slightly differently format to previous reports, since it focuses on vulnerable groups we were dealing with: parents, children, people with disabilities, unemployed people, religious communities, national and ethnic communities, employed people, LGBT+, and foreigners. In 2019, we dealt with 4,600 cases; of these 2,957 initiatives, we found 305 violations of rights and other irregularities by 48 different bodies. Most frequently, the violations pertained to the principle of good administration, children's rights, unjustified delay in proceedings, the legal and social state, and the violation of the right to social security. We gave 158 recommendations.

In the ensuing debate the Council members stressed that in the field of human rights or the implementation of the Ombudsman's recommendation, the review of a several-year period is key, since this reveals the actual progress made. Within the Universal Periodic Review of the UN Human Rights Council, Slovenia committed to regulate certain fields and this presents additional encouragement for the Government. Some of the ministries do not respond to the Ombudsman's findings and recommendations at all, which is especially disturbing, said the Council members, who also wondered about the recommendation mechanism according to which decision-makers can reject the recommendation.

The Ombudsman informed the Council members that the National Assembly always accepts all of the Ombudsman's recommendations and that the Ombudsman, despite the potential disagreement of the Government, insists on the realisation of its recommendations.

In connection with the report and activities performed by the Ombudsman in 2019, the Council members proposed that the Ombudsman prepare a brainstorming session about the recommendations pertaining to the gathering of detailed data based on personal circumstances.

A lively discussion also broke out among the Council members regarding **hate speech** and the Ombudsman's recommendation about the determining of a sanction for media which allow for the publication of such speech. It was emphasised that in the field of freedom of speech we are not only bound by the existing regulations but also the practice of the European Court of Human Rights. Both the freedom of speech and the prohibition of hostility need to be protected.

1.9

CENTER FOR HUMAN RIGHTS

The year 2020 was the first full year of the Center for Human Rights' (Center) operation after its establishment in the middle of 2019. The Center, which according to Article 26 of the ZVarCP does not deal with initiatives of individuals, performs the following **tasks** under Article 50.b of the ZVarCP:

- promotion, information, education, training, preparation of analyses and reports in individual fields of promotion and protection of human rights and fundamental freedoms,
- organising consultations on the implementation, promotion, and protection of human rights and fundamental freedoms,
- cooperation with civil society, trade unions, and government bodies,
- providing general information on the types and forms of complaints to international bodies concerning violations of human rights and fundamental freedoms,
- participation in international organisations and associations at European and global levels working in the field of the exercise, promotion, and development of human rights and fundamental freedoms.

Within the staff available, the Center focused its work on various tasks of its operations while following the timelines of international reports, primarily the dynamics of opinion exchange and reports connected to the situation and limitations of human rights as the consequence of the COVID-19 epidemic, which also marked the work of the Center in 2020. A representative of the Center also participated as a co-editor in the preparation of the Ombudsman's Annual Report.

It should be highlighted that the state recognises the establishment and operation of the Center as a best practice example in the context of realising the goals of sustainable development. This is explicitly emphasised in Slovenia's Second Voluntary National Overview 2020 about the implementation of sustainable development sent by the Government of the Republic of Slovenia to the United Nations in the summer of 2020.¹ In 2020, the Center offered wide

¹ The implementation of sustainable development goals, The second voluntary national overview, Slovenia 2020, Goal 16: To encourage peaceful and inclusive societies for sustainable development, to enable access to legal protection for everyone along with efficient, responsible, and open institutions on all levels, page 84, available at: <https://slovenia2030.si/drugo-porocanje-slovenije-v-teku/>.

professional support to the entire institution of the Ombudsman in the **accreditation procedure according to the Paris Principles** (1993) within the Global Alliance of National Human Rights Institutions (GANHRI), which was successfully brought to a close after turning in an extensive written application at the end of 2020. Also due to the work of the Center, the Ombudsman acquired the Status A accreditation according to the Paris Principles (more about this in Chapter 1.7 Ombudsman as a national institution for human rights).

Hereon, key activities of the Center in 2020 are presented briefly. In detail, the Center's activities are introduced in Chapter 1.9.3 New recommendations and activities of the Center, available at the Ombudsman's website <www.varuh-rs.si> as part of the online expanded version of the Annual Report. The Center's activities connected to the COVID-19 epidemic are presented in Chapter 3 of this Annual Report, which deals with the presentation of the Ombudsman's operation connected to the COVID-19 epidemic.

1.9.1 Promotion, information, and education and providing general information about types and forms of complaints to international bodies



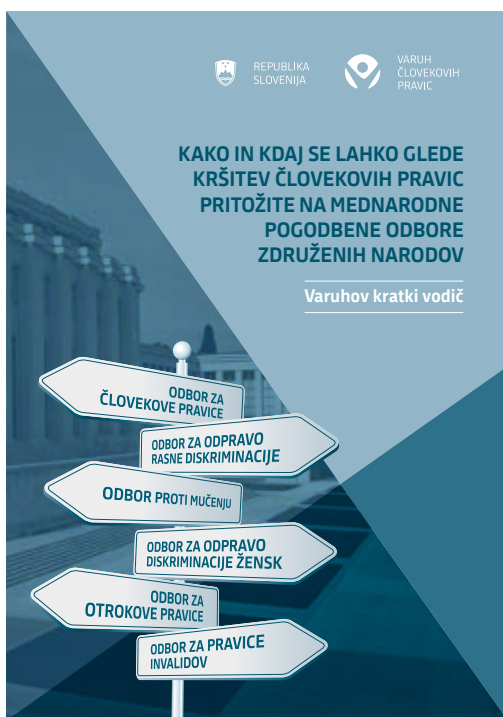
“If you see injustice, use justice” project about children’s rights and options for a child’s complaint directly to the Ombudsman

The goal of the “If you see injustice, use justice” project, carried out in November and December 2020 and continuing into 2021, was to contribute to

raising awareness and more efficient realisation of internationally guaranteed standards of children's rights in Slovenia. **The project is intended both to raise awareness among children and adolescents about their rights and raising awareness of children and adolescents about the fact that there exists an independent, accessible, safe, efficient, child-friendly, and child-focused complaint mechanism for them at the Ombudsman, which is to guarantee them the respect of their rights in schools, public institutions, or anywhere else. The project aimed at empowering children** and strengthening their awareness that children are not solely objects to rights but can actively contribute to the realisation of human rights, both their own and the human rights of others.

Two posters were prepared; one raises awareness about the options for children's complaints directly to the Ombudsman, while the other raises awareness about human rights. In addition, all schools were invited to talk with the pupils during class in an appropriate manner about children's rights on World Children's Day (20 November) – we suggested topics and guidelines for discussion. We set up a special free telephone number and e-mail address. For more information about the project see Chapters 1.9.3.2 and 2.5.1.4 of this Annual Report.

The Ombudsman's Brief Guide: How and when can you complain to international committees of the United Nations regarding the violation of human rights



With the purpose of realising its tasks regarding the provision of general information about the types and forms of complaints to international bodies due to violations of human rights and fundamental freedoms, the Center for Human Rights prepared and published in December the **Ombudsman's Brief Guide: How and when can you complain to international committees of the United Nations regarding the violation of human rights**. The brief guide is published on the Ombudsman's website (including the pdf form): www.varuh-rs.si/nc/vodic-mednarodne-pritozbe (More about this in Chapter 1.9.3.3).

Regular informing of the public about the Ombudsman's work in the field of human rights of people with disabilities

In 2020, the Center for Human Rights started the regular three-monthly informing of the public about the Ombudsman's activities in the field of human rights of persons with disabilities. This information is both published regularly on the Ombudsman's website and sent to disabled people's organisations. The first such overview was prepared for the period July–September 2020² and the second for October–December 2020³. The reason for such information being provided was found in numerous Ombudsman's activities concerning persons with disabilities in various topical fields which are interconnected, while a more comprehensive aspect also enables clearer realisation of the shortcomings of the regulatory process and the diversity of challenges people with disabilities and different disabled people's organisations are faced with. This activity continues in 2021.

1.9.2 Preparation of analysis and reports from individual fields of promoting and protecting human rights and fundamental freedoms

Criminal prosecution of hate speech in Slovenia according to Article 297 of the KZ-1 – The analysis of the prosecutorial practice of prosecuting the crime of public incitement to hatred, violence, and intolerance in the period of 2008–2018 – the draft sent to the Supreme State Prosecutor's Office

At the end of 2020, the Center prepared its first report, The analysis of the prosecutorial practice of prosecuting the crime of public incitement to hatred, violence, and intolerance according to Article 297 of the KZ-1 in the period of 2008–2018, and sent it for comment to the Supreme State Prosecutor's Office. The analysis was published in May 2021 and is available at the Ombudsman's webpage.

The analysis studied 145 prosecutors' files from this period, the goal of which was to explore individual aspects of prosecution (e.g. forms of criminal reporting, duration of prosecutorial proceedings, types of decisions of the prosecutors' office), circumstances of matters (e.g. characteristics of victims and suspects and forms of criminal acts), explanations of the elements of the crime by public prosecutors' offices, and relevant differences of the criminal treatment of a criminal offence under Article 297 of the KZ-1 over time and comparatively between state prosecutors' offices. **The analysis' findings are presented in 15 reasoned points.** Comprehensive findings of the analysis will be presented in the report for 2021, while the preparation of the analysis and some of the findings are part of this report in Chapter 9.1.3.4.

2 See <https://www.varuh-rs.si/sporocila-za-javnost/novica/pregled-aktivnosti-varuha-na-podrocju-clovekovih-pravic-invalidov-julij-september-2020/>.

3 See <https://www.varuh-rs.si/sl/sporocila-za-javnost/novica/pregled-aktivnosti-varuha-pri-zagotavljanju-clovekovih-pravic-invalidov-oktober-december-2020/>.

Violence against women and domestic violence

In 2020, the Center for Human Rights focused on certain aspects of preventing and addressing violence against women and domestic violence. We gathered information about reports of domestic violence and violence against women in recent years, and separately for the time of the epidemic. In connection to restriction measures brought about by the COVID-19 epidemic, we checked the accessibility of safe houses, crisis centres, and consulting services for victims of violence. The Center prepared answers to several international questionnaires, including the questionnaire by the UN Special Rapporteur on violence against women, its causes and consequences; the analysis and opinion about the legislative regulation of the crime of rape; gathered statistical data on the request for data about the criminal acts of femicide and other criminal gender-based offences or offences committed by intimate partners; and gathered information about violence against women and accessibility of services in the time of the measures against the spread of COVID-19 (see Chapter 3 of this Annual Report for the analysis of the latter).

The Center prepared three concrete recommendations:



The Ombudsman recommends that the National Assembly appropriately change provisions of Articles 170 and 171 of the KZ-1 so that criminal acts of rape and sexual violence will be based on the absence of voluntary consent in accordance with Article 36 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and fight against them (Istanbul Convention).

The Ombudsman recommends to the Ministry of Justice and the Government of the Republic of Slovenia that in 2021 they prepare and submit to the National Assembly the amendment of the Crime Victim Compensation Act (ZOZKD), with which the right to state compensation will also be appointed for persons who are not citizens of the Republic of Slovenia and other EU member states.

In connection to this recommendation see also Chapter 2.11 especially on the issue of human trafficking of this Annual Report.



The Ombudsman calls upon the Government of the Republic of Slovenia to regularly perform research about the incidence of violence against women and domestic violence.

Ensuring accessibility of websites to persons with various forms of impairment

From 23 September 2020, when the Accessibility of Websites and Mobile Applications Act (ZDSMA), which regulates the measures for ensuring the accessibility of websites and mobile applications to users with various forms of impairment, and for the adaptation of websites of persons liable published prior to 23 September 2018, came into force, all state bodies, bodies of self-governing local communities, and bodies governed by public law in accordance with the law governing public procurement, except for a few exceptions, have to meet the required standards of website accessibility. The Center for Human Rights checked how its provisions work in practice. Considering the responses received, the Center prepared the following recommendation:

With the purpose of ensuring effective implementation of the provisions of the Accessibility of Websites and Mobile Applications Act (ZDSMA), the Ombudsman recommends to the Government of the Republic of Slovenia that it provide appropriate capacities for the implementation of tasks in accordance with Articles 10 and 11 of the ZDSMA to the Government Information Security Office.



Detention of juvenile migrants and asylum seekers

The Center found that despite the fact that Article 82 of the Foreigners Act (ZTuj) defines the placement of juvenile foreigners in the Center for Foreigners only as a last resort, if there is truly no other option, this exception is still regularly used in practice. In 2020, 401 children were detained in the Centre for Foreigners in Postojna. Of these, 304 children were there without parents or legal representatives (i.e. unaccompanied minors) and 97 were there with their parents. The Center emphasises that the Convention on the Rights of the Child stipulates that the principle of the child's best interest has to be the central guideline in all procedures connected to children. Detention of children, both children accompanied by family members and unaccompanied children, is never in the best interest of the child, therefore the Ombudsman (again) calls for the lifting of the restriction of the freedom of movement for migrant children.

The Ombudsman warns about the urgency of realising past Ombudsman's recommendations on the placement of unaccompanied minors from the Ombudsman's recommendations no. 23 (2016), 30 (2015), 9, and 85 (2019) and in connection to this presents a new recommendation in Chapter 2.14 Restriction of personal liberty, while the Center gives a more general (refreshed) recommendation:





The Ombudsman calls upon the Government of the Republic of Slovenia to stop detaining children and recommends that the Government of the Republic of Slovenia and competent authorities guarantee that all juvenile foreigners and families with juvenile foreigners are placed in appropriate institutions for the accommodation of minors in accordance with Article 82 of the ZTuj.

Internal appeal procedures in case of violations of children's rights in schools and other institutions

Within the “If you see injustice, use justice” project, presented in Chapter 1.9.1.1, the Center **studied the internal appeal procedures in case of violations of children's rights in schools and other institutions.** The research, the purpose of which is to prepare actual recommendations, will continue in 2021.

1.9.3 Preparation of international reports from individual fields of promoting and protecting human rights and fundamental freedoms

For the purpose of monitoring the implementation of international recommendations, the Center prepares internal instructions and timelines of international reports, as well as internal “tracers” for recommendations of various international mechanisms, universal periodical reviews, and recommendations of the Ombudsman.

Interim alternative report to the Human Rights Committee

In January 2020, the Center prepared the **interim alternative report for the Human Rights Committee.** In its last final remarks regarding the third periodic report of Slovenia about the implementation of the Covenant in the state, the Committee, which monitors the implementation of the United Nations International Covenant on Civil and Political Rights, imposed that within a year the Committee is reported to about the implementation of its recommendations from Paragraph 8 (prevention of racism and xenophobia), Paragraph 16 (access to international protection), and Paragraph 20 (protection of vulnerable groups in migration flow)..² The Ombudsman's article is published in English on the website of the Office of the High Commissioner of United Nations for Human Rights.³

2 Concluding observations on the third periodic report of Slovenia, CCPR/C/SVN/CO/3, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVN%2fCO%2f3&Lang=en.

3 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=SVN&Lang=EN.

The Ombudsman here presents the Government with the recommendation, which was also previously given by the Ombudsman within the universal periodical review (2019) and again in the interim report of the Human Rights Committee (2020):

The Ombudsman recommends to the Government of the Republic of Slovenia that it ensures that all seekers of international protection who are under the actual competence of Slovenian authorities have access to the procedure of international protection in accordance with international law.



The Ombudsman recommends to all competent authorities to ensure that the Republic of Slovenia does not return foreign citizens to other states, without being provided a procedural safeguard from returning that could lead to the risk of violation of their human rights in the state to which they would be directly or indirectly returned.

The Ombudsman's report about the state of the rule of law in Slovenia (part of the joint report of the ENNHRI to the European Commission)

In May 2020, the Ombudsman prepared the Ombudsman's report about the state of the rule of law in Slovenia, which was published **as part of the ENNHRI Report about the State of the Rule of Law in EU Member States or in Europe, which was presented to the European Commission during the procedure of preparation of the first Report of the European Commission about the State of the Rule of Law in the European Union and the EU member states.** The entire ENNHRI report is also published on the ENNHRI website⁴.

Commentary of the Ombudsman to the European Committee of Social Rights on the 19th national report about the implementation of the European Social Charter

The Center prepared and in October 2020 sent to the Council of Europe, more precisely to the European Committee of Social Rights, the Ombudsman's commentary⁵ to the 19th national report about the implementation of the European Social Charter, prepared by the Government of the Republic of Slovenia (the Ombudsman's commentary is published on the Council of Europe's website).

A meeting with the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Ombudsman's alternative report

⁴ <http://ennhri.org/rule-of-law-report/>.

⁵ <https://rm.coe.int/rap-cha-svn-comments-19-2020/16809fdd10>.

On 29 September 2020, Ombudsman Peter Svetina and two representatives of the Center met with two representatives of the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**, who visited Slovenia to acquire information about the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). For GREVIO, the Center also prepared a **written contribution for the discussion of the baseline report of Slovenia (alternative report)**⁶.

Responses of the Center to various questionnaires and calls from the bodies of the United Nations and other international organisations, institutions, and associations working in the field of human rights

The Center prepared a multitude of information and reports about the state of human rights in response to questionnaires and calls from the bodies of the United Nations and other international organisations, institutions, and associations as well as embassies or foreign institutions related to the Ombudsman. Our responses to requests of special rapporteurs of the United Nations and the European Union Agency for Fundamental Rights (FRA) should be mentioned among our most important; one such was when the latter was preparing its work programme for 2021, the interim review of the implementation of the Charter of Fundamental Rights of the European Union, or leading the consultations about the state of fundamental rights in the EU and its member states and their promotion in the future.

1.9.4. Cooperation with civil society, trade unions, and other state bodies

The Center prepared several expert answers from the field of human rights to questions from Slovenian non-governmental organisations and state bodies.

In addition, the Center also collaborated with civil society by including their data and positions in the answers to some international questionnaires and analyses. For example, inquiries were sent to NGOs working in the field of violence against women (and then their “voices” were included in the questionnaire of the special rapporteur and the alternative report of GREVIO). In February, the Head of the Center participated at a debate about human rights in the digital society, organised by the non-governmental organisation Državljan D. Two representatives of the Center participated through their work in focus groups in a project of the Faculty of Social Sciences and the Peace Institute entitled Državljanstvo in diskriminacija – intersekcijski pristop k raziskovanju družbene izključenosti (Citizenship and discrimination: intersectional approach to research of social exclusion).

⁶ Published in English at <https://www.varuh-rs.si/sporocila-za-javnost/novica/center-za-clovkove-pravice-s-predstavniki-grevio-o-istanbulski-konvenciji/>.

The Center established collaboration with the international or European non-governmental organisation **European Implementation Network**,⁷ the leading NGO striving for timely and consistent implementation of judgements from the European Court of Human Rights.

The Center also participated in the work of three interservice groups or commissions, in which representatives of the Center collaborate as observers or representatives of an independent state body. These groups are: Interservice Working Group for the Coordination of the Enforcement of Judgments of the European Court of Human Rights, headed by a representative from the Ministry of Justice (two Ombudsman Deputies participate as members); the Intersectoral Commission for Human Rights (MKČP), headed by a representative from the Ministry of Foreign Affairs, and the Working Group for the Collection of Disaggregated Data (which unfortunately was not active in 2020).

A representative of the Center participated also at the annual meeting discussing the operation of Slovenia in the Council of Europe, organised annually by the Ministry of Foreign Affairs.

The Center responded to several requests by state bodies within the preparation of their international reports, among which the following should be highlighted:

- Priorities of the Republic of Slovenia in the Council of Europe in the period 2020–2021;
- Report on the implementation of Phase 3 of the World Program for Human Rights Education;
- Report of the Government of the Republic of Slovenia on the implementation of the Agenda for Sustainable Development until 2030 (voluntary interim report 2020);
- Opinion to the Government on the inclusion of the position of national human rights institutions as an indicator in the EU's comprehensive rule of law mechanism.

1.9.5. Participation in international organisations and associations on the European and world levels

In 2020, the Center strengthened its international collaboration and presence primarily through establishing excellent cooperation with the **European Network of National Human Rights Institutions (ENNHRI)**⁸ and within the **Council of Europe. Representatives of the Center participated at a few international training events and several international events; the most important ones are presented below.**

⁷ See <https://www.einnetwork.org/>.

⁸ See www.ennhri.org.

Participation in international organisations

In September, the Center representative actively participated in an online event **Why should implementation of ECtHR judgments matter to NHRIs?**, jointly organised by the ENNHRI, the European Implementation Network (EIN), and the Judicial Enforcement Division of the Council of Europe, and presented a best practice example in Slovenia and the Ombudsman's operation.⁹ This webinar continues in four parts, in addition to 10 September also on 17 September, and 8 and 22 October 2020.

In October, a Center representative acted for the ENNHRI at the first **meeting of the Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V), operating within the Steering Committee for Human Rights (CDDH) of the Committee of Ministers of the Council of Europe**; the ENNHRI holds the observer status in this group. Thus, two ENNHRI representatives can participate in the work of the group (a representative of the ENNHRI Secretariate and a representative of the Ombudsman as a representative of one of the national institutions).

In November, a Center representative **acted for the ENNHRI at the 7th negotiating meeting of the ad hoc negotiating group of the CDDH (Group "47+1") about the accession of the European Union to the European Convention on Human Rights**. In 2020, discussions were again held about the accession of the EU to the European Convention on Human Rights, which is strongly supported by both the Ombudsman and the ENNHRI; negotiations continue in 2021 and further consultations with civil society and the ENNHRI are scheduled.¹⁰

Through its comments and suggestions, in the spring the Center actively participated in the **preparation of the OSCE/ODIHR document "Aide-mémoire for NHRIs during the state of emergency"**. In December, several representatives of the Center and the Ombudsman participated at the Technical Seminar of the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE and the ENNHRI about the role of national institutions for human rights in state of emergency, originating from which a special guide was prepared intended for national institutions, in the creation of which the Ombudsman also participated.

Participation in international associations

In December, in the name of the institution of the Ombudsman, the Center's representative **participated at the Annual Meeting** of the GANHRI, 3. and 4.12.2020) and the **Annual Conference on Climate Change** as well as the ex-

9 See <http://ennhri.org/our-work/topics/democracy-and-rule-of-law/webinar-series-enhancing-nhris-capacity-for-effective-implementation-of-judgments-of-the-european-court-of-human-rights/>.

10 More about the accession of the EU to the EKČP is available at: <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/accession-of-the-european-union-to-the-european-convention-on-human-rights>.

change of knowledge and best practices regarding the mandate of NHRIs in the context of COVID-19. The Center also strengthened its collaboration with the GANHRI.¹¹ In December, the Center's representative attended the **ENNHRI Annual Conference**, and prior to this, in November, we participated in **two online events, two management webinars of the Network (9.–10.11.2020)**. In December, in the Ombudsman's name, the Center's representative also attended the **General Assembly of the ENNHRI (18.12.2020)**, at which the Ombudsman has not yet had the right to vote (which is acquired with Status A), but could actively participate in discussions.

During 2020, the Center's representatives participated in four working groups of the ENNHRI¹²: the Economic, Social and Cultural Rights Working Group, the Working Group on Asylum and Migration, the Legal Working Group, and the Rights of Persons with Impairments Working Group.

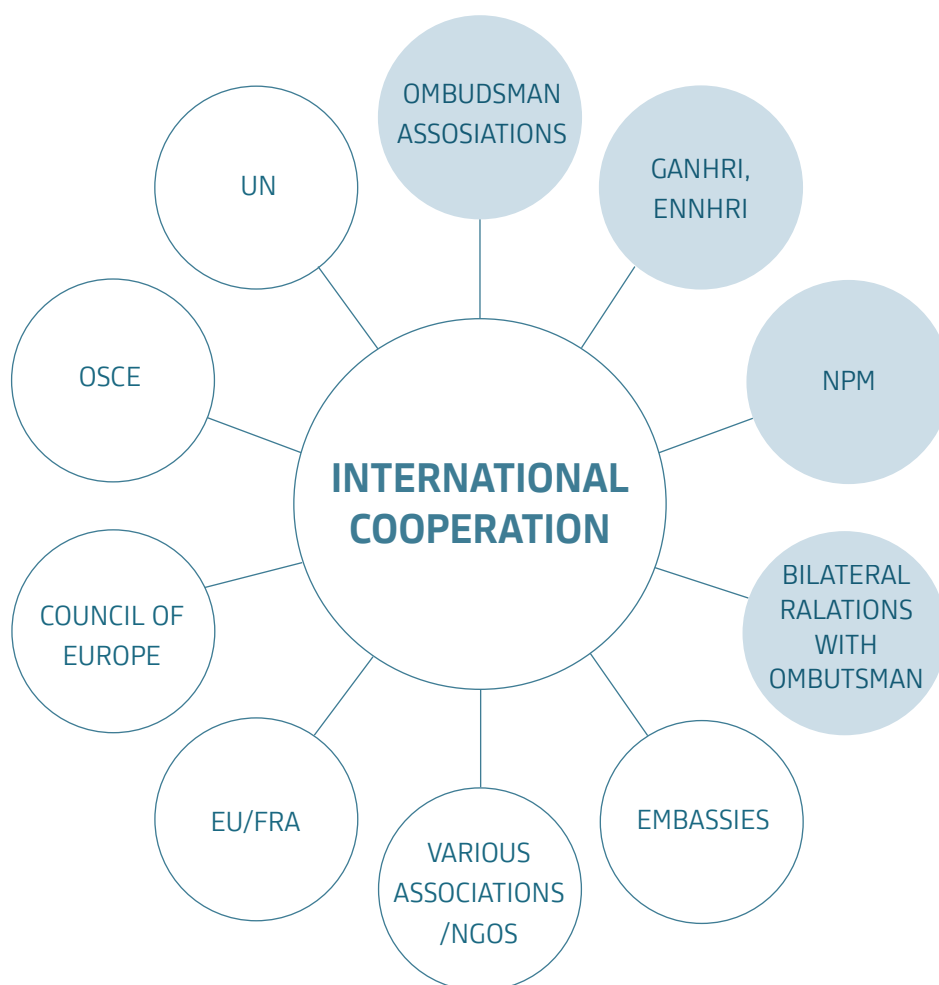
¹¹ See <https://ganhri.org/>.

¹² An Ombudsman's representative participates in the ENNHRI working group for communicating. Participation in working groups includes a debate about current questions about the state of human rights in Europe, the exchange of experiences and best practices as well as challenges the national institutions face, and at the same time also reporting about the state of human rights in individual fields in a country.

1.10

INTERNATIONAL COOPERATION

In 2020, the Ombudsman again actively participated at various international events and training events. After life was paralysed due to the COVID-19 pandemic, international events were moved to virtual platforms from March; nevertheless, it was no less efficient and diverse. The virtual format of meetings and workshops enabled a larger number of participants to take part, while the costs were also significantly reduced.



IN 2020, THE OMBUDSMAN PARTICIPATED AT MORE THAN

100

INTERNATIONAL EVENTS

The intensification of activities on the international level, both within the established international and intergovernmental organisations that work in individual fields of human rights and fundamental freedoms (ZN, EU, Council of Europe, OSCE), ombudsman's associations, and ombudspersons themselves, and direct bilateral relationships with colleagues from abroad and representatives of foreign states in the Republic of Slovenia is one of the main Ombudsman's priorities.

Hereon, the most essential part of activities in this field is introduced briefly.

COLLABORATION WITH THE COUNCIL OF EUROPE

In July, we participated at a Collaborative Platform on social and economic rights joining the Council of Europe (CoE), the European Union Fundamental Rights Agency (FRA), the European Network of National Human Rights Institutions (ENNHRI), and the European Network of Equality Bodies (EQUINET), which organised an online event discussing the approach to sustainable development and revitalisation of economy and society, based on equality and human rights. The discussion revolved around the role national institutions for human rights and national bodies for equality can play in providing the aforementioned approach to recovery.

In September, we joined the online event "Why should implementation of ECHR judgments matter to NHRIs?", organised jointly by the ENNHRI and the European Enforcement Network and the Judicial Enforcement Division of the Council of Europe. We also participated in three follow-up events in September and October, since it was a set of four webinars discussing the topic of enforcing judgments of the European Court of Human Rights.

In the same month, we took part at the annual seminar of the European Commission against Racism and intolerance (ECRI). We studied ways and options for everybody involved in the fight against racism and intolerance to communicate better and more efficiently, and how we can join forces so that our communication will have the best and greatest possible influence on the promotion of equality and fight against racism and intolerance. The seminar's focus was on recognising different target groups of the public, communication messages, and how to communicate them as well as possible, and on the development of communication strategies.

Throughout the year, we participated in various online courses, seminars, and training events organised by the Council of Europe (Human Rights Education for Legal Professionals (HELP) Online Courses), which addressed numerous current and topical issues. Thanks to the accessibility of the training, the employees used the opportunity to upgrade and strengthen our knowledge in a greater number than had previously been possible, and in various fields connected to the specifics of our work. We had the chance to test the knowledge acquired very soon in practice in actual cases.

COLLABORATION WITH THE EUROPEAN UNION

In February, we attended the Conference closing the first phase of the Preparatory Action for a Child Guarantee) in Brussels, Belgium. Action for a Child Guarantee is an initiative for the free access of all children in the EU to schooling and child care of also pre-school children, to health care, stimulating living conditions, and appropriate diet. Experts, officials, and other interested parties exchanged opinions regarding further priority activities, examples of the existing best practices, and further steps for the implementation of the Guarantee.

In September, we took part in a virtual seminar of the European Network of Ombudspersons for Children (ENOC) entitled Child Rights Impact Assessment and Review of the ENOC Statutes. The Child's Rights Impact Assessment (CRIA) is a procedure, tool, and form of reporting for the systematic assessment and warning about the influence individual proposals or measures of the decision makers (can) have on the rights, needs, and benefits of children. ENOC studies the situation among its members so that it will be able to form suitable recommendations about the implementation of the CRIA.

Also in September, we participated at the EU Forum on the Rights of the Child by ENOC. The forum was part of a wider consultation process aiming at the adoption of the EU Strategy on Child's Rights, while special emphasis was placed on the following four topics: combatting violence against children, inclusive societies, inclusive education, and a child-friendly judiciary. The discussion also involved the topic of the influence of the anti-corona measures on children. The forum was attended by more than 250 participants from all over Europe.

In October, we were among the participants of the virtual conference of the European Network of Ombudspersons (ENO), which denoted the 25th anniversary of the European Ombudsman. The conference presented the view of the future role of the European Ombudsman and its strategy until 2014 and focused on the influence of the COVID-19 pandemic on the network's work, future parallel inquiries, and further strengthening of collaboration within the network.

In November, we participated at the virtual 24th annual conference which this time addressed the concept of the CRIA - Child Rights Impact Assessment and the General Assembly of the ENOC. In addition to the overview of the network's annual activities, supervision and confirmation of the changes to the network's statute prepared by a special work group of which we were also a part, a visible role at the conference was played by the European Network of Young Advisors - ENYA with the workshop addressing the topic of participation and decision-making and with the presentation of proposals for various topics (CRIA, LGBT+, etc.).

COLLABORATION WITH THE UNITED NATIONS

In January, we participated at the 3rd UNESCO Conference “Migration and the Rule of Law” in Zagreb, Croatia.

In May, we took part in the Expert Seminar on Artificial Intelligence and the Right to Privacy organised by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

In September, we attended the online workshop entitled The EU acquis on return and readmission organised by the United Nations High Commissioner for Refugees (UNHCR). The workshop analysed EU law and the corresponding judgment of the Court of Justice of the EU in the field of return and readmission of undocumented migrants.

In December, we took part in an online panel entitled Independent Monitoring Mechanisms: How to Establish Them Inclusively, organised by the OHCHR, the United Nations Development Programme (UNDP), and the United Nations Partnership on the Rights of Persons with Disabilities (UNPRPD). The independent monitoring mechanisms play a crucial role in the efficient implementation of the United Nations Convention on the Rights of Persons with Disabilities. The panel thus focused on the process of establishing independent monitoring mechanisms and the importance of inclusion and participation of organisations of people with disabilities in independent monitoring, while the work of independent monitoring mechanisms during the COVID-19 pandemic was also discussed.

COLLABORATION WITH THE OSCE

In September and October, we participated at the 2020 NHRI Academy: Framing migration from a human rights perspective: the role of NHRIs, collaboratively organised by the Organisation for Security in Co-Operation in Europe (OSCE) and the European Network of National Human Rights Institutions (EN-NHRI).

In October, we attended the Kosovo Youth Academy organised by the OSCE.

COLLABORATION WITH OMBUDSPERSONS, INTERNATIONAL ASSOCIATIONS OF OMBUDSPERSONS, AND NATIONAL INSTITUTIONS FOR HUMAN RIGHTS

The Ombudsman started the year by strengthening bilateral relations. In January, we welcomed Werner Amon, Secretary General of the International Ombudsman Institute and (the main) Austrian Ombudsman, for a working visit. We exchanged experience of both national institutions for human rights and in the desire to strengthen and raise their recognisability, we also advocated even greater liaison between ombudspersons within Europe. Upon this occasion, the conversation between the ombudsmen revolved around topics such as the con-

stitutional place of both bodies in their respective countries, election to office, presentation of annual reports in parliament, and submission of requests to assess the constitutionality of legislation, as well as experience connected to all this. Special attention was devoted to the tasks of the National Preventive Mechanism and efforts of both institutions for the acquisition of Status A according to the Paris Principles.

Also in January, we responded to the invitation of the Croatian Ombudswoman Lora Vidović. Our talks touched upon experience of the operation of both institutions and their organisation and exchanged information on current topics. The conversation between both ombudspersons revolved around the constitutional place of both bodies in their respective countries, annual reports, and submission of requests for assessment of the constitutionality of legislation, as well as experience connected to all this. Their attention was also directed to the tasks of the National Preventive Mechanism and the efforts made by Slovenia to acquire Status A according to the Paris Principles. The conversation also touched upon the subject of police actions with foreigners who cross the Croatian-Slovenian border. Both ombudspersons advocated a humane approach to all people in all areas. In general, the institution of the Croatian ombudsperson was implemented into the Croatian national and legal systems in 1990.

In February, we received a visit from the ombudspersons from Bosnia and Herzegovina, Ljubinko Mitrović, Jasminka Džumhur, and Nives Jukić. We exchanged experience in protecting human rights in both countries. Our guests were briefed on the challenges we face in establishing the operation of the national institution in Slovenia. We also introduced in detail the tasks and competences of the National Preventive Mechanism and the vision and tasks of the Center for Human Rights.

In March, we welcomed the Hungarian Ombudsman Dr Ákos Kozma. At their first, introductory meeting the ombudsmen talked about the challenges faced by institutions competent for protecting human rights. Dr Kozma was introduced to the Slovenian institute of the Human Rights Ombudsman, while the two delegations exchanged information about the treatment of complaints against the work of the police, about the intensified international cooperation, and collaboration with non-governmental organisations.

The Ombudsman's employees also attended many seminars, training events, workshops, and round table discussions, at which numerous topics from the field of human rights were discussed and which were organised by different international networks and organisations.

In April, the ENNHRI organised an online meeting for the informal exchange of experiences concerning the influence of the COVID-19 pandemic on economic and social rights. In April, the same network organised the webinar Realising Economic and Social Rights in Europe: Tips and tricks for NHRIs focusing on older persons' rights.

In May, we participated at the webinar The Human Rights of Older Persons in

the Age of COVID-19 and Beyond organised by the NGO Committee on Ageing Geneva.

In June, we attended the webinar Racism and Discrimination in the EU at times of Covid-19: The Role of Fundamental Rights Monitoring, organised by the Centre for European Policy Studies and the FRA.

Within initiatives connected to the celebration of the twentieth anniversary of the Adriatic & Ionian Initiative and the Ancona Charter, in August we participated at two online events organised by the ombudsman of the Italian region of Marche, in cooperation with the Permanent Secretariat of the Adriatic & Ionian Initiative and the Region of Marche, as the Italian project partner of the EUSAIR Facility Point. The goal of the first event entitled Sharing best practices and instruments to protect children and adolescents in emergency situations - Focus on containment measures and related side effects in the Adriatic Ionian area was to pave the way for the establishment of the permanent Adriatic & Ionian network of ombudspersons for children's rights. The second event entitled Fundamental rights and EU Enlargement: prospects in the Adriatic Ionian Area focused on the search for ways to better protect fundamental rights, with the simultaneous continuation of the enlargement process in the Western Balkans, especially during the COVID-19 pandemic, in which a certain regression has been noticed.

In September, we attended two webinars organised by the ENNHRI. The first discussed the current topic of communicating human rights during the COVID-19 pandemic. We exchanged best practice examples and advice and talked about difficulties and advice for their elimination when communicating with the public. The second event was the On-site monitoring of the rights of persons with disabilities during COVID-19 pandemic.

Again organised by the ENNHRI, in November, we participated at the virtual Annual Conference of the ENNHRI and two leadership seminars; and in December also at the virtual General Assembly of the ENNHRI, at which the Ombudsman did not yet have the right to vote.

In November, we were among active participants of online training focusing on the media and organised by the IOI. The training event brought together associates of ombudsman institutions from all over the world aiming to strengthen communication skills and even better presentation of messages, which is of even greater importance during the unpredictable and demanding circumstances of the COVID-19 pandemic. The training focused on developing skills and techniques for undertaking media interviews in a confident and focused manners. Ways to treat more difficult questions were also introduced.

In December, the IOI was once again the organiser of the IOI webinar Covid-19 and the Ombudsperson - Rising to the Challenge of a Pandemic. The Ombudsman Peter Svetina actively participated at the event with a video in which he presented the work of the institution and how it deals with challenges during the COVID-19 pandemic.

In December, we took part in the virtual annual conference of the GANHRI and Annual Conference on Climate Change and the exchange of knowledge and best practices regarding the mandate of the NHRIs in the context of COVID-19.

In the same month, we participated at the virtual annual conference and meeting of the General Committee of the Association of the Mediterranean Ombudsmen (AOM). The overview of past activities and action plan for 2021 was at the forefront of the conference which was attended by representatives of ombudsman institutions from nine countries and an observer from the Venice Commission.

In December, we also attended the round table discussion entitled Rights of Children in Need – Migrant Children, organised by the ombudsman of the Autonomous Province of Vojvodina, the Republic of Serbia.

The employees of the Ombudsman participate in various working groups of the ENNHRI. The Communications Working Group, the CRPD Working Group, the Economic, Social and Cultural Rights Working Group, the Working Group on Asylum and Migration, and the Legal Working Group held regular meetings throughout the year. Working groups are put in place for the collaboration between national institutions for human rights, exchange of opinions and best practices in various fields, and the discussion of current topics as well as providing help to members and education.

Individual working groups of the ENNHRI cooperate well with other international institutions, networks, and organisations. Thus, in June, a virtual meeting of the working group for the rights of persons with disabilities and the EU's CRPD Monitoring Framework was held. The meeting was organised to allow both groups to exchange experience, identify priorities, report on current activities, and study the options for possible joint projects and collaboration.

The Head of the Centre, Deputy Miha Horvat, **participated at the virtual defence of the Institution of the Ombudsman in front of the Subcommittee for Accreditation (SCA) of the GANHRI on 10 December.**

INTERNATIONAL COOPERATION IN THE FIELD OF THE NPM

In 2020, the Ombudsman's associates in the field of the national preventive mechanism (NPM) led by Deputy Ivan Šelih participated at some of the international events, the most important of which are presented below.

In January, Rome, Italy, hosted a workshop entitled "On the Way to Synchronised Standards in Case of Criminal Detention in the European Union – the role of the NPM", prepared by the Ludwig Boltzmann Institute for Fundamental and Human Rights in cooperation with the Italian non-governmental organisation Antigone, the Bulgarian Helsinki Committee, and the Hungarian Helsinki Committee. In addition to the NPM representatives from ten European countries, other experts were also among the twenty-five participants. The emphasis of

the workshop was on various aspects of solitary confinement in prison, including its influence on prisoners' mental health. They also touched upon various forms of actual isolation that can happen in prisons, in addition to the most typical solitary confinement as a disciplinary punishment. Different approaches that could contribute to a decrease in the use of all types of isolation were also discussed. The set of workshops was concluded in November with the last virtual conference.

In February, our offices hosted Montserrat Feixas Vihe, the Head of the Regional Office of the United Nations High Commissioner for Refugees (UNHCR) for Central Europe, and the Slovenian representative Dr Romana Zidar. We introduced the work of the NPM unit, while the discussion also revolved around police procedures including foreigners – refugees at the border.

In the same month, we attended a closing conference in Rome, Italy, discussing the topic of monitoring of forceful return of citizens of third countries in Italy and Europe. The event organised by the Italian NPM – GNPL (Garante Nazionale dei diritti delle persone detenute o private della libertà) and with the help of the Italian Ministry of Internal Affairs and the European Union was intended for the introduction of the project of establishing a system of monitoring forceful returns that was carried out between April 2017 and its closure with this conference.

Also in February, in Zagreb, Croatia, we participated at a conference within the ARVID (Advancing Access to Rights under Victim's Directive for Persons with Disabilities) project, coordinated by the Hrvatski pravni center, while its Slovenian partners are the Peace Institute and the Altra society. The purpose of the conference was to improve the understanding of the challenges of participation of people with disabilities – victims of criminal acts in criminal procedures, familiarise ourselves with best practices from Europe, and connect all the stakeholders. The project supported by the Human Rights Ombudsman of the Republic of Slovenia is financed by the EU Justice Programme and is implemented in Croatia and Slovenia. Its purpose is to research the degree of participation of persons with disabilities in criminal procedures in the role of a victim, as well as possible problems limiting their full participation and enjoyment of rights. The continuation of the conference was conducted virtually in September.

In April, we took part in a webinar entitled Under surveillance: Monitoring at the border, organised by the Greens/EFA Group at the European Parliament.

Also in April, we participated at the webinar Do No Harm Principle: from Theory to Practice, organised by the Association for the prevention of torture from Geneva (APT).

Still in April, we attended a virtual expert meeting organised by the Hungarian Helsinki Committee. The meeting involved the exchange of opinions, ideas, and best practices and was entitled Requests and Complaint Procedure in Prisons.

In May, the Hungarian Helsinki Committee organised a virtual meeting discussing complaint options in prisons.

In June, the APT organised a webinar Combatting torture and ill-treatment in times of COVID-19: Testimonies from the ground, at which we also participated.

In July, an online consultation entitled Systemic Approach to NPM Work was organised by the Hungarian Helsinki Committee. It was the last in a series of workshops of the Working towards harmonised detention standards in the EU – the role of National Preventive Mechanisms (NPMs) programme.

In October, we were among the participants of the online workshop for members of the South-East Europe NPM Network (SEE NPM Network) on strengthening the prevention of torture in South-Eastern Europe. The workshop was organised by the NPM Croatia in the role of the network president, with the support of the Council of Europe, the APT from Geneva, and the Ludwig Boltzmann Institute. The event was organised for detailed exchange of challenges and best practices of NPMs in monitoring the realisation of the rights of detained persons in the first hours of police detention. Findings of the online workshop pertaining to planning and the gathering of information prior to visiting police stations or prisons, monitoring the realisation of detainees' rights (especially access to a lawyer and access to a doctor), triangulation of information gathered during visits to police stations, retrospective interviewing, and the analysis of samples are presented in a report, which is a useful tool for the work of any NPM.

In December, we attended the second workshop of the SEE NPM Network, again organised by the NPM Croatia as the one presiding the network, with the support of the Council of Europe, the APT from Geneva, and the Ludwig Boltzmann Institute. The workshop dealt with the monitoring of NPM recommendation implementation (primarily from the viewpoint of realisation of detainees' rights during police detention) and work in special situations, such as pandemics and other challenges to performing the NPM mandate. Deputy Šelih presented the experience of recommendation realisation of the NPM Slovenia, which is generally a commitment of a Contracting State to the Optional Protocol. The participants agreed that the situation of the coronavirus disease brought about special challenges and the need for the adjustment of NPM activities when discussing the protection of persons who are deprived of their freedom, and emphasised that when performing visits, everything should originate from the "do not harm" principle and it should be made certain that all preventive measures are undertaken both for NPM members and in relation to persons and staff of closed institutions.

In November, we attended a virtual meeting of the Nafplion Group. We discussed the proposal to launch two pilot projects in cooperation with the Council of Europe.

While heading the Health Section of the SEE NPM Network, the NPM Serbia organised an online meeting in December of the network's members to discuss the topic of treatment of prisoners addicted to psychoactive substances in prisons (ZPKZ). At the meeting, experience was shared and the ability of NPMs

to monitor the treatment of people addicted to psychoactive substances, as an especially vulnerable category of prisoners, was strengthened. Findings from topical visits made were presented by the NPM Serbia and other representatives of the prison system in Serbia, while we also presented our report about the situation in Slovenia.

INTERNATIONAL COOPERATION OF THE CENTRE FOR HUMAN RIGHTS

International cooperation of the Centre is presented in detail in Chapter 9.1 Centre for Human Rights of this report.

COOPERATION WITH EMBASSIES AND FOREIGN REPRESENTATIVES

In 2020, the Ombudsman had several work meetings with ambassadors, including the visit from the Ambassador of the Kingdom of the Netherlands Marco Hennis and his Deputy Derk Jan Naut, whom we welcomed again in May. We also welcomed Florence Ferrari, the Ambassador of France to Slovenia, the Ambassador of the USA to Slovenia Lynda C. Blanchard, His Excellence Monsignor Jean-Marie Speich, the Apostolic Nuncio to Slovenia, and a representative of the US Embassy in Ljubljana. We were invited to lunch in honour of Adriana van Dooijenweer, the Dutch Advocate of the Principle of Equality, by the Ambassador of the Kingdom of the Netherlands Marco Hennis.

1.11

THE OMBUDSMAN AS THE NATIONAL PREVENTIVE MECHANISM

The Ombudsman also performs tasks and responsibilities of the national preventive mechanism (NPM). The Republic of Slovenia with its Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Uradni list RS, no. 114/06 – Mednarodne pogodbe, no. 20 from 9.11.2006) stated: **“The competencies and tasks of the national preventive mechanism under the Optional Protocol, in accordance with Article 17, are exercised by the Human Rights Ombudsman, and in agreement with the institution also by non-governmental organisations registered in the Republic of Slovenia and organisations that have acquired the status of humanitarian organisation in the Republic of Slovenia.”**

The purpose of implementing tasks of the NPM is to strengthen the protection of detained persons from torture and other forms of cruel, inhuman, or degrading treatment or punishment. During the implementation of tasks and responsibilities, the NPM visits all places in Slovenia where individuals deprived of their liberty by an act of an authority are or could be placed. These are preventive visits, the purpose of which is to prevent torture or other ill-treatment even before it occurs.

In Slovenia, places of deprivation of liberty are:

- prisons (ZPKZ) with all their departments and the Radeče Juvenile Correction Facility,
- educational institutions (VZ),
- some social care institutions (SVZ) – retirement homes and special SVZs, education, work, and care centres (CUDV), and occupational activity centres (VDC),
- psychiatric hospitals (PB),
- police stations (PP) and Ljubljana Police Detention Centre,
- Centre for Foreigners in Postojna (CT) and the Asylum Centre in Ljubljana,
- detention premises operated by the Slovenian Army, and
- all other places in accordance with Article 4 of the Optional Protocol (such as police emergency vehicles and the like).

In 2020, in accordance with Article 4 of the Optional Protocol, youth crisis centres were added to the known places of deprivation of liberty.

The Ombudsman has been performing the tasks of the national preventive mechanism since the spring of 2008. Since 2015, the work has been organised in the form of the internal organisational unit of the Ombudsman. The unit is headed by the Ombudsman’s deputy Ivan Šelih. In the unit he is joined

by three other officials: a **graduate security specialist** in criminal investigation, who is responsible for visits to prisons, police stations, the Centre for Foreigners, and the Asylum Centre, a **Master of Legal Sciences**, competent for visits to social care institutions and psychiatric hospitals, and a **Bachelor of Legal Sciences**, who is responsible for visits to educational and social care institutions.

Every group performing a visit is composed of representatives of the Ombudsman and selected organisations. **Non-governmental organisations collaborating with the Ombudsman in the implementation of the NPM tasks in 2020 were:** Novi paradoks (NP), Humanitarno društvo Pravo za VSE (Pravo za VSE), SKUP – skupnost privatnih zavodov (SKUP), Pravno-informacijski center nevladnih organizacij – PIC (PIC), Mirovni inštitut (MI), Zveza društev upokojencev Slovenije (ZDUS), Spominčica – Alzheimer Slovenija (Spominčica), and Slovenska fundacija za UNICEF (UNICEF).

In 2020, we visited 51 places of deprivation of liberty and conducted two escorts of the return of foreigners (53 in total); the places of deprivation of liberty included 18 police stations, ten SVZs (retirement homes), seven different locations of VZ, five ZPKZs, five special SVZs, three PBs, premises for detention operated by the military police, a youth crisis centre, and a VDC. All visits (with the exception of two escorts of the return of foreigners due to the very nature of these activities) were **conducted without prior notice**. Eight visits were follow-up visits (which mostly checked the realisation of NPM recommendations from previous visits) and five were topical (which focused on a specific, previously chosen topic).

The NPM prepares a comprehensive (final) report about every visit and its findings about the visited institution. This report also includes suggestions and recommendations for the elimination of discovered irregularities and the improvement of the current condition, including measures to decrease the risk of misconduct in the future. The report is sent to the competent body (i.e. the superior body of the visited institution), with the suggestion that within the set deadline it assumes a position towards the statements or recommendations in the report and informs the Ombudsman about it. The report is also presented to the visited institution and in certain cases (upon visits to social care institutions, psychiatric hospitals, and educational institutions) a preliminary report is made.

All recommendations and responses of competent bodies from the visits of the NPM from 2020 are published in special charts prepared according to visited institutions on the Ombudsman's website. The charts include the entire recommendation, a brief explanation of the recommendation if necessary, the type of the recommendation (system, general, or individual), a keyword, the response to the recommendation, and a comment on the response if necessary, findings from the follow-up visit, and the response to these findings. Best practices and commendations presented in our work are also entered into this

chart. Based on comments (of the visited institution or its superior body) received in response to our recommendations we determine whether the visited institution or/and its superior ministry accepted the NPM recommendation, implemented it, or it did not accept it. The realisation of the recommendations is also regularly checked during following visits to institutions in question and, if necessary, with follow-up visits.

Every year, the national preventive mechanism prepares a detailed report about its work. The NPM Report for 2020 is the thirteenth in a row. It is printed in a separate publication but is also a component part of the regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2020. Both reports are published on the Ombudsman's website.

The NPM can also submit proposals and comments to enforced and proposed acts (Article 19 of the Optional Protocol). This possibility is used by the Ombudsman in the role of the NPM in the preparation of individual reports recommendations and directly in the procedure of individual acts or preparation of amendments to them in the field of restrictions to personal liberty. In 2020, we participated with our comments in the preparation of the **amendment to the Criminal Code (KZ-1), the new act on mental health (ZDZdr-1)**, and the preparation of the new **act on the prevention of infectious diseases (ZNB-1)**. Our comments were also considered during the preparation of the **proposal for the Act Amending the Criminal Procedure Act (ZKP-O)**. **Furthermore, we were part of the panel discussion encouraged by the Ministry of Justice about the possible necessity to determine a more appropriate longer duration of the discussed security measure of compulsory psychiatric treatment and care in the institution and the measure of compulsory treatment at liberty**, also in the light of future necessary arrangement of long-term care for persons with incurable psychiatric problems. Our comments were also part of the preparation of the **proposal for the Act Amending the State Prosecution Service Act (ZDT-1E)**.

1.12

CHILD ADVOCACY

1.12.1 General findings and assessment of the situation

Advocacy strengthens the voice of children. Since in various proceedings the voice of children has been too weak or neglected, 14 years ago the Advocate – the voice of a Child project was introduced. Advocacy with all its legal bases is coordinated at the Ombudsman Institution and functions as one of the independent units. Advocates strive for a child to entrust them with their opinion and then communicate this opinion to those who need to hear it, i.e. the courts, centres for social work, and other bodies who decide about the future of a child's life. The advocate is not a legal representative of a child, nor are they a court-appointed expert who assesses what is good for a child. The advocate only enables the child's voice to be heard in procedures and other matters, which makes decisions about the child's interest of higher quality and undertaken without delay.

For 2020, the following can be concisely highlighted:

- **108** initiatives received to appoint an advocate;
- **51** times the advocate was appointed;
- **23** times the advocate was not appointed;
- **1** time the parents' consent was withdrawn subsequently;
- **33** initiatives are still under consideration;
- **36** times the initiators were parents;
- **25** times the initiators were CSDs;
- **38** times the initiators were the courts;
- **6** times the initiators were others;
- **3** times the initiators were children;
- **88** children got an advocate in 2020: **38** from Ljubljana and its surroundings, **16** from Celje and the Koroška and Zasavje regions, **15** from the Gorenjska region, **9** from the regions of Primorska, Kras, and Notranjska, **6** from the north-eastern part of Slovenia, **3** from the region of Goriška, and **1** from the regions of Dolenjska and Posavje;

- **116** children had an advocate in 2020, since for 28 children started advocacy in 2019 and ended in 2020;
- **68** children had an advocate appointed with their parents' consent;
- **3** children had an advocate appointed with the consent of a child older than 15;
- **16** children had an advocate appointed with the decision of a court;
- **1** child had an advocate appointed with the consent of a legal guardian;
- No advocates were appointed with the decision of a CSD;
- **711** meetings between advocates and children were carried out;
- **7.9** meetings were on average carried out per case;
- **36** girls and **52** boys had an advocate appointed;
- **10.3** years was the average age of a child in advocacy.

Area	Number	New in 2020
Regions of Celje, Koroška and Zasavje	23	16
Regions of Dolenjska and Posavje	3	1
Region of Gorenjska	21	15
Region of Goriška	3	3
Ljubljana and its immediate surroundings	42	38
Regions of Primorska, Notranjska, and Kras	12	9
Regions of Štajerska and NE part of Slovenia	12	6
TOTAL	116	88

In 2020, we faced numerous challenges we have not encountered before in modern history. The declaration of the epidemic in March also demanded adjustments to our work in the field of child advocacy. Children for whom their family does not present a safe environment pulled the shortest straw during this time and experience in advocacy confirmed that.

In the majority of advocacy cases, contacts were not carried out regularly during this time, and the relationship between the parents grew even more adverse, while there were practically no possibilities for help and support outside the family.



The Ombudsman notices that in some parts of Slovenia the institute of advocacy has been used to their advantage, while elsewhere the appointment of an advocate is still very rarely used. The Ombudsman presumes that this is primarily due to insufficient knowledge about the institute; therefore, in 2019 we started with the planned promotion of child advocacy among the expert public across the country: judges, teachers, representatives of po-

lice, non-governmental organisations, centres for social work, and other experts who meet with children most often in their work. It presents who advocates are, when they are appointed, and what their task is. All this is done with the purpose of strengthening the voice of the child, as is demanded by the Convention on the Rights of the Child.

Last year, the Ombudsman prepared at its headquarters a presentation of child advocacy for judges and expert associates of the District and Higher Courts in Ljubljana and the Supreme Court. The Ombudsman issued a reminder that the institute of advocacy is a kind of a unicum in Europe. Since 2007, an advocate has been appointed to more than 700 children. The advocate is not the child's legal representative but helps a child to strengthen their voice so that it is heard in proceedings that decide on the child's best interest, warned the Ombudsman. Advocates are also not experts even though they do possess expert knowledge. They are not therapists, but can cause therapeutic effects. In practice, an advocate is appointed in cases when parents negotiate before court about where the child is going to live after the divorce, who the child is going to be entrusted to, with which of the parents the child will have contact, and where the child is to be schooled. The child can also communicate their opinion through the advocate when things in a family go wrong to the extent that the removal of a child or their placement into foster care, institutional care or the like is being considered.

Last year, we were present at the Faculty of Education of the University of Primorska, where we presented the institute of child advocacy to students who will come into contact with children and adolescents in their future work.

Special attention needs to be devoted to the regular annual two-day consultation the Ombudsman organised in Bohinjska Bistrica last September. Here, renowned experts acquainted the audience with manners of communication with children with special needs. The participants also got acquainted with characteristics of children with attention deficit and hyperactivity disorders, those with autism spectrum disorders, and children with emotional and behavioural problems, learned about the influence of stressful events on them, and got acquainted with the peculiarities of leading a discussion with them.

Year after year, the Ombudsman receives more initiatives for the appointment of an advocate which are substantiated, yet in our opinion the share of unsubstantiated initiatives remains too high. The purpose of promoting the institute of children's advocacy is thus also to present to experts who work with children or families when it is time to suggest an advocate and when it could be too late or the appointment is meaningless.



Until the end of 2020, an advocate had been appointed **to almost 900 children;** based on experience we can thus claim that it makes sense to appoint an advocate in the earliest possible phase of the proceeding or, in other words, when the situation in a family gets complicated to the extent that services have to intervene which have a duty to protect the rights and interests of children. Based on the advocacy cases, we have found that advocacy is much less

successful if procedures before various institutions have been running for a long time, occasionally even several years. The child who ends up in such a situation usually lacks their own opinion or has expressed it so many times, while the matters are still not resolved, that they no longer have any hope or will for the advocacy to bring anything positive.

1.12.2 Child (un)friendly judiciary



The Ombudsman has organised and managed child advocacy for over a decade; since October 2017, the child's right to an advocate has been enshrined in the Human Rights Ombudsman Act. Regardless, the practice reveals (too) great differences between Slovenian district courts in the acknowledgement and use of this institute.



The advocacy examples from recent years indicate that there is an increasing number of courts among proposers for the appointment of a child advocate. Most frequently these are cases running at family departments of district courts, in non-contentious procedures, in which decisions are made either about contacts (appointment, change, termination, etc.) or entrusting the care and upbringing of children to parents. In recent years, since the beginning of the application of the Family Code, an advocate is also proposed by the courts in some other proceedings, e.g. the restriction of parental care, placement of a child in institutional care, domestic violence, etc.



Despite the great increase in the number of court proposals in recent years, **the lion's share is divided between only six district courts: Ljubljana, Maribor, Kranj, Murska Sobota, Celje, and Koper, while the remaining five district courts propose a child's advocate in the same proceedings very rarely, and some have never done so.** Even though bigger courts are at the forefront and every child in the above-mentioned proceedings does not need an advocate, we wonder about the reasons for the lack of proposals from other district courts.

Since this is a child's right and not an obligation to express their opinion in proceedings and matters they are part of, we would like to stress another, qualitative and not only quantitative aspect of child-friendly judiciary.



Namely, from the initiatives for the appointment of an advocate we still detect a paternalistic attitude of the court towards a child, where a child is still being treated as an object and not the subject of the proceeding.

In several initiatives we receive the consent of both parents for the appointment of an advocate, while we receive **no information about whether the child also agrees with the advocacy.** For the assessment of merits, the Ombudsman first obtains information about the family, the ongoing procedures, and other more important recent information about the family and child. We are especially interested in whether interviews have already been done with

the child, where and how many times, and whether the child is simultaneously receiving any other professional help with the purpose of the psychosocial support and help. The crucial factor for the assessment is whether the child wants an advocate, possibly even proposes it, or other adults are proposing the advocate for the child. If the benefit in the advocate is perceived by others, the child is always informed about what an advocate is and the procedure of the advocacy process, with which the child must agree to even begin the process. It occasionally happens that an advocate is not appointed and the initiative is assessed as unsubstantiated, since the child has expressed their opinion clearly several times, was included in other forms of help, and was tired of talking to experts about a topic painful for them. The rejection of new talks with new experts is most frequently encountered in adolescents who have found themselves in various proceedings connected to them several times before. Even if the child agrees to collaborate with the advocate, it can be interrupted at any time if the child wishes. The Ombudsman strives for adults included in the child's story to hear and understand that advocacy is the child's right and not duty.

Just the opposite from the above-described, we notice that the practice of some courts in the treatment of children is on an enviable level. An example of best practice, which we have not recorded anywhere else, comes from the Maribor District Court. In the case of a fifteen-year-old girl we received an initiative from the court for the appointment of an advocate in a proceeding deciding on a change of contact. The parent with whom the girl had previously lived proposed that contacts with the other parent cease completely, for the adolescent had been utterly declining them for a long time due to violence and bad experiences in the past. The other parent, however, wanted contacts to be determined and insisted that the reasons for contact rejection were on the side of the current caretaker, who supposedly influenced the daughter and prevented contact with the other parent.

The participation of advocates at court hearings is the second example of best practice which has been established at the Kranj District Court. After the advocacy is finished, the advocate usually receives an invitation from the court to participate at the hearing, at which the advocate presents the course of advocacy and reads the child's statement. Thus, the child's opinion gets the appropriate weight in the proceeding and simultaneously, in judges' belief, can have a mollifying effect on parents and the course of the court hearing since the "child's voice" is present.

1.12.3 Conflicting relationship between parents and the child's distress – experience from advocacy examples

Arranging contact between the child and parents after a divorce are the most common procedures in which the child is appointed a child advocate within child advocacy at the Ombudsman. We warn about the responsibility of parents and distress of children we notice in advocacy due to conflicts between parents.



Despite different legal options brought about by the Family Code and positive changes in the work of competent services, we still see several system deficiencies. The speed of procedures in which children are participating would definitely help make children less exposed to pressures from both parents. In addition to the time aspect, more attention should be placed on the **professionalisation of people who come into contact with such a family**, so that they know how to recognise the psychological pressure that conflicts between parents exert on a child. And last but not least, competent experts need knowledge and support to choose the most appropriate among a wide range of possible measures against parents, and again, that such action is decisive and quick.

It appears that for some children, the real problems are just about to start after a divorce. Unfortunately, as we have previously described, the responsibility for that is first and foremost on the parents who persist on the emotional rollercoaster and, as it often seems, do not know how and do not want to get off. A child stuck between them thus needs fast and efficient action of competent state bodies, before conflicts grow into a war. In this situation, the advocate can strengthen the child's voice, which is a wake-up call for some parents, but absolutely not for all, since they are too occupied with their own distress and problems.

1.12.4 When is the right time to appoint a child's advocate?

Year after year, the Ombudsman receives more initiatives for the appointment of an advocate which are substantiated, yet in our opinion the share of unsubstantiated initiatives remains too high. The purpose of promoting the institute of children's advocacy is thus also to present to experts who work with children or families when it is time to suggest an advocate and when it could be too late or the appointment meaningless.

Until the end of 2020, an advocate had been appointed to almost 900 children; based on experience we can thus claim that it makes sense to appoint

an advocate in the earliest possible phase of the proceeding or, in other words, when the situation in a family gets complicated to the extent that services have to intervene which have a duty to protect the rights and interests of children. Based on the advocacy cases, we found that advocacy is much less successful if procedures before various institutions have been running for a long time, occasionally even several years. The child who ends up in such a situation usually lacks their own opinion or has expressed it so many times, while the matters are still not resolved, that they no longer have any hope or will for the advocacy to bring anything positive.

It is not uncommon for parents to tell us that they suggested to the CSD or the court months ago that the child be assigned an advocate, but were not heard or were told that it is too early for a child advocate to be appointed. Some of them were not even given the information that they can turn to the Ombudsman themselves, since the proposal for the appointment of a child advocate can, in accordance with the law, be submitted by anyone. Believing that the proposal must come from a CSD or the court, they waited for months and months before they turned to the Ombudsman themselves and discovered that the proposal has not yet been submitted by anyone.

The Ombudsman receives the most initiatives for the child advocate to be appointed in cases of family disputes: divorces, entrusting children's care and upbringing, contacts with parents, changes regarding the latter, and only a few initiatives in other cases. Even though advocacy was not created with the purpose of getting the child's opinion in family disputes, the institute has until today gained the most recognition in precisely this field. However, this does not mean that a child cannot get an advocate in other cases where parents do not know how or are not capable of playing the role of a true child advocate, or when parents are not present and the child is being decided about in various procedures and matters. In such cases, the advocate could be someone independent, someone who informs a child, lessens the pressure and empowers the child so that they can express their opinion, wishes, and needs, and makes sure the child's opinion is heard and considered in accordance with the abilities and interest of the child in a particular case. The advocate is not the one deciding what is the child's best interest, meaning that the advocate is not the child's legal representative, but is a child's confidant who translates the child's opinion, wishes, and views about the current situation to other adults.

Thus, it is (too) late for child advocacy if the competent services have decided what is best for the child and the measure only needs to be carried out.



We have been noticing that experts at the CSD are still not sufficiently aware of the various roles they play – to offer help and submit proposals to courts. Even if the child and family are treated by various experts, the relationship between the parents frequently breaks down when the CSD has to intervene in more decisively the family due to the protection of the child's interests. Once the trust is gone, the CSD is not left with many options for efficient help, despite the fact that the final decision will be made by the court. In this respect, the Family Code did not bring significant changes in practice.

In this procedure phase, when the CSD loses the parents' trust, the Ombudsman frequently receives a proposal for the appointment of an advocate.

Examples of too late parents' initiatives are when the court proceeding is in the closing phase, when an opinion has been issued by the court expert, when the CSD had had several interviews with the family, or prepared several assessments for the court, as well as the school and other experts who work with the child. A father or a mother who does not hold the advantage in the court proceeding, often wants the child to get an advocate so that the presumed wish of the child would be considered, which can also be in opposition to the child's interest.

Recently, the expression high-conflict relationship or a high-conflict divorce between the parents has become established in our country. Every case with this label is different and demands different approaches and treatment, while their common denominator is a child, the victim of the conflict between the parents, which can cause emotional and/or behavioural problems of the child, while due to the intensity of their mutual arguments, the work with such parents is demanding and strenuous for experts. In such cases, expert services recognise that children have been overlooked between the parents and search for various ways to help children. Parents, too, usually recognise the child's distress, yet they see the only culprit for the situation in the other parent.

In the case of a high-conflict relationship between the parents, the Ombudsman warns about the inclusion of children in court proceedings, since this puts the child in the centre of the parents' conflict. The point of appointing an advocate should be assessed considering the circumstances of each case, since in high-conflict relationships between parents, child advocacy, as well as a potential opinion expressed by the child, could present a reason for a new conflict between the parents and thus new source of distress for children.

It is also always a good time to appoint an advocate when adults important for the child honestly want to hear the child's opinion. When they see a subject and not only an object in a procedure in the child. When they see a person in a child and not only a means to an end and when they understand that children have the right and not an obligation to express their opinion. Unfortunately, the latter are the rarest among all proposals for the appointment of an advocate.

1.12.5 Unrealised past recommendations

In its work last year, the Ombudsman once again noticed the critical lack of court experts in family matters. Hence, the Ombudsman again calls on all competent institutions in the country to finally eliminate this serious problem, since it is the permanent task of courts.

In cases of child advocacy, the Ombudsman finds that the lack of court experts in family matters can lead to violations of children's rights and thus recommends to the Government of the Republic of Slovenia and the Medical Chamber of Slovenia to do whatever is necessary to eliminate this unbearable situation in the shortest possible time.



1.12.6 Advocacy examples

Example: The Court Recognises the Need for an Advocate in the Procedure of Arranging Contacts

Even at the initiative of a district court, the child's statement is not always made within advocacy, since the child's will has to be respected.

The initiator who turned to the Ombudsman for the child to be appointed an advocate in a procedure for change of contact was the district court that handled the matter, while the parents gave their consent to the court's proposal, since the court believed that it is in the child's best interest to express the child's will regarding contacts with the father with the help of an advocate. Until then, the contacts were irregular and with time the child started expressing resistance to any contact with the father, which is why, with a temporary decision, the contacts were appointed to be carried out under supervision.

Meetings with the advocate were uninterrupted, nine in total. The child liked coming to the meetings, and during conversation was very open to all subjects. The child looked forward to the meetings. The advocate presented the meaning of forming a statement, but at this the child displayed very grave distress. Thus, the child decided not to write a statement in order not to hurt either of the parents. During the process of the advocacy, the child clearly stated that contacts with the father are deeply desired, if they could decide on the visits together, depending on their obligations. The child also expressed a wish that they could spend weekends together and venture on walks in nature together.

Since the child did not want to write a statement, the advocate took that into consideration and stated that at the final hearing with both parents where the child did not want to be present. The child wanted the advocate to give the parents a message. Upon hearing that the child did not want to hurt either of them, the mother was very moved, while the father displayed no feelings.

When the advocacy was concluded, the Ombudsman informed the court that the child did not want to write a statement; the court was simply presented with a report from the advocate about the course of advocacy and the report of the coordinator who monitored the case.

More examples from the child advocacy work in 2020 are presented in the Ombudsman's annual report at www.varuh-rs.si:

- **Non-cooperation of the CSD in informing the child about the possibility of appointing an advocate**
- **Help to the child advocate of a child placed in an educational institution**
- **Clear expression of will with a child advocate**
- **Appointing an advocate to a child who refuses all contact with the mother**
- **The advocate does not perform hearings in penal procedures instead of a child or adolescent who was a victim of violence**
- **A child refuses the possibility of an advocate**
- **Child advocacy for a child who wants a different relationship with the father**

1.13

LEGAL BASES OF THE OMBUDSMAN'S OPERATION

THE CONSTITUTION OF THE REPUBLIC OF SLOVENIA

Article 159

(Ombudsman for Human Rights and Fundamental Freedoms)

In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of an Ombudsman for the rights of citizens shall be established by law.

THE HUMAN RIGHTS OMBUDSMAN ACT

(ZVarCP; Official Gazette of the Republic of Slovenia [Uradni list RS], No. 69/17 – official consolidated text)

Article 1

To protect human rights and fundamental freedoms against state authorities, local self-government bodies and holders of public authority, the Human Rights Ombudsman and their jurisdiction and powers shall be established by this Act

Comment on Article 1

The foregoing text is from paragraph one of Article 159 of the Constitution of the Republic of Slovenia, but the word "citizens" (in Slovenian: male citizens) appearing next to the name of the institution has been deleted, as it would be discriminatory if the Ombudsman protected only the rights of male citizens.

In its work, the Ombudsman shall be independent and autonomous. In its work, the Ombudsman shall comply with the provisions of the Constitution of the Republic of Slovenia and international legal acts on human rights and fundamental freedoms. When intervening, the Ombudsman may also invoke the principles of equity and good administration (Article 3 and 4 of the ZVarCP).

In addition to general provisions, the Human Rights Ombudsman Act also defines the election and position of the Ombudsman, the jurisdiction of the Ombudsman and his/her deputies, the procedure for processing complaints, the maintaining of personal databases, the rights of the Ombudsman, and his/her duties.

THE RULES OF PROCEDURE OF THE HUMAN RIGHTS OMBUDSMAN

(Official Gazette of the Republic of Slovenia [Uradni list RS], No. 3/2019 of 11 January 2019)

The new Rules of Procedure of the Human Rights Ombudsman that entered into force on 26 January 2019 was adopted on 3 January 2019.

The Rules harmonised the organisation of the Ombudsman with the Act Amending the Human Rights Ombudsman Act (ZVarCP-B; Official Gazette of the Republic of Slovenia [Uradni list RS], No. 54/17) from 2017. The Rules also govern the method of work of the Human Rights Ombudsman, define the division of work areas and the procedure for processing complaints.

The Ombudsman's first Rules were published on 6 November 1995 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 63/95), and its amendments were adopted at a later date (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos. 54/98, 101/01, 58/05).

The Human Rights Ombudsman Act defines the establishment of the **Human Rights Ombudsman Council** (Article 50a) as the Ombudsman's consultative body and three internal organisational units:

- **Child advocacy** (Article 25a)
- **Human Rights Centre**; conducting broader tasks, including the promotion of human rights (Article 50b)
- **National Preventive Mechanism as per the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (NPM)** (Article 50c)

RULES OF PROCEDURE OF THE OMBUDSMAN'S COUNCIL

(Official Gazette of the Republic of Slovenia
[Uradni list RS], No. 71/18 as of 9 November 2018)

Article 1 (Subject and purpose)

(1) The Human Rights Council (hereinafter: the Council) shall be the consultative body of the Ombudsman as the head of the institution of the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman), which is established to promote and protect human rights and fundamental freedoms, and to enhance legal certainty.

(2) The Council shall enjoy operational autonomy, which includes internal democracy, open dialogue and suitable consideration of various aspects in its own work.

General Legal Act on child advocacy, the organisation of advocacy, the integration of children into the advocacy system and on the tasks, composition and method of work of the expert council

(Official Gazette of the Republic of Slovenia [Uradni list RS], No. 44/18 as of 29 June 2018)

Article 1 (Subject and purpose)

This general act shall determine in detail the manner of implementing child advocacy, its organisation and the procedure of integrating children into the advocacy system, including the composition, tasks and work methods of the expert council, which accompanies the realisation of advocacy.

The purpose of advocacy is to provide professional assistance to a child to express their opinion in all proceedings and matters involving the child, and to forward the child's opinion to those competent authorities and institutions which decide on the child's rights and best interests.

Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

(Official Gazette of the Republic of Slovenia
[Uradni list RS], No. 114/06 as of 9 November 2006)

Article 4

In connection with Article 17 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Slovenia makes the following declaration: »Competences and duties of the national preventive mechanism under the Optional Protocol, in accordance with Article 17, shall be implemented by the Human Rights Ombudsman and, in agreement with him/her, and also by the non-governmental organisations registered in the Republic of Slovenia and organisations that have acquired the status of a humanitarian organisation in the Republic of Slovenia.«

The position and powers of the Ombudsman are also determined in other acts:

- Constitutional Court Act,
- State Prosecution Service Act,
- Courts Act,
- Judicial Service Act,
- Equal Opportunities for Women and Men Act,
- Defence Act,
- Patient Rights Act,

- Environmental Protection Act,
- Personal Data Protection Act,
- Criminal Procedure Act,
- Police Tasks and Powers Act,
- Attorneys Act,
- Enforcement of Criminal Sanctions Act,
- Administrative Fees Act,
- Classified Information Act,
- Integrity and Prevention of Corruption Act,
- Infertility Treatment and Procedures for Biomedically-Assisted Procreation Act,
- Public Employees Act,
- Public Sector Salary System Act,
- Court Experts, Certified Appraisers and Court Interpreters Act,
- Travel Documents Act.
- Public Finance Act

The decision on the repealing of Article 20, the second paragraph of Article 40, the first paragraph of Article 103 connected to the first and second paragraphs of Article 102 of the Public Finance Act, as much as they pertain to the National Council, Constitutional Court, Human Rights Ombudsman, and Court of Audit, about the finding that the first paragraph of Article 95 of the Public Finance Act, as much as it pertains to the National Council, Constitutional Court, Human Rights Ombudsman, and Court of Audit, inconsistent with the Constitution, and about the finding that Point 5 of the first paragraph of Article 3 and the first and third to seventh paragraphs of Article 40 of the Public Finance Act are not inconsistent with the Constitution, no. U-I-474/18-17 from 10.12.2020, Uradni list RS, no. 195/2020.

International acts that govern the Ombudsman's operational standards:

- Principles referring to the status of national institutions (Paris Principles) adopted by UN General Assembly resolution 48/134 of 20 December 1993,
- Principles on the protection and promotion of the Ombudsman institution (the Venice Principles) adopted by the Venice Commission at its 118th Plenary Session (Venice, 15–16 March 2019) and endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers' Deputies (Strasbourg, 2 May 2019).
- United Nations General Assembly Resolution on The role of the Ombudsman and mediators in the promotion and protection of human rights, from 16 December 2020, A/RES/75/186.

1.14

FINANCE

Overview of the Ombudsman's resources in 2020 by budget lines within individual sub-programmes

	Assigned funds (SP) in EUR	Established budget (VP) in EUR	Spent funds in v EUR	Remaining funds according to VP in EUR
Human Rights Ombudsman of RS	3.067.240	3.057.823	2.984.107	73.716
SUBPROGRAMMES				
Protection of human rights and fundamental freedoms	2.760.740	2.745.740	2.692.692	53.048
Salaries	2.100.741	2.100.741	2.049.384	51.357
Material expenses	549.999	528.672	527.231	1.441
Investments	110.000	116.327	116.077	250
Implementation of tasks and powers of the NPM	196.500	180.668	172.422	8.246
Salaries	135.000	135.000	127.075	7.925
Material expenses	50.000	39.971	39.868	103
Collaboration with NGOs	11.500	5.697	5.479	218
Child advocacy	110.000	119.500	118.993	507
Material expenses	110.000	119.500	118.993	507
Appropriations*	0	11.915	0	11.915
Compensation funds	0	2.365	0	2.365
Funds from the sale of state property	0	9.550	0	9.550

**Appropriations will be transferred to the 2021 budget*

In the second paragraph of Article 5, the Human Rights Ombudsman Act (ZVarCP) stipulates that, upon the proposal of the Ombudsman, the amount of funds for the work of the Ombudsman is set by the National Assembly of the Republic of Slovenia in the state budget. For 2020, the National Assembly established EUR 3.067,240 for the Ombudsman's work in the state budget.

The Ombudsman transferred to the 2020 budget financial appropriations in the amount of EUR 11,915 (funds from compensation received and the sale of state property).

At the end of the year, due to the coverage of legal obligations, the Ombudsman reallocated funds from the state budget in the amount of EUR 21,332.

Taking into the account the above, the established budget of the Ombudsman for 2020 was EUR 3.057,823.

The Ombudsman spent EUR 2.984,107 on three subprogrammes, namely:

- the Protection of Human Rights and Fundamental Freedoms: EUR 2.692,692,
- the Implementation of tasks and powers of the NPM: EUR 172,422,
- Child Advocacy: EUR 118,993.

Expenditure within the Protection of Human Rights and Fundamental Freedoms subprogramme

In 2020, EUR 2.049,384 was used for the payment of salaries and other employees' expenses. Of this, salaries and benefits amounted to EUR 1.629,150, holiday allowance EUR 49,479, reimbursements and allowances EUR 67,157, funds for work performance due to increased workload EUR 13,181, funds for working overtime EUR 1,357, other expenses of employees EUR 4,307, and employers' social security contributions EUR 264,211. EUR 20,542 was used for premiums of collective pension insurance based on the Collective Supplementary Pension Insurance for Public Employees Act.

In 2020, material expenses totalled EUR 527,231. Of this, EUR 189,370 was spent on office and general supplies and services, EUR 16,361 on special material and services, EUR 14,529 on transport costs, EUR 67,195 on power, water, municipal community services, and communication services, EUR 11,199 on business travel expenses, EUR 42,748 on routine maintenance, EUR 146,922 on business rentals and leases, and EUR 38,907 on other operating expenses.

In 2020, investment expenditure amounted to EUR 166,077.

The purchase of equipment accounted for EUR 81,502 (the most for computer hardware), investment maintenance and renovations for EUR 23,984, the purchase of licensed software EUR 6,687, and the preparation of a plan and project documentation EUR 3,904.

Expenditure within the Implementation of tasks and powers of the NPM subprogramme

In 2020, EUR 127,075 was spent on the payment of salaries and other expenses of the employees. Of this, salaries and benefits amounted to EUR 103,539, holiday allowance to EUR 2,351, reimbursements and allowances to EUR 3,167, funds for working overtime to EUR 127, other expenses of employees to EUR 82, employers' social security contributions to EUR 16,699, and premiums of

collective pension insurance based on the Collective Supplementary Pension Insurance for Public Employees Act to EUR 1,119.

In 2020, material expenses of the Optional Protocol amounted to EUR 39,868. Of this, EUR 11,147 was spent on office and general supplies and services, EUR 165 on communication services, EUR 677 on business travel expenses, EUR 944 on other operating expenses, and EUR 26,935 on business rentals.

In 2020, from the funds intended for collaboration with non-governmental organisations, EUR 5,479 was spent, of which EUR 2,378 was spent on operating expenses and EUR 3,101 on current transfers to non-profit organisations and institutions.

Expenditure within the Child Advocacy subprogramme

In 2020, Child Advocacy accounted for EUR 118,993 of spending.

The funds were spent on material expenses, of which EUR 14,477 was spent on office and general supplies and services, EUR 75 on communication services, EUR 72 on business travel expenses, and EUR 104,369 on other operating expenses (expenses of advocates, supervision, consultation).



2.

CONTENT OF WORK AND REVIEW OF CASES HANDLED

- A. Vulnerable groups
- B. Substantive fields discussed

A. Vulnerable groups

2.1 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES

As arguably the most important historical event by field, it should be pointed out that in 2020 (7 February) **the mosque in Ljubljana opened its doors**. The path towards this moment was a truly long one; the Ombudsman's engagement in this matter through the years spanned from warning that the Muslim community has been striving in vain for almost three decades to build its own cultural centre (which could mean the violation of the constitutionally guaranteed right to freely satisfy one's religious needs and that such a lengthy (non)construction cannot be the consequence of a random web of adverse circumstances) and through public calls for the construction of the Muslim religious centre to saluting the final decision of the Municipality of Ljubljana about the adoption of spatial planning documents and conclusion of legal dealings that would enable the construction of the first mosque in the country. Upon the occasion of its opening, renewed attempts were made to problematise the role of women in Islam, stating that the joyous occasion for Muslims *in the eyes of other inhabitants of Slovenia was spoiled by the message of the Islamic community to female believers that due to the crowd there would probably be no room for them in the mosque* (that the priority is given to men, while women in Islam are *unfortunately used to this*), etc. To avoid misunderstandings, we would like particularly to emphasise that even in such hesitations motivated by this or that, the Ombudsman sees manifestations of constitutionally guaranteed freedom of speech or pluralism of thought or opinions necessary for any democratic society which are still within the constitutionally permitted limits. As regards the role of gender within religious communities, the Ombudsman's position remains that this can also be perceived as a matter connected to the exercise of faith and to the rights and obligations of members of a religious community connected to the exercise of faith – it pertains to the religious belief of the community, to its internal organisation, and the internal position of its members, about which a religious community holds the greatest autonomy.

On the other hand, we can point out that none of the Islamic or Muslim communities responded to the Ombudsman's self-initiated invitation to all registered religious communities to inform us of possible changes in their operation during the COVID-19 epidemic and the prohibitions connected to this, especially with regard to services and other religious rites for their members. If we recapitulate briefly, **last year we wrote** (related to the halt in initiatives to discuss questions at meetings of the Council of the Government of the Republic of Slovenia for Dialogue on Religious Freedom) **about the**

public-dialogue disengagement of religious communities and concluded that it is primarily crucial for the Ombudsman that it does not appear that religious communities or their individual members would be prevented any type of contact with the authorities if they desired it – this can be repeated again here, with an additional note that the same goes for the attitude of religious communities towards the Ombudsman, as a non-governmental body.

Specifically related to Islam, the Ombudsman would like to note that **after the deadly terrorist attack of the Islamic State sympathiser in early November in Vienna, the Islamic community in the Republic of Slovenia publicly and unequivocally condemned this attack**¹. It can be frequently heard in public discourse that, following terrorist attacks committed by Islamic extremists, there is insufficient decisive public condemnation of such actions in the name of their god on the side of Muslim communities.

In general, the activities of state officials in one way or another connected to the freedom of conscience remains particularly sensitive. In the past we have reported protests due, for example, to the participation of state representatives at the traditional Holy Mass for the Motherland in the Ljubljana cathedral of St Nikolaj upon the celebration of the Independence and Unity Day. In the year concerning this report, we had to deal with complaints against the Easter message by the Prime Minister on the main website of the state administration, who was supposed to *“violate the Constitution which in Article 7 states: The state and religious communities are separate.”*, for supposedly *“in the letter he not only wishes happy holidays but also mentions ‘God’ several times.”* The Ombudsman’s position in connection to this is that the state is indeed bound to neutrality in handling matters of its competence by the principle of separation of the state and religious communities from Article 7 of the Constitution; however, the Prime Minister’s message, as it was published on the state administration website, does not signify the implementation of any of the statutory powers or authority that would have legal consequences for his addressees. Furthermore, he can be listened to or read (only) if they so desire – and not only that the word God was never explicitly connected in the text to an actual religious community nor did it explicitly exclude any of them, the situation as such should be placed in a wider context: Easter is a (most important) Christian holiday and the consideration of the *identity of people who have lived historically in the territory of the present-day state and are connected to the tradition of the European space* is, even according to the constitutional review, not necessarily inadmissible in authoritative conduct. In the Ombudsman’s opinion, such a speech of the Prime Minister can be understood primarily in the light of (his) freedom of conscience (Article 41 of

¹ On their website they published the news entitled *Islamska skupnost v Republiki Sloveniji ostro obsoja teroristični napad na Dunaju* (<https://www.islamska-skupnost.si/2020/11/islamska-skupnost-v-republiki-sloveniji-ostro-obsoja-teroristicni-napad-na-dunaju/>) and stating: *“The Islamic community in the Republic of Slovenia severely condemns the terrorist attack that happened in Vienna on 2 November 2020, in which innocent people were killed and injured.”* It was followed by the expressions of deep condolences for the *families of the killed and the entire friendly Austrian nation*, etc.

the URS) and freedom of expression connected to it (Article 39 of the URS), while in democratic systems the latter should take a central position since it represents² one of the foundations of a democratic society, conditions for its advancement, and development of every person.

The picture can quickly be balanced – over the telephone we received a complaint from someone who was bothered by the fact that one of the members of parliament attended a meeting of the National Assembly wearing a T-shirt with an inscription Bad Religion and the sign of a crossed cross (of similar length and width ratio as in the symbol of Christianity)³ – the caller ranked this alongside the then recent tweet of one of the state secretaries about Merry Christmas and filthy animals (“*MERRY CHRISTMAS YA FILTHY ANIMALS*”). Here, again, it is understandable that such a message can be upsetting to many people, yet in this manner the representative of the legislator or the state which allows it does not violate constitutional or conventional standards regarding the freedom of expression – after all, the latter, following a well-established assessment of the European Court for Human Rights, does not pertain only to ideas we look favourably upon but also to *those that can hurt, shock, or upset the state or any part of the population*⁴.

The general overview of the situation must be concluded with the information that the blessing of state schools is still perceived as controversial. This is another long story, which the Ombudsman ended last year with a clarification that following several years of sending proposals to the Ministry and the unrealised proposal directly to the legislator, he believes that it cannot be expected that further repetition of the recommendation for legislative changes, due to which there are doubts concerning the (in)admissibility of organising religious rites in the area of state schools and kindergartens, would achieve its purpose – the only missing element for such changes remains sufficient political will. Suffice to add that one of the initiatives in 2020, the blessing of a state school, was again brought forward (the extension of the Anton Martin Slomšek Primary School in Vrhnika blessed by the priest from Vrhnika), saying that “*such actions insult the feelings of atheists and other beliefs*”, that it “*violates Article 72 of the ZOFVI*”, etc.

2 As was emphasised on several occasions in its judgements (e.g. in the judgement of *Handyside versus the United Kingdom* (appeal no. 5493/72) from 7.12.1976) as well as by the European Court for Human Rights.

3 It is the iconography of the American punk band Bad Religion.

4 See e.g. §49 of the afore-mentioned judgement in the matter of *Handyside versus the United Kingdom*.

2.2 NATIONAL AND ETHNIC COMMUNITIES

In general, we still observe that **in some situations people (too?) often see some sort of discrimination which they attribute to their nationality or ethnic origin** – we have already reported on, e.g. an initiator who was convincing us that *he is always guilty and consequently in prison a lot* simply because he is Roma; and on a constitutional complainant who sought to achieve success only by claims that he was ordered detention *because he is Roma and on the basis of discrimination proceeding*; or on, e.g. unspecified allegations of Serbian Social Party *about harmful and discriminatory proceedings in Slovenia by the police, prosecution and judiciary*, and more. We encountered similar cases in 2020 too, e.g. of an Indian who claimed that the alleged irregularities pertaining to revocation or annulment of visa and communication with Slovenian Embassy in New Delhi occurred due to *racist standpoints* regarding his *ethnicity, family and state*, yet we, despite careful consideration of the circumstances, did not find any indication of that; or of a Sinti who claimed he was discriminated in the process of changing municipal non-profit housing without concrete proof (saying that *people in Jesenice talk about several changes of apartments neglecting the list*, and he as a Sinti has not managed to achieve it yet).

2.2.1 Will we ever get an immigration home for housing repatriated persons?

In dealing with the wider issue of repatriation, the Ombudsman specifically addressed the question of accommodation for repatriated persons and the matter of an immigration home. Pursuant to Article 79 of Act Regulating Relations between the Republic of Slovenia and Slovenians Abroad (ZORSSZNM), the Government of the Republic of Slovenia may establish an immigration home for accommodation of repatriated persons. In the founding act it may determine the manager of this home, together with the source of financing. In accordance with Articles 80 and 82, repatriated persons and their immediate family members, as defined in the third paragraph of Article 77 of the same Act, should be provided with basic care, i.e. accommodation and meals in immigration home, for 15 months, in conformity with the standards in the field of social welfare activities that apply to institutional care service. **But ever since the ZORSSZNM came into force in 2006, no government has decided to establish such immigration home.**

In 2020, the issue of accommodation capacities became extremely topical in connection with repatriation procedures of Slovenian compatriots from the

Bolivarian Republic of Venezuela. As the Ombudsman managed to find out from the Office for Slovenians Abroad, they started looking for possible accommodation only when the procedure of their repatriation started, and had significant problems regarding the suitability of accommodation, free capacities, costs, etc. The Office explained that after they had appealed to ministries, they received an offer for only one apartment (out of 17 municipalities that responded to their call, none had any free capacity; there was also no response from the Association of Hoteliers for renting out a hotel; private providers set too high prices, etc.), so they started looking for accommodation offers with private providers through advertisements. Concrete repatriation proceedings were temporarily suspended due to the COVID-19 pandemic, but prior to that, 15 persons received a positive decision on the status of repatriated person, and the same number of them met the conditions for granting the status at that time. The Office then had a dilemma over how to find adequate capacities for these persons, and it informed the Ombudsman, among other things, that **the problem regarding the accommodation of repatriated persons stems from the vagueness of the ZORSSZNM, as it does not define a specific department with duty and competence to provide adequate accommodation, and the office has no financial or staff, nor technical possibilities for that.**

The Ombudsman expects that issues of repatriated Slovene compatriots and their immediate family members, as foreseen by the ZORSSZNM, will remain relevant in the future. In connection to this, we have already contacted the Government of the Republic of Slovenia to clarify its position regarding the establishment of an immigration home and to pinpoint the department which should be responsible for this area and would also have appropriate financial, staff and technical possibilities for solving the issue at hand. The Government responded that **provisions of the ZORSZNM, which regulate repatriation of persons of Slovenian descent to the Republic of Slovenia and the rights of repatriated persons, have been used twice so far – in 2013, when eight persons from Syria were repatriated to Slovenia, and in 2019, when the repatriation of persons of Slovenian descent from the Bolivarian Republic of Venezuela began** (at the time of the reply, 23 persons had been repatriated from there but the process had not been completed yet as it was suspended due to the COVID-19 pandemic). In 2013, repatriated persons were accommodated in the organization of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the regional Centre for Social Work and the municipality of accommodation; in 2019, the repatriated persons were accommodated at humanitarian-oriented private providers and relatives of repatriated persons.

According to the Government of the Republic of Slovenia, several concerns arise when considering the possibility of establishing a single home for immigration and such solution is not necessarily optimal – the establishment of a permanent home would bring a constant cost of maintenance and care for its uninterrupted operation. Bearing in mind that it is not possible to predict if and when the Republic of Slovenia will again carry out repatriation, from which country, and what the number of repatriated persons would be, such

a home would function with difficulty. According to the government, an additional concern is the fact that joint accommodation of a larger number of people from foreign country inhibits their integration into Slovene society.

The Government of the Republic of Slovenia sees accommodation in organization of the state in individual family units as the best option. Article 79 of the ZORSSZNM is thus reasonably implemented in the form of providing more accommodation capacities which enable dispersed accommodation of repatriated persons and consequently easier and faster integration. The Government's *Action plan for repatriation of applicants of Slovenian descent from the Bolivarian Republic of Venezuela to the Republic of Slovenia* of 14.11.2019 also mentions that the establishment of such a home as mentioned in the act did not take place. As possible solutions, the action plan offers a state lease of a single accommodation facility (e.g. a hotel) in order to arrange an immigration home (in accordance with Article 79 of the ZORSSZNM it could be interpreted as an immigration home established by the state, but of temporary nature), or that housing capacities be sought and each family accommodated in the most suitable place. According to the action plan, the advantage of the first option is easier logistics as all repatriated persons are on one location, and the disadvantage is that the group of repatriated persons would stay together and isolated, creating a sense of ghetto; the advantage of the second option is that families could be placed close to potential jobs and places where their ancestors originated from, which would make integration easier for them, etc.

The Government of the Republic of Slovenia responded to the Ombudsman's question regarding the competent department, explaining that because the ZORSSZNM does not determine a specific department in charge of establishing and managing the immigration home, the solutions should be sought *together, through dialogue within the Interdepartmental working group* established to monitor and coordinate the procedure for repatriation of persons of Slovenian descent from the Bolivarian Republic of Venezuela to the Republic of Slovenia, which includes the ministries whose competences are related to this issue. According to the government, accommodation solutions for repatriated persons who are expected to come to the Republic of Slovenia in the near future should be sought within the interdepartmental working group, according to the number, frequency and structure of incoming repatriated persons. They also emphasized that one of the commitments in the coalition agreement was to provide sufficient funding for the implementation and completion of repatriation.

The Government of the Republic of Slovenia also pointed out that **successful implementation of repatriation and integration of persons into Slovenian society requires good interdepartmental cooperation, as the issue concerns several departments** (which should also be the reason why no ministry was specifically designated). Thus in 2013, the leadership of the interdepartmental working group was taken over by the Ministry of Labour, Family and Social Affairs and in 2019 by the Governmental Office for Slovenes Abroad.

According to the Ombudsman, the reasons given by the current government in the above-described response (constant maintenance costs, uncertainty when repatriated persons will be accepted again, etc.) are reasonable, **but do not solve the problem of looking for ad hoc solutions for accommodation of the repatriated people at the last minute. Such an approach does not reflect the explicit statements put down in the Resolution on the Relations with Slovenes Abroad (ReOSPS), stating that the Republic of Slovenia is “interested in the return of Slovenes to Slovenia, as well as in settlement of their descendants”**. It should also be noted that the proponent of the ZORSSZNM himself stated that special care *“should be given to Slovenes living in countries with a severe political or other crisis. In the process of repatriation, these compatriots should be offered priority in immigrating to Slovenia as soon as possible.”*¹ Above all, it should not be neglected that, according to Article 5 of the Constitution of the Republic of Slovenia (URS), the state is supposed to take care of Slovene emigrants and expatriates, and promote their contacts with the homeland.

2.2.2 About the Italian and Hungarian national communities or their members

The Ombudsman still does not receive many initiatives in this sub-field – in 2020, we received only three of them, and one case was opened on our own initiative (related to informing the autochthonous Italian and Hungarian national communities about COVID-19).

One of the initiators – a member of the autochthonous Hungarian national community in Slovenia has problematized the allegations of the Ministry of Education, Science and Sport, which, as a response to his opinion that *regulations of the Republic of Slovenia should be translated to Hungarian with the help of a court interpreter and published in the Official Gazette of the RS*, addressed the request for their opinion to the Government Office for Legislation, the Government Office for National Minorities, and the Ministry of Public Administration, and found that the position of all four bodies is the same, namely that *“translating all regulations of the RS to Hungarian and their publication in the Official Gazette of the RS would exceed the scope of bilingualism as guaranteed by Article 11 of the Constitution, as in this case bilingualism would not remain limited to the area where national community lives, but would (due to the nature of normative activity) be established outside this area, i.e. in the entire territory of the RS.”* The initiator was of the opinion that such a standpoint constitutes discrimination against members of Hungarian nationality *“because the state (ministry) does not enable them to acquaint themselves with legal acts in the official Hungarian language”*. He

1 Taken from the explanation to the proposed Article 71 of the ZORSSZNM (EPA:473 – IV), 2005.

emphasized that these acts affect the daily lives of members of the national community and at the same time signify “*the fundamental existence of the Hungarian language in the field of bilingualism*”. The initiator recognized discrimination also in the position of the Ministry of Education, Science and Sport (MIZŠ) stating that “*syllabus and other curriculum materials are translated to Hungarian according to financial and human resources*” and pointed out that the ministry’s website does not contain any Italian or Hungarian content.

2.2.3 About the Roma community or its members

Given the complexity and severity of accumulated problems, it is not surprising that the sub-field on the Roma community or its members remains the largest in terms of the volume of cases considered. **The situation remains essentially unchanged, i.e. antagonistic to legal and factual complexity, at times also marked by resignation, and it seems, above all, to be ignored regardless of the reasons.**² After years and years of criticism, even on international level, the situation imposes a reasonable conclusion that the persisting state simply reflects the fact that the vast majority of Slovene municipalities does not have areas where a sufficiently noticeable Roma community would live; consequently the so-called Roma issues present a completely particular aspect of life in the minority of local communities, whereas all other communities put these issues to the bottom of their priority lists. At the same time, **such politically low-profitable specifics do not generate enough sincere attention at the state level either.**

The above does not necessarily mean there is a complete eclipse of initiative in all respects. According to our observations, the most active driving force in the country, which seeks to radically change the situation in the field, is the mayor of Kočevje with his team with concrete proposals especially in the fields of housing, education, employment and social affairs, being aware that the issue is demanding and requires systemic measures, including at the legislative level. Like them, unfortunately, the Ombudsman has similar experience with state authorities regarding (non)compliance with proposals.

Towards the end of 2020, the *Seventh Report on the Government of the Republic of Slovenia on the Situation of the Roma Community in Slovenia* was published. There is nothing in its content that would indicate any significant shift toward the implementation of the Ombudsman’s past recommenda-

2 Compare with the statements in the Seventh Report on the Government of the Republic of Slovenia on the Situation of the Roma Community in Slovenia (No. 00701-1/2020-UN/81 of 5.11.2020) about the opinion of National Council Commission on Organisation of the State which also agrees that “*when considering government reports on the situation of the Roma community, we have been revolving around the same problems and warnings for years, wherein it is alarming that no significant progress has been detected and there is perception that situation on in SE Slovenia is worsening, despite all the efforts made and financial contribution intended for the measures.*”

tions regarding this field. In addition, reading the report raises the question of what the government can report at all, if “*obtaining accurate data for situation analysis and monitoring and evaluation of progress*” is supposedly impossible due to personal data protection (the Ombudsman has already reported on the aspect of collecting data on ethnicity³). It is surprising that despite the general view that data on the Roma community cannot be collected and processed, concrete (worrying) data on Roma inclusion in upbringing and education and labour market appear in several places in the above-mentioned government report.⁴ Thus, e.g. **despite the fact there are critical problems in primary schools due to which members of the Roma community do not complete primary education, there is still no data on attendance and performance of Roma children in primary schools**, allegedly due to inadequate legal bases for personal data processing. However, this problem obviously does not exist in case of kindergartens and secondary schools, where 133 to 145 Roma students were supposed to be enrolled in school year 2017/18, and in case of university education, which included 13 Roma students (the report also records 213 cases of employment, of which 100 Roma joined public works and other employment programmes, and 115 Roma were employed on the labour market; there is no data on unemployment rate among the active population of members of the Roma community).

Some statements in the already mentioned government report also **point to the obvious need for a strategy of the Government of the Republic of Slovenia on what to do with Roma settlements that cannot be legalized**. Namely, the Ministry of the Environment and Spatial Planning⁵ determined that guidelines and instructions for the preparation of the Municipal Spatial Plan (OPN) are mostly followed, except “*when illegal Roma settlements are located in areas protected by special protection regimes (narrow water protection area, area of NATURA 2000, flood area, protection of cultural heritage or when settlements are located in areas that cannot be provided with communal infrastructure for objective reasons)*”.

At the beginning of 2020, i.e. in winter, we visited the Municipality of Kočevje, where about 900 Roma are supposed to live (beside the town, the highest concentration occurs in six Roma settlements, namely Stari log, Marof, Trata, Griček pri Željnah, Željne, and Mestni log. We also visited some locations to-

3 See p. 91–92 of Annual Report for 2016.

4 E.g. on p. 4 of the Annex 1 it is written that approximately 180 (Roma) children are enrolled in kindergartens, while page 3 of the same Annex states: “A total of 7 groups included 90 Roma children. The groups operate in Roma settlements or in their immediate vicinity.” From these two pieces of data (90 and 180) it is difficult to determine how many Roma children actually go to kindergarten. It is worrying that less than 6 children are included in a shorter kindergarten programme which is specifically intended for Roma children (p. 3 of Annex 1 to the Report, the exact number is not given).

5 P. 25 of Annex 1.

gether with the mayor⁶, namely in Roma settlements Mestni log and Griček. Later in the year, this type of fieldwork, unlike in previous years, was no longer carried out due to the situation associated with the COVID-19 epidemic. Even though **the Ombudsman does not address the so-called Roma issues only from his office**, he still faces accusations, e.g. that he is “*not interested in the facts on the ground*”⁷, that “*he was obviously not on certain locations because the police do not dare to go there either*”⁸, etc.

The identification of all relevant circumstances in the so-called Roma affairs remains a difficult and ungrateful task – as already reported, it sometimes seems that Roma are occasionally promised some things with too much ease⁹, but this time we can illustrate the opposite and point out that one of the Roma initiators first claimed that he wanted vocational rehabilitation for his son, but it later turned out that he claimed the exact opposite to the institute. Such cases additionally confirm the importance of impartial conduct of the Ombudsman’s proceedings and of obtaining the views of all parties involved, as explicitly prescribed by the fourth paragraph of Article 9 of the Human Rights Ombudsman Act (ZVarCPP).

We have already reported on an interesting contradiction – on the one hand, we often encounter complaints from the Roma about allegedly anything but rare interventions of the police, inspections, and security, and about unfavourable judicial proceedings, and on the other hand we get equally frequent remarks from the non-Roma local population that the Roma can do almost anything with impunity.¹⁰ This time we can add a peculiar fact, namely the case of a Roma woman who complained to us that the police do not respond adequately to her reports of physical violence and threats by another Roma family in the settlement. **The sentiment that the police do not perform their basic duty or tasks of protecting life, personal safety and property of people in relation to members of the Roma community is, in our experience, present in significant part of public awareness** – how justified this is, is of course another question. At this point, we can repeat the Ombudsman’s long-standing position that the assurance of special protection for the Roma community and its members should not be equated with protection against any culpability for unlawful conduct.

With regard to the so-called Roma issues, there are, at least partly, unreal expectations regarding the actual competence or powers of the Ombuds-

6 Usually, such visits are carried out in cooperation with Roma counsellors.

7 This was a complaint by the president of the civil initiative from Novo mesto area (Regional Civil Initiative for Resolving Roma Issues), in one of his writings sent to multiple e-mail addresses.

8 This was a complaint by a member of Slovene National Party at the 21st session of the National Assembly, on 22.10.2020, during the discussion of the Annual Report of the Ombudsman for 2019.

9 Already on p. 135–136 of the Annual Report for 2018.

10 See p. 128 of the Annual Report of the Ombudsman for 2018.

man as defined by the current legal system – the Ombudsman's opinion is not given the power of legally binding force, and the burden of their realisation is on the people whom they address – not on the Ombudsman. For example, in his critique of the state policy approach, the president of the *Regional Civil Initiative for Resolving Roma Issues* accused the Ombudsman of “*doing absolutely nothing*” and of dealing “*only with communal arrangements of settlements, provision of drinking water and toilets and access to electricity*”. The Ombudsman rejects such allegations, as we address various concrete proposals, opinions, criticisms or recommendations¹¹ to the bodies involved in the course of dealing with individual cases. In his Annual Reports, in which he reports to the National Assembly of the Republic of Slovenia on his work in accordance with Articles 5 and 43 of the ZVarCP, the Ombudsman also emphasizes¹² his principled stance that inadequate legal and municipal services in Roma settlements pose a threat to the realisation of the human and special rights of the Roma community and its members on the one hand, and the realisation of the human rights and fundamental freedoms of other residents living in the vicinity of such Roma settlements on the other – in this regard he also addresses numerous recommendations to authority bodies, noting that the National Assembly has always adopted them and recommended them to all institutions and officials at all levels.¹³ The Ombudsman has also prepared a special report on the living conditions of Roma in the area of south-eastern Slovenia, in which local authorities and the Government of the Republic of Slovenia were given six recommendations. The Ombudsman did not remain passive during the latest attempts at normative changes in sectors – in 2017 he examined the Act Amending the Roma Community in the Republic of Slovenia Act on his own initiative and found out that his long-standing recommendations to ensure the effective and substantial exercise of human rights of the Roma community members in illegal Roma settlements, such as access to drinking water, sanitary facilities and electricity, were not observed.

Regarding the allegations related to the *constant expansion of ghettoized Roma settlements and the emergence of new ones*, it should be emphasized that approaches in this regard – and their results – can also differ significantly as a consequence of various variables (e.g. settlement of Pušča). This matter is distinctively programme-bound and the search for answers to it is again a matter of the policy of each ruling power – not the proceedings brought before the Ombudsman. Based on his powers, the Ombudsman cannot dictate in what way the government should pursue the policy of integrating the Roma community into Slovenian society. The issue of the existence and develop-

11 As an example: in 2014 and 2015 (see Annual Report of the Ombudsman for 2015, p. 64) the Ombudsman conducted intensive communication with local authorities on the installation of a sanitary facility for a father with three school-age children – finally, a sanitary container with a shower and toilet was installed, drinkable water supplied and connection to the public sewer network made.

12 See e.g. Annual Report of the Ombudsman for 2016 p. 105–106, 2017 p. 104, 2018 p. 125, 2019 p. 75–76.

13 For the last such case see the Uradni list RS, no. 157/20 of 30.10.2020, p. 6552.

ment of Roma settlements is, of course, also sensitive from the point of view of members of the Roma community; the residents often tell us they do not want to leave the settlement, and if they do, they often face discrimination. Irrespective of this, the Ombudsman has already, in one particularly justified case, advocated the relocation of the inhabitants of communally and legally unregulated Roma settlement. Furthermore, as the Roma are more or less openly accused of evading work, we should at least remark that we have no record that any member of the Roma community has ever approached the Ombudsman claiming that their right to work has been violated. However, we have already reported on the topic of employment relations and members of the Roma community. With reference to reproachful questions as to whether the Ombudsman has ever requested a report on the causes and their elimination regarding the *primary (non)education of Roma children*, it should be noted that, e.g. the editorial to the Annual Report critically states “*it is not possible to obtain official data answering a simple question of how many Roma children do not finish primary school, which could be a starting point for developing more effective programmes, which would enable the state to create real opportunities for exercising the constitutional right to obtaining appropriate education*”. The Ombudsman regularly draws attention to close connection between appropriate living conditions and children’s school performance and (subsequent) employability; e.g. in the Annual Report he has specifically stressed that as a result of violation of the right of access to sanitary facilities, Roma children face serious threats to their health and the health of others they come in contact with (e.g. at school) and severe obstacles while growing up and obtaining education, which will permanently mark their personality and further course of life. In the discussion of a concrete initiative to the Centre for Social Work, the Ombudsman e.g. proposed that they, in cooperation with the municipality, take measures to improve the situation of a family living in a caravan – the Centre for Social Work then proposed to the municipality a suitable non-profit apartment be allocated to them for lease if possible. We have already reported that the Ombudsman advocated the full exercising of the right to free transport to school for Roma children.

The conditions for regulating the spatial problems of Roma settlements and improving living conditions of members of the Roma community should be provided by the state bodies and bodies of self-governing local communities; the inclusion of members of the Roma community in the upbringing and education system, the provision of conditions for raising education level of members of the Roma community and special care for the promotion of employment are the tasks of the Government of the Republic of Slovenia; the latter should also adopt a programme of measures determining obligations and tasks for the coordinated exercise of special rights of members of the Roma community (in cooperation with self-governing local communities and the Council of Roma Community of the Republic of Slovenia). The responsibility for formulating policies and achieving results in these fields is therefore not with the Ombudsman, but primarily with the Government of the Republic of Slovenia, the democratically elected National Assembly, with (also demo-

cratically elected) local self-government bodies, and last but not least, **the responsibility to improve their position, development and successful integration into Slovenian society is with the Roma community or their members themselves**¹⁴. **The internal disunity of the inhabitants of Roma settlements is still noticeable, as it happens that people at the top of informal hierarchical structures (the so-called *chiefs, clan leaders*) use access to basic goods (water, electricity, ...) as a means for blackmailing and controlling others, all the more easily the most vulnerable ones within the settlement (children, women, the elderly), so every seemingly unreasonable refusal to supply them with drinking water must also be considered from this point of view.**

The general overview of the situation should be concluded in the direction of developments at the international level. Last year we reported on the historic decision¹⁵ (of the Chamber of Section II) of the European Court of Human Rights (ECHR) in the case of Hudorovič and Novak and Others v. Slovenia¹⁶, which was made in March 2020 and proved to be unfavourable for the applicants from the Roma settlements of Goriča vas in Ribnica and Dobruška vas in the Municipality of Škocjan. This year we can add that the judgement is now final, as in September a panel of five judges from the Grand Chamber rejected the referral for a retrial before the Grand Chamber. As we explained last year, the relevant Convention is usually intended for the protection of the so-called first generation of human rights, i.e. civil and political rights. The social aspect (i.e. the second generation of human rights) is much more explicit in the relevant case and that gives rise to the question of whether the ECHR was actually the most appropriate forum to decide on this matter. In relation to this, the Ombudsman has already stressed that the Republic of Slovenia has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. As per this Protocol, the Committee on Economic, Social and Cultural Rights has powers to receive and discuss notifications from individuals and groups of individuals who are under the jurisdiction of the signatory state and believe that their economic, social and cultural rights as specified by the International Covenant on Economic, Social and Cultural Rights have been violated. In relation to this we have put forward a concrete recommendation in the previous Annual Report, which has not been implemented yet and is repeated here.

Section 2.11 of this Report already mentioned the adoption of a non-binding working definition of holocaust denial and distortion of holocaust facts. On this spot we additionally point out that in an extraordinary Heads of Delega-

14 Compare with Article 2 of the ZRomS-1: e.g. the last paragraph on p. 133 of the Annual Report of the Ombudsman for 2018.

15 On the one hand for the court itself, as it dealt for the first time with the question of whether the Convention for the Protection of Human Rights and Fundamental Freedoms ensures the right to drinking water in circumstances in which there is no legal recourse for connection to a public water supply system, and on the other hand for the Republic of Slovenia, as the relevant case was the first Slovenian Roma case before this court.

16 Applications no. 24816/14 and 25140/14.

tion meeting in October, the International Holocaust Remembrance Alliance (IHRA) unanimously adopted a non-legally binding working definition of antigypsyism/anti-Roma discrimination¹⁷. **The Ombudsman recommends that the Government of the Republic of Slovenia adopts a non-legally binding working definition of antigypsyism/anti-Roma discrimination in the same manner it adopted a non-legally binding working definitions of antisemitism and denial and distortion of holocaust facts.**

At the transnational level, the European Commission launched a new EU Roma Strategic Framework¹⁸ in October, which aims to make faster progress in improving the living conditions of *Europe's largest and most discriminated minority*. Three objectives are set in the areas of equality, inclusion and participation, and four in the areas of education, employment, housing and health. This is the first direct contribution to implementing the EU Anti-racism action plan 2020–2025.

17 See <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antigypsyism-anti-roma-discrimination>.

18 See https://ec.europa.eu/info/publications/new-eu-roma-strategic-framework-equality-inclusion-and-participation-full-package_sl.

2.3 EMPLOYED AND UNEMPLOYED PERSONS

2.3.1 Employed persons

The number of discussed initiatives in the field of labour law significantly decreased in 2020. The Ombudsman dealt with 81 matters in comparison to 2019 when there were 124. However, the degree of merit increased. In 2020, it was 12.3% and 6.4% in 2019. This year the majority of initiatives, which are discussed in detail in a special chapter, were directly or indirectly connected to the COVID-19 epidemic, which practically engulfed the whole of 2020.

The right to additional days of annual leave for parents who take care of adult children with the most severe mental and physical disabilities

On 22.2.2020, the amendment of the State Employees Act, ZDDO-H, came into force, which now stipulates that five more annual leave days are awarded to workers who care for and protect a child who needs special care and nursing in accordance with the regulations governing family income. In practice this means that carers are entitled to this additional annual leave only until the child's 18th birthday or until the 26th if the child is in school.



The field of protection of persons with disabilities has been systematically regulated recently. Connected to this, the Ombudsman welcomes the fact that the Ministry of Public Administration followed the recommendations of the Ombudsman during the preparation of the legislative changes regarding the normative regulation of the right to additional days of annual leave for parents of children with special needs and so the Ministry simplified the proving of eligibility only with a decision of the centre for social work both for employees of state authorities and of the private sector.

Nevertheless, the fact remains that persons with the most severe mental and physical disabilities, if they are not placed in a full-time institutional care, also need a lot of attention, nursing, and care from their parents in their adulthood. Thus, parents who care for adult children with the most severe mental and physical disabilities should undoubtedly be entitled to additional days of annual leave. Therefore, the Ombudsman recommended to the Government of the Republic of Slovenia that within the system regulation and equal treatment of all persons needing greater attention, nursing, and care from their parents, to study the issue of adult persons with disabilities who are still cared for by their parents and together with social partners investigate the possibility for the introduction of additional days of annual leave for such parents employed both by the state and in the private sector.

The right to dignity and safety at work also has to be ensured for employees of education, work, and care centres (CUDV)

Due to the specificity of their users and certain categories of protégés, employees of the CUDV are particularly exposed to violence in the workplace, for the managing of which special strategies for violence prevention and the management of negative consequences employees experience due to violent events are essential. The Ombudsman finds that to date not enough has been done by the MDDSZ to solve the discussed issue on the system level despite the fact that providers in the field of training institutions have been warning about this for a long time. Thus, it has been recommended that the Ministry of Labour, Family, Social Affairs and Equal Opportunities start systematically resolving the issue of unbearable working conditions in centres for education, work, and care that do not ensure their employees the right to safe and dignified work as soon as possible.

The issue of precarisation of work

For a long time, the Ombudsman has been warning about the problem of precarisation which forces workers into uncertain and unpredictable working conditions with the lack of social security. Once again, it was recommended that the Ministry of Labour, Family, Social Affairs and Equal Opportunities legally define precarity and its most common forms, and prohibit precarious relationships, while simultaneously stipulating sanctions for the violation of this prohibition. This recommendation of the Ombudsman from 2019 remains unrealised.

2.3.2 Unemployed persons

In 2020, the number of initiatives received in the field of unemployment decreased by 50%. In 2020, we dealt with 12 matters, in 2019 22. The degree of merit increased. In 2020, it amounted to 10%, while in 2019 it was 6.4%. The uncertainty in the economic sphere brought about by the COVID-19 epidemic was also reflected in the increased number of unemployed persons in 2020 (according to the data of the Employment Service of Slovenia, in 2020 the unemployment rate increased on average by 14.6% in comparison to 2019). The most vulnerable are without question the elderly and persons with disabilities.

In this subdivision, the Ombudsman recommended that the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service of Slovenia examine the content of seminars and workshops in the framework of active employment policy measures available to unemployed persons, carry out assessment and analysis and determine whether participation increased the employability of the training participant; and also that the Ministry analyse the efficiency of the Employment Service of Slovenia services and adopt organisational measures accordingly.

2.4 WOMEN

In 2020, the Ombudsman dealt with several matters pertaining to the position of women in society. **The Ombudsman devoted special attention to the issue of human trafficking, the position of women in prison, violence against women, and domestic violence, as well as other topics that especially affect the position of women in society. Special attention was also devoted in this year to questions of violence against women and girls, and domestic violence. It was emphasised that only an informed society can decrease violence against women.** Due to increased domestic violence, the state should have appropriate support services for victims of violence provided as a priority, including accessibility of safe houses and crisis centres. To contain violence against women, a lasting process of empowering women and girls is essential, as well as educating men and boys about the inadmissibility of such actions. One of the key factors in preventing and addressing violence is also the support for victims in procedures, constant training of employees in competent bodies who encounter violence, care for the sexual and reproductive health of female victims, and a clear message to all that violence is unacceptable. **The Ombudsman also brought attention to the need for redefinition of the criminal offence of rape, which has to be founded on the absence of consent and clearly communicate that sexual acts are not allowed if they are not consented to by everybody involved.**¹



The Ombudsman finds the non-conformity of the existing definition of the criminal offence of rape and sexual violence with the Istanbul Convention, and also the practice of the ECtHR, as the criminal offences of rape and sexual violence according to Articles 170 and 171 of the KZ-1 are currently based on the so-called model of coercion, which requires the use of force or threat as a necessary condition. According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention), the “consent must be given voluntarily as an expression of the free will of a person assessed in the circumstances”. Similarly, in recent years, the Committee of the UN overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) called on a series of European states to harmonise their legislations with international standards, including the Istanbul Convention, and define rape based on the absence of consent.

Based on the analysis conducted by the Ombudsman’s Centre for Human Rights, the Ombudsman appealed to the Ministry of Justice (MP) to examine, from the perspective of the requirements of the Istanbul Convention, the appropriateness of the fourth paragraphs of Articles 170 and 171 of the KZ-1, which stipulate that if **rape or sexual violence was committed against a person**

¹ See <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-samo-ozavescena-druzba-lahko-zmanjsa-nasilje-nad-zenskami/>.

with whom the perpetrator lives in a marital or extramarital community or a registered same-sex community, the prosecution begins on a motion. That is because the Istanbul Convention stipulates that countries have to ensure that the prosecution of such criminal offences is not completely dependent on the will of the victim and that the procedure can continue even if the victim withdraws their statement. The current legislative regulation of prosecution of rape or sexual violence in an intimate partnership, differently than in cases of rape and sexual violence outside intimate partnerships, does not allow prosecution without a motion.

The inappropriate regulation is also noticed by the Ombudsman in connection with the provision of the Crime Victim Compensation Act (ZOZKD), which determines the right to a special state compensation for victims of acts of violence and their relatives for acts committed on the territory of the Republic of Slovenia. In Article 5, this act determines as a formal condition for the awarding of the compensation that the victim has to be a citizen of the Republic of Slovenia or any other member state of the European Union. Therefore, victims who are citizens of other countries do not have the right to this state compensation. However, the interpretation of the **Explanatory Report to the Istanbul Convention** in Article 30 stipulates the right to state compensation for both nationals and non-nationals, since numerous victims of violence are not citizens of the country on the territory of which a criminal offence was committed.² This deficiency was also warned against by the Group of Experts on Action against Trafficking in Human Beings with the Council of Europe (GRETA) and appealed to the Slovenian bodies to include all victims of human trafficking in the ZOZKD, regardless of their citizenship.³

In the field of healthcare, we received an initiative connected to artificial termination of pregnancy. The Ombudsman called upon the MZ to act appropriately and advise the members of Commissions UPN I and II on the correct conduct of procedure and decision-making which will be possible to test with the purpose that a case, as was experienced by the initiator, would never be repeated.

In September 2020, the Ombudsman and two representatives of the Centre met also with two representatives of the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), who visited Slovenia** to acquire information about the implementation of the Istanbul

2 Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, paragraph 172, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a>.

3 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, Second evaluation round, GRETA (2017)38, paragraph 138, <https://rm.coe.int/greta-2017-38-fgr-svn-en/168078919e>.

Convention. For GREVIO, the Centre also prepared a **written document for the discussion of the initial report of Slovenia (alternative report)**⁴. Within the Centre for Human Rights, several studies were made regarding violence against women and domestic violence, the purpose of which was, among others, the preparation of reports for various international institutions.

4 Published in English at <https://www.varuh-rs.si/sporocila-za-javnost/novica/center-za-clovekove-pravice-s-predstavniki-grevio-o-istanbulski-konvenciji/>

2.5 CHILDREN

2.5.1 Child's best interests

When referencing or interpreting a child's best interests we have to be careful not to patronisingly try in any way to limit the realisation of the rights ensured to children by Slovenian and international documents. **The Ombudsman emphasises that in all decisions and measures concerning children a child's best interests have to be our guideline. This means that children should always have priority in decisions in matters in which they participate, or in procedures that influence their position.**

The Ombudsman welcomes the introduction of the use of the Family Code and the implementation of the Non-Contentious Civil Procedure Act; however, we find that their implementation has only increased the need for experts in clinical psychology for children, psychiatry, and paedopsychiatry, which is unfortunately reflected in backlogs in judicial proceedings. **In the care for children, various authorities and institutions have to collaborate and connect. We find that the responsibility for full protection of children's rights is being shifted from one to another, when institutions only bureaucratically write to each other and do not advocate the destiny of each and every child in need. We strive for more interdepartmental cooperation.**



The Ombudsman advocates that children and adolescents be included in the decision-making processes about matters pertaining to them. The Annual Report published the findings from the 29th **National Children's Parliament**, where they discussed the topic of schooling and the school system.

As Slovenia was warned by the United Nations Committee on the Rights of the Child upon their last inspection of Convention implementation, the state should consider complaints of children in a manner sensitive to children and fast. Thus, **the Ombudsman plans to raise awareness among children about their right to directly lodge complaints with the Ombudsman and ensure accessible, simple, and child-friendly procedures.**

We wish our families to be spaces of love, acceptance, and hope. Every one of us should feel safe and respected within a family, yet sadly, in this time of isolation due to the coronavirus epidemic, the occurrence of violence in the family has increased. Therefore, we called upon the competent authorities to immediately react and protect the most vulnerable members of society in families where violence is detected. Our goal should be a society in which all families feel equal and accepted.

Upon the International Day of the Family, the Ombudsman stressed that all families should feel equal and accepted in society. The Ombudsman adds that the family is the basic cell of society and for the majority of citizens it is by far the most important value in their lives. Even though the family has constantly been changing in recent decades, adapting to time and space, its sig-

nificance and influence remain the same. In the time of the coronavirus, the institution of the Ombudsman has recorded an increased number of problems with contacts between parents and children, despite the fact that such contacts are essential, especially for the protection of a child's best interest. Numerous families are also facing poverty. Due to the epidemic, many families have found themselves in a difficult financial situation, because an immense number of people found themselves out of work overnight. Many families who had been on the verge of survival before were even more affected by this crisis. Even prior to the outbreak of the coronavirus, several thousands of children in Slovenia lived below the poverty threshold, and now there are even more of them, which is very alarming. The state allocates a lot of money for social transfers, yet unfortunately this money does not always reach families who need it urgently. Parents who have jobs have to be paid decently for their work which has to suffice for a quality life of a family, the Ombudsman stresses, adding that families with children or adults with different special needs also encounter various difficulties. Two years ago, the National Assembly adopted the Resolution of Family Policy 2018–2028 entitled *A society friendly to all families*. It presents specific goals, measures, and indicators. The Ombudsman calls on the authorities to make sure that the family policy envisaged in the resolution, which inevitably requires interdepartmental collaboration, does not remain a dead letter on paper.

The Ombudsman emphasises that due to inappropriate social and economic circumstances, many children do not live in families that could protect their rights and do not have the opportunity to develop their full potential. The Ombudsman warns that in Slovenia we have indeed developed relatively good systems of social, health, and institutional care, education, foster care, adoption, counselling, legal and judicial protection, and other help for children and parents, yet in practice, in some areas, not everything has been done yet to fully protect children's rights, and the principles and provisions of the Convention. The Ombudsman frequently encounters distress caused by poverty, and problems in the fields of social exclusion, peer and online bullying, long-term foster care, and numerous problems caused by divorce are alarming. The Ombudsman also warns about the lack of paedopsychiatrists, clinical psychologists, and other experts, as well as about the fact that care for children with special needs and impairments has still not been arranged systematically but depends on the awareness of individuals and their individual efforts. The Ombudsman also encounters violations of the rights of Roma children and child refugees, and with the unequal treatment of children in caring for their health.

The Ombudsman also warns about the great differences shown in the field of children's schooling. The Ombudsman has stressed that at a time of remote schooling the weakest also need to be taken care of. We cannot, for example, forget about those Roma children who live in homes without electricity, computers, and the internet. Many among their parents cannot read, and do not understand the language. It is therefore imperative that authority representatives and teachers pay attention to the different circumstances in which pupils live and make sure that they are not more deprived due to the current measures, the Ombudsman clearly states.

Upon World Autism Awareness Day, the Human Rights Ombudsman brought attention to the lack of system solutions. The General Assembly of the United Nations Organization proclaimed 2 April World Autism Awareness Day, with the purpose of promoting a better understanding of this condition. The Ombudsman also warns about the fact that their voice is not heard enough since they lack power in society. The Ombudsman is working towards the full implementation in Slovenia of the Declaration of the Rights of Persons with Autism, adopted by the European Parliament in 1996. Following the efforts of various associations and non-governmental organisations, autism was classified as a disability category, which enables more appropriate treatment of people with autism spectrum disorders. Nevertheless, in practice this treatment is hindered since the field faces a drastic lack of appropriate staff: paedopsychiatrists, psychologists, and occupational therapists. The Ombudsman has been warning about this for years. Another major problem we detect is that primary level medical staff as well as social workers frequently lack appropriate knowledge regarding these disorders. Knowledge of the field is just as weak among the law enforcement authorities. Many solutions have already been found in the field of working with people with autism spectrum disorders and they work; it is, however, essential to make them more widely accessible and systematic.

While **the state (too) slowly searches for system solutions, numerous children with various disorders of the autistic spectrum are growing up. However, missed opportunities to improve the quality of their lives and inclusion in the society cannot be made up for.** The Ombudsman finds that they need adapted help and support in everyday life, since they are more or less left to their own devices. It is not uncommon for these persons to more or less successfully finish their schooling and then wait for several years for an employment opportunity which, due to their special needs, most frequently do not get. Due to everything just stated, the Ombudsman believes that early detection is of key importance so that people with autistic spectrum disorders, who are frequently harder to employ, are directed into appropriate programmes that can help them enter the labour market and other aspects of life on time.

2.5.2 The significance of civil society for the realisation of children's rights

The Ombudsman believes that by working with civil society progress can be made in realising children's rights. Through meetings with non-governmental organisations working in the field of children's rights protection, collaboration with civil society is actually deepening. Thus, **awareness strengthens the significance of orientation of democratic culture with regard to the protection of children's rights.**

The Ombudsman stresses the synergy between the Ombudsman and civil society and points out the significance of equal treatment of children as well as bringing attention to the dispersion of legislation that paralyses the



realisation of children's rights and prevents the appropriate interpretation of the child's best interests in various fields. In Slovenia, many laws deal with the area of children's rights. **As a serious problem we draw attention to the long-running preparation of a unified document based on which an action plan could be adopted and would commit decision-makers to take action.**

Frequent changes in the leadership at various ministries, even before any project is finished, and horizontal inconsistency present a high obstacle for any advancement in the area of exercising children's rights. The third major problem many non-governmental organisations face is in the lack of appropriate experts, while we consider alarming the ignorance of many who come into contact with children in their work, since they use inappropriate communicational approaches, including stereotypes and prejudice. Another worrying issue is the fact that people with different special needs and impairments are treated primarily as a health problem, neglecting the search for solutions to how to find them appropriate social care and inclusion. Representatives of NGOs warn that poverty among children is very present, since no less than 40,000 of them live below the poverty threshold, and that the pandemic exposed all the weaknesses in the system regulating the realisation of children's rights. Those working in the field agreed that the inequality in access to education, access to various forms of expert help, healthcare, and many other segments of care for children has been revealed in all its clarity and needs to be addressed appropriately, and have called upon decision-makers to act. Official statistics often hide those children who are particularly endangered and who are frequently only reached by civil society. Furthermore, during the epidemic, unaccompanied children or those caught in families that do not present a safe environment for them received help only from civil society organisations. The social quarantine left its mark on children's mental health. Children's and adolescent's telephone helplines or lines for victims of violence recorded an alarming increase in calls, which testifies to children's distress. Hence, programmes that enable the alleviation of this distress are imperative. Another current issue is cyberbullying, and no progress has been recorded in the field of forced marriages or prostitution of minors, they warned. Care for unaccompanied children has been an ongoing project since 2017. The Ombudsman warns about the unacceptable practice of accommodating these children in the Centre for Foreigners or the Asylum Centre. During the lockdown, they were left to the help of NGOs, and the foster system is also not prepared for them. It is also taking too long for the arrangement of the institute of a permanent assistant, who would enable children with special needs to be successfully included in the education system and to show their potential. Representatives of non-governmental organisations agree on the urgent need to improve the position of children in judicial proceedings and to open a Children's House (Barnahus) and use all the modern technologies which can facilitate children-friendly procedures.



The Ombudsman especially warns about the fact that due to the enforcement of the Family Code and the Non-Contentious Civil Procedure Act, there is a greater need for experts in clinical psychology for children and adolescents. Namely, the waiting period for an appointment with such an expert is, in his words, from six months to one year.

2.5.3 The Ombudsman's project "Če vidiš krivice, uporabi pravice!" (If you see injustice, use justice!)

The Ombudsman's brand-new project "If you see injustice, use justice!" brings a fresh approach into the social space and invites children to actively realise their rights. Upon the occasion of World Children's Day, celebrated on November 20 when the Declaration and Convention on the Rights of a Child were adopted, the Ombudsman prepared a project entitled "If you see injustice, use justice!". The pandemic presents a special opportunity to put children's rights first. According to UNICEF, it has caused an 'educational crisis', and children are one of the most vulnerable groups due to the measures taken to curb and eliminate the epidemic. UNICEF also notes that the current aggravated health conditions and the consequent shutdown of public life in many countries around the world have exacerbated the existing violations of children's rights. Children's rights and fundamental freedoms are limited by efforts to curb the coronavirus disease. The rights to gather, to associate, to education, to contact with peers, to quality leisure time, to creativity, to play sports, and to participate in the community have all been limited. Therefore, the specific purpose of the project is to offer children the opportunity to reflect upon their meaning and the value that rights have for their lives. It is also important to raise awareness of the procedures available to children if they feel that their rights have been violated.

With this project, we would like to raise awareness among children and young people, so they understand that they are not only beneficiaries of rights, but can also actively contribute to the realisation of both their own rights and the human rights of others, the Ombudsman said at the launch of the project.

The Ombudsman believes that the unusual times we have all found ourselves in are not easy for anyone. However, this period enables us to **learn to be more attentive to the rights of others**; we could help an elderly neighbour or a schoolmate who does not have the same opportunities as we do; the Ombudsman calls on young people to write or call the free telephone number intended for them if they see a violation of their own or somebody else's rights. *More on the project can be found in Chapter 1.9.1 of this report.*

2.5.4 The Ombudsman's international activities in the field of children's rights

According to the Ombudsman, difficulties and interventions into children's rights are very comparable on the European level, which he not only realises in his meetings with colleagues from other countries but also within the European Network of Ombudspersons for Children (ENOC), the South East Europe Children's Rights Ombudspersons Network (CRONSEE), and the EU

Strategy for the Adriatic and Ionian Region (EUSAIR). International collaboration enables the flow of information about examples of best and worst practices and the search for common solutions, while their meetings are important for the simple reason that we are stronger united. Occasionally, a state is more attentive to warnings from abroad – from regional or international organisations; this is where colleague ombudspersons are a great help to one another, says the Ombudsman. He believes that without international cooperation we could not solve the questions of refugees fleeing from wars, the consequences of climate change, or poverty, as well as many questions of cyber interference in the rights of individuals and other questions, in which problems do not respect state borders. The Ombudsman further stresses that this is the reason why collaboration and solidarity are of such importance in all areas.

The presence in the above-mentioned international organisations and participation at conferences has also left a mark in the international environment in the field of children's rights. Thus, Slovenia puts itself on the map of countries with high protection in the field of children's rights. Nevertheless, the Ombudsman does not rest and underlines that the constant fight to raise the level of protection of children's rights needs to continue. In this field, new challenges are also brought by information and communication technologies that have unstoppably spread into every aspect of our lives. Compared to their peers around the world, Slovenian children have a high level of internet access, which is good, but that simultaneously increases the risk of abuse. Cyber violence – verbal, sexual, and economic – can become violence in offline life. There is an increasing number of children whose parents have different nationalities or who live in different countries, where international kidnappings, problems with maintaining contact or paying child support occur, and these are further enumerated by the Ombudsman as occurring issues as he warns about the importance of awareness.

In 2019, the Ombudsman recommended that the Government should as soon as possible prepare a proposal for a law dealing with the position, management, and operation of a Children's House and defined the ways of synchronised collaboration of various offices and authorities when treating a child victim of a criminal offence. This recommendation was **partly realised in 2020, since numerous activities by the Ministry of Justice and other participants pertaining to the foundation of a Children's House (Barnahus) were carried out. We need to add that on 21 January 2021, the Government adopted the proposal of the Protection of Children in Criminal Procedure and their Comprehensive Treatment in the Children's House Act and submitted it for discussion in the National Assembly, which adopted it on 26 March 2021 with 83 votes for and none against – thus we consider the recommendation realised.** The Ombudsman especially welcomes the fact that the preparation of this act saw children participate for the first time in the procedure of creating laws pertaining to them, which is an example of best practice. The Ombudsman believes that this approach of including children in the preparation of regulations and policies pertaining to them should be followed in other cases.

2.6 PERSONS WITH DISABILITIES

In 2020, the Ombudsman emphasised several times that the institution is ready to accept the task of monitoring the implementation of the Convention on the Rights of Persons with Disabilities. This is evident from the 25th Ombudsman's Regular Annual Report 2019, in which it is pointed out that the institution strives for the Republic of Slovenia to establish an independent body to promote, safeguard, and monitor the implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the second paragraph of Article 33 of the convention. Namely, the Convention on the Rights of Persons with Disabilities requires the establishment of an independent national mechanism which respects the Paris Principles on the Status of National Human Rights Institutions (1993). The institution of the Ombudsman is willing to assume this responsibility and mission. It is also the only organisation in Slovenia with the internationally recognised status of a national institution for human rights, i.e. from January 2021 with status A, meaning that it meets all the international standards. Hence, it is all the more logical for the Ombudsman to assume the duties from the second paragraph of Article 33 of the convention in Slovenia.

We also brought attention to the fact that, for the execution of these new tasks, certain additional means would have to be provided for the establishment and operation of this national mechanism, including for the necessary new jobs and provision of additional premises. Last but not least, we also informed the MDDSZ that the Ombudsman is ready to actively participate in the establishment of appropriate legal bases connected to the mentioned additional mandate of our institution. We have written to the MDDSZ twice more, yet no progress has yet been made here. In the Annual Report, the Ombudsman thus recommended to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Government of the Republic of Slovenia that they prepare an appropriate proposal, and to the National Assembly that it adopt appropriate legal bases which will ensure the Republic of Slovenia to establish an independent body for promoting, protecting, and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the second paragraph of Article 33 of this convention, and appoint for this task the Human Rights Ombudsman of the Republic of Slovenia, which is internationally accredited as the national institution for human rights with status A according to the Paris Principles (1993).

In 2020, we continued monitoring the realisation of the rights of persons with disabilities both in connection to COVID-19 (discussed in detail in Chapter 3 of this report) and in general. The Ombudsman studied various initiatives concerning the guarantee of human rights to persons with disabilities and sent several recommendations to the Government, ministries, and other competent bodies. The Ombudsman also met with representatives of different dis-

ability organisations, e.g. representatives from the Association of Societies of Deaf and Hard of Hearing of Slovenia, the Slovenian Paraplegic Association, and the Sonček – Cerebral Palsy Association of Slovenia. The Ombudsman also met with the managers of Radiotelevizija Slovenija (RTV), the Slovenian Press Agency (STA), and the Government Communication Office (UKOM), with whom he spoke about the accessibility of information for vulnerable groups. The Ombudsman continued to stress the need for deinstitutionalisation, called for the establishment of an independent body for efficient promoting, protection, and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities, and supported the initiative for the adoption of Slovenian sign language into the Constitution of the Republic of Slovenia.

The implementation of the Ombudsman's past recommendations, new recommendations, and detailed activities concerning people with disabilities are discussed in individual chapters of the Annual Report. Hereon, only a few activities, findings, and warnings are presented.

In general, the Ombudsman finds that persons with disabilities in Slovenia are discriminated against in numerous fields. We frequently bring attention to that and encourage various state institutions to enable all persons with disabilities to be seen, heard, and understood regardless of their impairment.

For example, the Ombudsman warns against the deficiencies in the educational system for users of sign language. We believe that the deaf should be enabled learning in sign language, which is their natural language. We should be aware that in the past sign language was not recognised in Slovenia, which was an example of obvious discrimination. Many deaf and hard of hearing people are poorly educated because schools do not provide the full-time presence of an interpreter. **Thus, the Ombudsman signed an initiative to enter Slovenian sign language into the Constitution of the Republic of Slovenia. The Ombudsman welcomes the fact that on 27 May 2021, the National Assembly adopted a constitutional law with 78 votes for and none against, according to which the Constitution will be supplemented with the right to use and develop Slovenian sign language. This law also stipulates that the free use and development of the language for deafblind persons is arranged by law. We expect the competent bodies to approach the preparation of this law at the earliest possible time with the purpose of adopting it in a reasonable timeframe.** We should be aware that for the guarantee of appropriate inclusion of deaf and hard of hearing persons into society, much has to still be done. Various measures that will ease the lives of approximately 1500 deaf and approximately 75,000 users of hearing aids in Slovenia have to be taken.

Based on an initiative, the Ombudsman dealt with several questions regarding the rights of children with special needs and their families. A violation of Article 23 of the Convention on the Rights of Persons with Disabilities was determined in the part referring to the state's obligation to gather appropriate segmented data and establish control mechanisms for efficient control over the redistribution of sources. The Ombudsman called upon the Ministry to car-

ry out the appropriate analysis as soon as possible. The Ombudsman also found a violation of Article 52 of the Constitution of the Republic of Slovenia, since for children with special needs who are not blind yet need the help of a third person for their basic or supporting daily tasks, the right comparable to that for blind children or persons from the fifth paragraph of Article 100 of the Pension and Disability Insurance Act (ZPIZ-2) is not provided.

On 23 September 2020, the **Accessibility of Websites and Mobile Applications Act** (Uradni list RS, no. 30/18) started also to be used for websites published prior to 23 September 2018. Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of websites and mobile applications of public sector bodies was thus completely transferred to the Slovenian legal order. Namely, with this the deadline for the adjustment of websites of state authorities, bodies of self-governing local communities, and public law entities expired, meaning that they are also accessible to users with different forms of disabilities. The Ombudsman addressed an inquiry to the Ministry of Public Administration **regarding how many and which persons liable fulfil the legal demands regarding the accessibility of their websites. The Ombudsman adapted its own website accordingly.**

For the **European Committee of Social Rights**, the Ombudsman prepared the so-called alternative report concerning the consideration of the 19th National Report on the Implementation of the European Social Charter. In it, the Ombudsman brought attention to great delays in the implementation of legal demands regarding the accessibility of physical environment, transport, information, and communication for persons with disabilities and the shortcomings in ensuring appropriate, accessible, and acceptable services for persons with disabilities who need assistance (including the lack of policies for deinstitutionalisation).

Within its Child Advocacy programme, the Ombudsman prepared a **two-day consultation on the topic of how to be an advocate to a special needs child.**

The Ombudsman achieved that contracts with personal assistant providers were signed. After the Ombudsman received an initiative with a reproach that the MDDSZ does not conclude contracts on the execution of personal assistance from Article 13 of the Personal Assistance Act and after the explanation from the MDDSZ that the contracts cannot be concluded due to the measure of the Government to suspend the implementation of the budget of the Republic of Slovenia (adopted at the Government session on 11.4.2020), which restricts the conclusion of new contracts that would present new financial duties for the state budget, the Ombudsman acquainted the MDDSZ with the position that during the execution of personal assistance, additional costs for the system appear only if a new user appears who is enabled the help of a new personal assistant. Thus, after the Ombudsman's intervention, the MDDSZ signed all the contracts.

The Ombudsman also called for expedited decision-making about appeals concerning the granting of personal assistance. Based on the initiative, the Ombudsman made an inquiry at the MDDSZ about the reasons for the delay in the issuing of a decision and called upon it to decide on it.

The Ombudsman also warned about the fact that the third paragraph of Article 9 of the Personal Assistance Act (ZOA) cannot present the legal basis for the reduction of the approved hours of personal assistance in the amount of the number of hours a person is included in a special programme of education, about which the MDDSZ was also informed.

The Ombudsman called for special attention to the implementation of legal proceedings according to the Mental Health Act (ZDZdr). The Supreme Court of the Republic of Slovenia and the Bar Association of Slovenia were warned about the special vulnerability of persons with mental health disorders and the respect for their human rights and called upon them to be especially careful that in current conditions people in procedures according to the ZDZdr understand their position and their rights. In his immediate response, the President of the Supreme Court informed the Ombudsman that he had forwarded the recommendation to lower courts and he himself simultaneously recommended that special attention be placed on the respect of dignity of detained persons in videoconference conducting of hearings.

Furthermore, the Ombudsman called for redressing of injustices and filling the legal gap regarding the recognition of the status of a person with disabilities.

For an extensive period, the Ombudsman has been dealing with the issue of adjusting the study process to the needs of students with disabilities. On the system level, the Ombudsman warned about the resolving of the issue of students with disabilities in 2010, and then repeated the recommendations. In 2020, too, subordinate acts for the arrangement of the rights of students with special needs have still not been adopted. The deadline for the appropriate adjustment of the school or study process from Article 11 of the Equalisation of Opportunities for Persons with Disabilities Act (ZIMI) expired on 11 December 2015 – considering this act, this is a five-year delay.

On 11 December 2020, **the deadline expired for the appropriate adjustment of passenger buses in road traffic in a manner to ensure persons with disabilities the accessibility demanded by Article 16 of the ZIMI.** Therefore, the Ombudsman addressed an inquiry to the Ministry of Infrastructure as to which actual measures were adopted in the 10-year transitional period for the purpose of ensuring (movement and sensory) accessibility of public bus transport for persons with disabilities and in what way and with which measures the Ministry guarantees that the bus transport providers within public services provide accessibility of public transport to persons with disabilities.

The Ombudsman warned the Ministry of Infrastructure and the MDDSZ **that the Convention on the Rights of Persons with Disabilities stipulates in Arti-**

Article 20 that states **must adopt efficient measures which guarantee persons with disabilities the greatest possible independent personal mobility.** The Convention does not define a precise intensity/level of disability(ies) of an individual by which this person can still be counted as a person with disabilities. It suffices that a person has limitations to full and efficient participation in society, which can be limited to only one or several fields of social life, due to the longevity of an impairment. Therefore, **the Ombudsman suggested that the two ministries study whether the arrangement, which guarantees the right to free transport only to holders of the disability benefit card, as stipulated by Article 114b of the Road Transport Act (ZPCP), is in accordance with Article 52 of the Constitution of the RS in connection to Article 14 of the Constitution of the RS.**

Furthermore, the Ombudsman provided comments on the proposal of the act on long-term care and compulsory insurance for long-term care. The Ombudsman believes that the question of long-term care encompasses both the fields of health and health care as well as the field of social matters, which is insufficiently recognised in the act proposal. The proposal also does not make clear the claimed direction towards the deinstitutionalisation.

Since July, the Centre for Human Rights has been preparing **regular three-monthly information** for the public about the activities of the Ombudsman in the field of human rights for persons with disabilities – information about the overview of activities was published both on the Ombudsman's webpage and forwarded to disabled people's organizations.

2.7 THE ELDERLY

In 2020, through its activities in connection with the position of the elderly in society and their rights, the Ombudsman warned that “the elderly need measures for decent life now”. Namely, the new reality of living with the coronavirus uncompromisingly poses demands for us to fill in the gaps in systems that have been neglected for many years. Regarding care for the elderly, long-term care has to be regulated and ensured so that the number of those who live in poverty, despite the fact that they gave society a significant part of their youthful endeavours, decreases. It is essential to invest in the public healthcare system, since this is the only way everybody can have access to healthcare services, regardless of their income. This was brought to attention to by the Ombudsman with a special press release on the International Day of Older Persons, on 1 October.

The lack of the act on long-term care, for which we have been waiting almost 20 years and on which many hopes rely, cannot be an excuse for issues not being resolved now. The social legislation needs to be amended instead of simply waiting for the act on long-term care to solve all the problems. We believe that the answer to the longevity of society is not to increase institutional capacities but rather make a step in the direction of deinstitutionalisation. It is for this reason also unacceptable that many find themselves in various institutions, even though they could live a dignified life in their home environment.

In February, the Ombudsman met with the leadership of the Slovenian Federation of Pensioners' Organisations (ZDUS).

The Ombudsman emphasises that **the elderly need to be included in the decision-making about their rights and way of life and not patronisingly be shoved to the side under the front of diminished psychophysical abilities and other impairments.** They should be enabled to decide for themselves the extent to which they need protection and care so that it still provides them with a good quality of life.

A positive attitude towards ageing needs to be encouraged and be attentive to all unwanted forms of discrimination, such as violence against the elderly or ageism, which is present in society yet not perceived to a sufficient extent, and take action even before these unwanted forms become a ‘normal’ part of everyday life. It also needs to be ensured that older people in the labour market are not perceived as a burden and that they do not encounter stigmatisation due to their age.

The Ombudsman believes that decision makers need to direct special attention towards the system regulation of social inclusion of the elderly, which can also be realised with the pursuit of guidelines for deinstitutionalisation. This is also emphasised by the European Union's cohesion policy and the social investment package. “The elderly need to be enabled the choice of wheth-

er they want to live in the home environment or in an appropriate institution. Then it needs to be ensured that wherever they are, they are taken care of by professionally trained, numerous enough staff adequately paid for their work, since this contributes to the quality of relationships and increases the level of the quality of life. Not only the staff in retirement homes, there is also a lack of appropriate workers offering support to people who want to live at home but cannot live on their own anymore without the appropriate help," the Ombudsman Peter Svetina enumerates the challenges for social policymakers.

Due to the lack of space in nursing homes, costly services, and consequently their unequal accessibility to all who need them, the institution of the Ombudsman frequently determines the violation of the principle of the welfare state. We emphasise that this is among the five most frequent violations we discover. Too often a person's dignity is hurt when an individual or his or her family do not have the basic conditions to meet basic needs or suffer from poverty. The elderly are among the most endangered, while violations are all the more frequent behind closed doors.

In 2020, the Ombudsman also raised awareness about the fact that we have forms of elderly care which are not often used. Such a form is accommodation with another family according to the Social Assistance Act. People should be familiarised with different types of care and given the choice.

We would like to especially emphasise that since society is ageing on a global scale, it is particularly worrying that there exists no international legal document which would comprehensively regulate the rights of the elderly. **The Ombudsman supports the adoption of a special convention on the rights of the elderly within the Organization of the United Nations, much like conventions on the rights of children, women, and disabled persons were adopted in the past.** We welcome the commitment of Slovenian foreign policy regarding the rights of the elderly in the Organization of the United Nations; nevertheless, we would want this commitment to be reflected better within the Republic of Slovenia with the adoption of the appropriate legislation and measures and in general with the attitude of the state towards elderly people.

The position of the elderly is particularly discussed in Chapter 3 of this Annual Report pertaining to the activities of the Ombudsman during the COVID-19 epidemic.

2.8 LGBTI+



In 2020, the Ombudsman considered few complaints related to the rights of lesbian, gay, bisexual, transgender, intersex persons, and persons with other gender identities (LGBTI +). We would like to welcome the European Commission's **adoption of the first EU Strategy for lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality for 2020-2025** on 12 November 2020. This is an important step towards promoting diversity in the EU. We emphasize in particular that the strategy aims to highlight the voice of LGBTIQ persons and encourage all EU Member States at all levels to work together to address LGBTIQ inequality effectively. The strategy emphasizes in particular that the EU has very high standards of fundamental rights, but these are not equally established in all Member States. The Ombudsman believes that the competent authorities will follow the adopted strategy in their work and decisions.

The fact is that within the European Union, the arrangements for (joint) adoptions in same-sex relationships differ. According to the European Parliament's Report on the Rights of the LGBTI Community in the European Union, joint adoption for same-sex partners has been possible in 14 Member States, namely in the Netherlands (since 2001), Sweden (since 2003) and Spain (since 2005), in the United Kingdom (since 2005), Belgium (since 2006), Denmark (since 2010), France (since 2013), Malta (since 2014), Luxembourg (since 2015), Austria (2016), Ireland (2016), Portugal (2016) and, since 2017, also in Finland and Germany. Almost all countries of the so-called Western Europe therefore have a legal possibility of joint adoption regardless of sexual orientation, including those that are usually classified as more traditional (e.g., Ireland, Portugal, Spain). On the other hand, in some Member States such arrangements also show the opposite tendency – for example in Hungary, in November 2020, the government proposed an amendment to the constitution that would result in a ban on adoption by same-sex partners. Opinion polls also show a great deal of European diversity in public attitudes towards this issue.

It is known that in the Republic of Slovenia, according to the explicit provision of the third paragraph of Article 2 of the ZPZ and the fourth paragraph of Article 3 of the same Act, partners in a partnership and partners in a non-contracted partnership cannot adopt a child together. The Ombudsman has already presented the selected constitutional and convention aspects in relation to such legislation in more detail – taking into account the fact that even within the European Union (let alone the Council of Europe) there is no approximate consensus on this issue (and consequently, Slovenia would be a kind of solitary eccentric exception) as well as the fact that this is an area where states are granted a wide margin of discretion regarding its regulation; the Ombudsman specifically recommended to each of

1 European Parliament (May 2019): The rights of LGBTI people in the European Union (Briefing). Available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637950/EPRS_BRI\(2019\)637950_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637950/EPRS_BRI(2019)637950_EN.pdf).

the 90 members of the National Assembly to decide whether to submit a proposal to amend the above-mentioned provisions of the ZPZ, which would allow joint adoption of children by same-sex partners in contracted or non-contracted partnerships. However, no such amendment to the ZPZ has been submitted so far, which testifies to the insufficient political will for such a feat. The defender of the principle of equality finally decided to file a request for an assessment of the constitutionality of the current regulation. Will adopting children by same-sex partners have to be achieved the hard way?

In the field of equal opportunities, in terms of gender identity or orientation, it is still the case that we rarely receive the initiative of a specific individual who would specifically demonstrate that there was direct authority interference with their right to equality before the law or the right to non-discriminatory treatment and the circumstances for the Ombudsman's intervention are given – however, even if it did not happen in 2020, it does still happen and in such cases, the Ombudsman can also try to help in a more concrete manner.

In any case, with regard to the rights of lesbians, gays, bisexuals, transgender and intersex persons, and persons with other gender identities (LGBTI+), we can also commend the fact that the relevant non-governmental organization seems to have been involved in the preparation of amendments to the law that is supposed to regulate legal recognition of gender – Following the adoption of the relevant decision at its session on 24 June 2020, the interdepartmental working group for the study of the legal regulation of gender reassignment or legal recognition of gender in the Republic of Slovenia submitted the prepared document titled Enforcing legal recognition of gender (comparative legal analysis and analysis of regulation in Slovenia) to the TransAkcija Initiative. The mentioned document is supposed to be the basis for further reflections on the change of legal regulation in this field, and its possible amendments by the stakeholders are to be discussed by the mentioned interdepartmental working group at the beginning of 2021. On the other hand, it should be noted that the drafting of a law regulating the legal recognition of gender is (too) slow. The Ombudsman has already reported in detail on the issue of legal recognition of gender and finally recommended that a bill should be prepared in that same year, which was to regulate legal gender recognition, but that was not realized then – but at the same time, since 2018, the Ombudsman has not been approached by any individual who would point out any new or additional, concrete issue in this (for now) unresolved legal field. On 21 May 2020, the Medical Ethics Commission also issued its opinion on the proposed amendment to the Rules on the implementation of the Civil Register Act, and the Ombudsman also joined its call for a comprehensive reform of legislation in this field. On this occasion, the Ombudsman once again addresses a recommendation to the Ministry of Labour, Family, Social Affairs and Equal Opportunities for the preparation of a bill, as soon as possible, which will comprehensively regulate the legal recognition of gender.

1 See pg. 80–87 of the Ombudsman's Annual Report for 2018.

2 Recommendation no. 10 (2018).

2.9 FOREIGNERS

It is still one of the areas with a large number of petitions (for comparison, in the same year, for example, only 37 petitions for criminal proceedings were considered in the field of justice, and only 17 petitions of detainees in the field of restrictions on personal liberty, etc.). The largest number of initiatives in the field of foreigner affairs again related to the issues of entry and residence of foreigners in the country, and for about a third of the initiatives were related to international protection or the principle of non-refoulement. Acquisition of citizenship has been the subject of only a small number of initiatives.

With regard to the field of foreigners, the Ombudsman remains the target of criticism from all sides – both by those who criticize the Ombudsman's excessive advocacy for foreigners and by those who believe that the Ombudsman's concrete engagement is not sufficient. In 2020, for example, there were allegations in some media about *ombudsmen who care more about migrants than locals, and we also received e-mails with allegations that »the Ombudsman does not do anything useful for the Slovene nation, he only gives concessions to immigrants from Albania, Bosnia“*; and with questions about *whose rights are we protecting*; and then further accusations that *we interpret laws in accordance with whispers of criminals who smuggle migrants from Bosnia to Slovenia and make fabulous earnings, and that we support such crime with allegations of human rights violations, etc.* **It is still one of the most controversial areas, where reasonable and fact-based arguments usually have no effect.** We have also repeatedly, in our annual reports, recalled that in its quarter-century history, the Ombudsman had filed only two requests among dozens for the assessment of the constitutionality of regulations with the Constitutional Court of the Republic of Slovenia, which related to foreigners. Last year we additionally pointed out how at our press conference, none of the many people present asked a single question regarding the request presented there for the assessment of the constitutionality of the so-called Noise Decree, while many questions were raised in connection with the then presented findings of the treatment of foreigners at the southern border by the police. However, without any serious expectations that we will actually change any of the apparently prevailing fixed ideas, or that in this way we could succeed in deterring anyone from deliberately manipulating anti-foreigner rhetoric, this year we are additionally adding another important piece of information: second paragraph of Article 9 of the Human Rights Ombudsman Act (ZVarCP) gives the Ombudsman the opportunity to *»also deal with broader issues that are important for the protection of human rights and fundamental freedoms and for legal certainty«* – and on this legal basis, the Ombudsman in the last three years (2018, 2019 and 2020) at his own initiative regarding foreigners considered a total of 9 cases, and in the field of social security (poverty, social benefits, social services,... for citizens) he has considered a total of 62! In other words, the Ombudsman, at his own initiative, paid attention to almost

seven times more issues with a wider, socially relevant issue for citizens than to issues with all the issues of foreigners combined! A special aspect of the narrative facts, which put the allegations regarding the Ombudsman's alleged favouritism of foreign interests at the expense of Slovenians, is also the following: not only did the Ombudsman establish a special new sub-field of work on Slovenians abroad at his own initiative in 2018, since then he has dealt with as many as three quarters (75%) of all cases there at his own initiative. In the meantime, during the same three-year period, at his own initiative, the Ombudsman considered slightly more than 4% of all cases in foreigner-related cases. And we could go on and on, but – we are sure that whoever wants to understand, understands already. However, it would be impossible to convince otherwise those who do not want or cannot understand.

At the same time, it should be emphasized that it would also be the wrong conclusion that the Ombudsman neglects the issue of foreigners too much. In order to honestly realize that this is not the case, a cursory glance at the present chapter should in principle suffice, and all other Ombudsman's efforts in foreign affairs can be read in other easily accessible Ombudsman's annual reports and reports on his implementation of competences

and tasks of the state preventive mechanism. All that is therefore necessary for the true perspective of the Ombudsman's real dealings with foreigners are well-documented facts from his annual practice, with due regard, of course, also to his competences and authorities. Everything else, at best, testifies to the partial interests of those who try to exert pressure with their accusations, and not to those of the Ombudsman.

It is still true, then, that the Ombudsman is not the one who focuses disproportionately mainly or even exclusively on foreigner-related issues - the discourse is directed, as set by others, at foreigner-related topics. The reason for this is, of course, is the appeal of the we-they dichotomy, which divides by default nature of things, and which at least part of politicians (scoring cheap political points with voters) and at least part of the media (for greater readership, audience, viewership) try to exploit. Such intentions of others are not reflected in the actual practice of the Ombudsman himself, who does not have (and does not want to have) a suitable opportunity to deal with the rights of only a few. In most cases considered annually by the Ombudsman, (not) being a Slovenian is not a crucial circumstance at all, but with regard to those for whom decisive consequences are attached to this status, it should be remembered that foreigners are also people, and should, therefore, be entitled to certain legal certainties, mostly similar to those enjoyed by citizens. This is necessary out of respect for human dignity, without which there can be no truly democratic society. After all, human rights and fundamental freedoms are universal even under the applicable international legal acts, which means that they are guaranteed to everyone, regardless of any personal circumstance, including nationality, race, language, and religion. Despite the pressures mentioned above, the Ombudsman will therefore continue to consider, with all due diligence, cases of foreigners or issues related to their situation.

As already mentioned, we again received diametrically opposed accusations of excessive protection of the authorities in their treatment of foreigners - this time by rejecting the initiative of a dissatisfied individual that the Ombudsman »was not neutral, shares the interests of the Ministry of the Interior and the Laško administrative unit«. Such allegations are also without actual factual support, and unlike those described above, they are most often rooted in unrealistic expectation by the affected individual in relation to their specific case to the Ombudsman in view of his legal competence or authority.

Otherwise, in terms of fields, the aspect of border events related to modern migration flows and related issues in all their complexity probably prevails as the most topical. The Ombudsman's view of the legal and factual situation is essentially as follows. In the context of the so-called *right to asylum* of the relevant legal bases, which are supposed to ensure that the necessary protection of migrant foreigners is treated individually and they are not returned without any access to such treatment, what must be first emphasized is Article 48 of the URS, which otherwise explicitly guarantees *the right of refuge* only to those foreign citizens and stateless persons persecuted for advocating for human rights and fundamental freedoms – however, a broader framework of the *right to asylum* is provided to everyone through Article 8 of the URS, according to which ratified and published international treaties are directly applicable (including for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967) and Article 18 of the URS, according to which no one shall be subjected to torture or to inhuman or degrading punishment or treatment (which, according to the established constitutional review, also includes the principle of *non-refoulement*, or the prohibition of returns). Pursuant to Article 42 of ZMZ-1, any third-country national or stateless person may express an intention to apply for international protection to any state body or body of a self-governing local community in the Republic of Slovenia (in practice such a body is usually the police) – and once done, Article 36 of ZMZ-1 explicitly prohibits the removal of such an individual from the country in accordance with the regulations governing the entry, departure and residence of foreigners unless they fail to submit an application for international protection due to unjustified reasons arising on their part, even though they were allowed to. Furthermore, the prohibition on removing a foreigner is prescribed in Article 72 of the ZTuj-2, which states that the principle of non-refoulement under this Act and in accordance with the principles of customary international law there is an obligation of the Republic of Slovenia not to remove the foreigner to a country where their life or liberty would be jeopardized by race, religion, nationality, membership of a particular social group or political opinion, or to a country where they may be subjected to torture and other cruel, inhuman or degrading punishment or treatment.

The Ombudsman's principled position is that from a legal point of view, the state's commitment to individual treatment of potential needs for the protection of migrant foreigners against possible return is appropriate - the

adequacy of the implementation of this formal commitment in practice is more questionable. This is particularly pronounced in the light of the return of migrants to Croatia on the basis of an agreement between the two countries, without conducting a procedure in which the individual would have the right to declare, and without issuing a reasoned decision on return or surrender to a neighbouring country, as well as without legal remedies against such a decision by the competent authorities. Last year, we briefly described the Ombudsman's engagement in terms of addressing his critical opinion on the *Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on extradition and takeover of persons whose entry or residence is illegal*, in two specific court proceedings. In 2020, in accordance with the ZUstS, the Ombudsman also lodged a constitutional complaint with the Constitutional Court of the Republic of Slovenia, with the consent of one of the Moroccan citizens returned to Croatia in this way. In addition to the explanation of the reasons which, in our opinion, substantiate the alleged violations of Articles 21, 22, 23, and 34 of the URS, **the Ombudsman also suggested to the address court that, on the basis of Article 267 of the Treaty on the Functioning of the European Union, submits for a preliminary ruling the question whether the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the extradition and takeover of persons whose entry or residence is unlawfully considered an agreement or arrangement within the meaning of Article 6 (3) of the Return Directive; if it is considered to be an agreement or arrangement within the meaning of Article 6 (3) of the Return Directive, whether a special decision must be issued before the surrender of the individual to another Member State and whether the affected individual has the right to make a declaration before surrender; however, if the person concerned does not have those rights and such surrenders can be carried out without formalities, the extraditing State must at least satisfy itself in advance that the return decision will be issued by the receiving State.** The Ombudsman also informed the Commissioner for Human Rights of the Council of Europe about this constitutional complaint when he learned that she had intervened before the European Court of Human Rights in a case¹ from Croatia to Bosnia and Herzegovina following a similarly (too?) fast procedure of the returned Syrians. In her letter to the court, the commissioner also expressed *concern, among other things, that even for those returned to Croatia by other EU member states, especially Slovenia, there are significant obstacles to accessing a fair and efficient asylum procedure.*

The negation of safeguards against the (return) of foreign migrants is also questionable if the amendment to ZTuj-2 is to take place, as is expected. It should be reminded that in 2017, the amendment to ZTuj-2D was adopted,

¹ S.B., A.A., and A.B. v. Croatia (complaints nos. 18810/19, 18865/19, and 23495/19). See also Commissioner publishes observations on summary returns of migrants from Croatia to Bosnia and Herzegovina at <https://www.coe.int/en/web/commissioner/-/commissioner-publishes-observations-on-summary-returns-of-migrants-from-croatia-to-bosnia-and-herzegovina>.

according to which access to the asylum procedure was restricted in case of *excessive threat to public order or internal security of the Republic of Slovenia*, and the Ombudsman then succeeded before the Constitutional Court of the Republic of Slovenia with his request to assess the constitutionality of this new regulation. The Ombudsman then made an exception in his approach to filing requests for constitutional review and challenged the law, even though he did not receive any initiative from any specific foreigner to show that his rights had in fact been inadmissibly infringed as a result of the application of the legislation in question. In the case of this law, the Ombudsman will most likely not repeat such an exception, even if in the end, the currently planned amendments to ZTuj-2 would be adopted, which otherwise provide for similarly questionable provisions as were once enacted. It should not be forgotten that the system of constitutional protection of constitutionality and human rights or fundamental freedoms, as defined by the ZUstS, shows that it usually deals with initiatives to assess the constitutionality of specific individuals who can prove that a specific regulation directly interferes with their rights, legal interests, or legal position. Thus, the Ombudsman does not and will not irresponsibly take advantage of the privileged access to this legal forum, which has been entrusted to him by the legislator with the possibility to submit requests for the assessment of constitutionality. After all, the previous paragraph regarding the filed constitutional complaint clearly shows that **in the field of protection of foreigners against unjustified return (denial) of another (different) path to the highest judicial body for the protection of constitutionality and legality and human rights and fundamental rights and freedoms, is anything but unrealistic – and that the Ombudsman does not refuse to actually use them.**

In any case, in 2020 we also dealt with some concrete cases, which seem to confirm that the Slovenian authorities do not always take into account the always expressed intentions to apply for recognition of international protection, or do not provide a real opportunity to do so. *They seem to confirm*, because this is **one of those areas where establishing the facts is extremely thankless work, especially in light of the various interests involved and consequently strongly contradictory claims of both parties, but usually also due to difficulties in maintaining contact with initiators, for whom the trace is often lost after their return to regional migrant flows.** This can be nicely illustrated by the case of the initiator, who was one of the five citizens of Morocco who had already crossed the border and entered the Republic of Slovenia, and then the Brežice police officers, despite their expressed intention to apply for international protection in this country, handed them over to the Croatian security authorities (who then continued to hand them over to the Bosnian authorities). Since the circumstances of the treatment of these people were so deficiently or inconsistently documented in the official documentation, it was not possible to reliably explain how the police officers concluded that they were merely the so-called economic migrants. Despite the unannounced visit to the police station, access to documentation and inquiries, the most we managed to gain in connection with the initiator's allegation that the police

did not comply with his intention to apply for international protection was the explanation of the relevant ministry that the existing documentation does not appear to express this intention during the proceedings at the Brežice police station, which was also denied by the police officers who were dealing with him there at the time. The Ombudsman found a clear discrepancy between the allegations of the initiator and the explanations of the Ministry, and the latter was also able to agree with us that the documentation on the treatment of the five detainees was deficient and inaccurate. However, since the present case involved a situation in which individuals were detained, i.e., they were at the power of the police (i.e., in the given situation, there was a clear disparity of power between individuals and the authority), it would not be appropriate if the burden of proof of whether he had expressed an intention to apply for international protection is imposed on the petitioner. In the present case, the documentation required by the police did not show clearly enough what had happened to the application for international protection, and the Ministry also agreed that the important circumstances were insufficiently and inaccurately recorded, so it was easier to believe that the petitioner's allegations of non-compliance with the expressed intention to apply for international protection were true. We were further strengthened by the Ministry's assurances that police officers detain persons crossing the state border illegally as a rule in accordance with the fourth indent of the first paragraph of Article 64 of the ZNPPol for the return of a person to the country of origin or the country from which they entered the territory of the Republic of Slovenia - whereby extradition to the Croatian security authorities is then carried out in accordance with the *Agreement between the Government of the Republic of Slovenia and the Republic of Croatia on extradition and takeover of persons whose entry or residence is illegal*, despite the fact that these cases involve the so-called informal return procedures, in which no return decision is issued, and detainees should be allowed to exercise all their statutory rights, including the right to international protection. Appropriately greater to these assurances must be the burden of sufficiently convincing documentation of the circumstances related to the request for international protection on the shoulders of the authorities, especially since the ministry repeatedly mentions *abuses of the institute of international protection*, etc.

Another interesting case of this kind was the surrender of a foreigner to the Slovenian authorities by the Italian police on the basis of the *Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Italy on the takeover of persons at the state border*.² The police officers explained to him orally that he would be detained for 14 days for the duration of the quarantine, after which he would be handed over to the Croatian authorities on the basis of an *Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the extradition and takeover of persons whose entry or residence is illegal*,

2 Uradni list RS, no. 35/1997.

and among other things, he also claimed that he had expressed his intention to the Slovenian authorities to apply for international protection, but that his intentions had not been taken into account (despite his explicit wish, he had also been prevented from contacting a *non-governmental organization providing legal assistance in international protection proceedings*). The initiative was also accompanied by a payment order, which showed that the foreigner had been fined for an offense under the first paragraph of Article 145 of ZTuj-2 (unauthorized entry into the Republic of Slovenia), and a decision on detention (accommodation in the Centre for Foreigners), from which it was evident that he had been handed over to the Slovenian police immediately after he had been apprehended by the Italian police in Italy after crossing the border illegally – but no return decision was attached and no documentation was recorded anywhere that such a decision had been issued at all, which is in line with the perceived practice that transfers under interstate agreements take place under an expeditious informal procedure without the issuance of such a decision. Shortly afterwards, we were informed that, after the intervention of a third party, the foreigner was then able to contact the desired non-governmental organization and, with its help, express his intention to apply for international protection in Slovenia.

However, since we are already talking about Italy, it is worth mentioning that the media have repeatedly reported that Italian courts refuse to return foreigners to our country – for example, in April, a court in Genoa allegedly refused to extradite a Pakistani person to Slovenia, citing in this case that *“the applicant’s complaint –given the conditions for the reception of refugees in Slovenia and the systemic shortcomings in the asylum procedure – seems justified. (...) In this case, the risk that the applicant in Slovenia would be subjected to inhuman and degrading treatment seems justified (...) The data collected raise serious concerns about the reception and asylum system currently in place in Slovenia and, in general, about the climate of cultural intolerance and discrimination in civil society, between government leaders and between police forces towards foreigners who have entered the country illegally.”* Similarly, at the end of January 2021, the news that a court in Rome upheld the lawsuit of a Pakistani refugee against the Italian Ministry of the Interior for his return to Slovenia after reaching Italy via the so-called Balkans route (according to the court, the police should no longer return potential applicants for international protection to Slovenia without proper procedure), from where the well-known chain of extraditions then continues to Croatia and then Bosnia and Herzegovina.

It should also be pointed out that the police treatment of the foreigners who illegally cross the state border raises a whole bunch of other questions that are not directly related to international protection, the principle of non-refoulement, etc. – such a special aspect is, for example, retrieving data from the mobile phones of such foreigners when they are detained. Police officers therefore generally detain persons crossing the state border illegally, in accordance with the fourth indent of the first paragraph of Article 64 of

the ZNPPol, for returning to the country of origin or the country from which they came to the territory of the Republic of Slovenia. in accordance with the *Agreement between the Government of the Republic of Slovenia and the Republic of Croatia on the extradition and takeover of persons whose entry or residence is illegal*. One of such petitioners also problematized, among other things, that the police officers looked into his mobile phone and checked the »maps« application, which showed which route he had used to cross the border. The Ombudsman also verified the existence of the recordings of mobile phone screens with a dotted path in the navigation application by inspecting the documentation. The fact that the petitioner's telephone was inspected was also evident from the minutes of the initiator's extradition and surrender. However, it was not possible to deduce from the documentation the legal basis and other circumstances of obtaining data from the mobile phone of such a detained person. The police claimed that the initiator himself showed the police officers the route of travel (via a navigation application) during a personal interview, which was recorded with his consent for proving the illegal crossing of the state border and returning him to the Croatian security authorities with mobile phone screenshots. The Ministry of the Interior was of the opinion that the police officers did not investigate the phone in the manner described, but that they should record in more detail the method of obtaining route information and the person's consent to photographing their mobile phone screens.

The Ombudsman cannot agree that the contents of the telephone were not investigated in the manner described simply because the information was allegedly obtained during a personal interview – the fact that the invasion of privacy took place in the context of another police operation does not affect the nature of the intervention. Such insight into the data contained in the mobile phone is an invasion of the privacy of the holder of the phone, i.e., interference with the constitutionally guaranteed human right from Article 35 of the URS, which occurred in the context of minor offence proceedings. Article 67 of ZP-1 stipulates that the provisions of the Criminal Procedure Act on the seizure and investigation of electronic and related devices and electronic data carriers shall apply sensibly in the regular procedure, unless it is an interference with the secrecy of letters and other media, where the interference is permissible only in the prosecution of legal persons who are alleged to have committed an offense. In accordance with the reasonable application of Articles 219a and 223a of the ZKP, the investigation of electronic and related devices and electronic data carriers, such as a mobile phone, may be carried out if there are reasonable grounds to suspect that an offense has been committed and it is probable that the electronic device contains electronic data: a) on the basis of which the perpetrator can be identified, detected or apprehended or traces of the offense relevant to the offense proceedings can be discovered, or b) which can be used as evidence in such proceedings.

In the present case, it did not appear that a telephone investigation would be necessary because of the specific offence proceedings, i.e., due to proving that the petitioner committed the alleged offense from the first paragraph of

Article 145 of ZTuj-2, for which a payment order was issued to him. The nature of the invasion of privacy (determining the route along which the border was crossed, with an application showing maps) could not have been intended to identify the perpetrators either. It was also not apparent from the payment order itself, which contained a brief description of the facts and evidence, that the police officers used the information obtained from the telephone search in the offense proceedings. Determining the route along which a person crossed the border and the time of entry into Slovenia with the help of a telephone thus seemed to be relevant at most for the needs of the implementation of the so-called abbreviated procedure for the admission of an individual who has illegally crossed the border determined by the *Agreement between the Government of the Republic of Slovenia and the Republic of Croatia on extradition and takeover of persons whose entry or residence is illegal* - while there is no legal basis for such privacy, and the Agreement itself does not envisage such an intervention. According to the Ombudsman, a written note from a police officer on an official note could not be sufficient to establish the existence of consent – any prior consent of the telephone holder to inspect the data in his telephone should be clear, unambiguous, and informed – and documented as such.

The Ombudsman still encounters concrete cases of (too) long decisions on international protection. The reasons for this are various – and more or less objectively justifiable. We discussed for example, the case of a petitioner who filed an application for international protection four and a half years ago at the time, but which has still not been finally decided – which, however, was mainly due to the fact that the available legal remedies were often used in the proceedings. In accordance with the judgment of the European Court of Human Rights, the State party has a (positive) obligation to ensure that the competent authorities promptly decide on an individual's application for asylum in order to be as uncertain as possible and without security; and if no decision is made on the application for asylum within a reasonable time, this may constitute a violation of the right to privacy under Article 8 of the European Convention on Human Rights, taking into account the applicant's other situation (e.g. being forced to work illegally to survive, being unable to enrol in a university, etc.). However, during the relatively long procedure, the concrete petitioner had the rights of an applicant for international protection – he was accommodated in an asylum home, where he was provided with care, he had free access to the labour market³ and to education⁴ and other rights⁵. According to the Ombudsman, such circumstances at least somewhat alleviate the situation of uncertainty in which an applicant for international protection is waiting for a long time to decide on the application and whether he will be able to stay in the territory of the country where he is seeking protection or not.

3 In accordance with Article 87 of the ZMZ-1.

4 In accordance with Article 88 of the ZMZ-1.

5 See Chapter VII of the ZMZ-1.

However, lengthy decisions on international protection may also be the result of insufficient regulation of the use of classified evidence in such proceedings, as has been shown in one of the other cases. It was a process of extending subsidiary protection, with three years having passed since the application in question. It turned out that the Ministry of the Interior had been deciding on the timely submission of the request for extension of subsidiary protection for fifteen months, rejecting the request on the grounds that it allegedly came from documents of the Slovenian Intelligence and Security Agency and was classified »secret«. In the initiated administrative dispute against this rejection decision, the Administrative Court of the Republic of Slovenia has already upheld the lawsuit and returned the case for reconsideration, ordering the competent authority to inform the applicant of the reasons stated in the documents of the Slovenian Intelligence and Security Agency as being unaware of this information constitutes an interference with the right to a statement and defence – but as the competent authority did not issue a decision within 30 days of receiving the judgment, as ordered by the administrative court, the applicant also lodged an action for the authority's silence which was also granted and the defendant was ordered to issue a new administrative act within 30 days of receipt of the judgment, deciding on the application for an extension of subsidiary protection. That did not happen then either.

Asked whether they saw procedural arrangements in this regard as sufficient so that the competent authority could satisfactorily reconcile the interests of national security and procedural guarantees of the parties (including decision-making within a reasonable timeframe), the Ombudsman did not receive any response from the Ministry. However, it is important to understand the specificity of the situation in such cases, when the competent authority wants to base the decision on evidence marked 'secret' – in order to satisfy the victim's right to be informed and to declare, he must first propose revocation or change of secrecy, and only after such revocation or modification, the affected party will be able to become acquainted with this evidence. **The duration of the procedure is thereby expected to be attributed not only to the body responsible for deciding on international protection, but also to the procedure in which it is decided to revoke or change the secrecy.** However, it should also be recalled that the Administrative Court of the Republic of Slovenia pointed out in the judgment in question that domestic legislation is rather under-regulated in this area, and it would be advisable for the legislature to amend that as soon as possible.

In any case, with regard to the length of proceedings concerning foreigners, the **Ombudsman maintains that the increased scope of administrative matters to be dealt with by the administrative authority may otherwise be a justifiable reason for the authority not to act and decide within a reasonable time, but no longer after the expiration of the time necessary for organizational or personnel adjustment to the increased volume of cases.**

Since last year, we have also been obliged to clarify the age assessment procedures for applicants for international protection. At the Ombudsman's re-

quest, the Ministry of the Interior finally announced that the Institute of Forensic Medicine of the University of Ljubljana (and not the Medical Centre from Rogaška Slatina) had ordered the preparation of expert opinions for the purpose of assessing the age of minor applicants for international protection. According to the ministry, the institute usually prepares an opinion based on a short conversation with the applicant and a basic medical examination; to create an opinion, they also need an image of both collarbones and both wrists and an X-ray of teeth. Since images of both collarbones and wrists and X-rays of teeth cannot be provided by the institute itself, they are provided by the Ministry of the Interior through contractors, and one of these providers is the Rogaška Slatina Medical Centre, which provides MRI imaging of both collarbones and both wrists. We also obtained information from the ministry that in 2019, it ordered the institute to prepare four expert opinions on the age of applicants for international protection, in which it was established that two applicants were in fact older than they claimed and were of legal age.

From foreigners just trying to get through, we move on here by focusing on those who are actually already here. We have already pointed out at the outset that human dignity should not be forgotten even when it comes to foreigners, as foreigners are also people. **The Ombudsman is still approached by foreigners to whom banks do not want to open even a basic payment account** (e.g. foreigners with a permanent residence permit in the Republic of Slovenia who would need a bank account for employment). As we have heard, bank employees are supposed to justify such decisions orally with instructions that foreigners should not be allowed to open an account, and such decisions are not reasoned in writing. As the Ombudsman is responsible for the protection of human rights and fundamental freedoms in the relationship between individuals and public authorities in accordance with Article 159 of the URS, the Ombudsman cannot intervene directly in such cases with commercial banks that are subjects of private law. However, we can at least clarify that in the case of **bank accounts for natural persons, a distinction must be made between a (normal) transaction account and a basic payment account** – this distinction is also linked to the different legal channels available to an individual who considers himself affected by discriminatory practices of banks in providing banking services.

When opening a transaction account, it is in principle a business decision of the bank or savings bank to cooperate with a certain client in business or not. However, banks are also subject to discrimination prohibition, or rather, the customers (consumers) have the right to non-discriminatory treatment in the services provided by banks on the market. At the same time, it is not difficult to imagine that consumers who believe that a bank has unjustifiably denied them a service due to a certain personal circumstance (such as the fact that they are not citizens of the Republic of Slovenia or other EU members) find it difficult to prove this in practice. However, their situation should be at least somewhat eased by the reverse burden of proof rule that the person alleging discrimination has to prove the facts justifying the presumption that the prohi-

bition of discrimination has been infringed, and then the infringer must prove that in the present case, they have not infringed that prohibition or that unequal treatment is permissible. Pursuant to Article 42 of the ZVarD, the Defender of the Principle of Equality and the competent inspections shall perform inspection supervision over the implementation of the provisions of this Act.

While, in principle, it is a matter of the bank's business decision whether to do business with a certain person, they should also, in principle, allow consumers at least the access to a basic payment account. The Bank of Slovenia has already sent a circular letter to commercial banks and savings banks, reminding them of their **duty to allow a consumer legally residing in the EU to open a basic payment account, in order to prevent financial exclusion of individual groups**, which arose with the implementation of the approach, based on a risk assessment. The Bank of Slovenia emphasized **that ensuring access to basic payment services is vital for the economic and social integration of these people, and at** the same time referred to the individual treatment of customers. A consumer who is a legal resident of the EU, who applies for or accesses a basic payment account in the EU, must not be discriminated against by the bank on the basis of nationality, residence, gender, race, skin colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, belonging to a national community, a national minority from another country, property, birth, disability, age or sexual orientation. An application for opening a basic payment account must be rejected by the bank (only) if the opening of such an account would violate the provisions of the law governing the prevention of money laundering and terrorist financing (but the bank also has the option to reject⁶ consumer's request for a basic payment account in certain statutory cases) – and if the bank rejects the application for opening a basic payment account, it must, as a rule, immediately inform the consumer in writing and free of charge of the rejection of the application and the specific reason for rejection, as well as the appeal procedure, on the right to inform the Bank of Slovenia of the rejection of the application for the opening of a basic payment account, and on the right to out-of-court settlement of disputes. Therefore, if an individual – even if he is a foreigner – considers that the bank is unjustifiably preventing him from opening at least a basic payment account, he can therefore turn to the Bank of Slovenia and propose the implementation of offence proceedings.

We also observe **other situations in which foreigners are quickly pushed into an unenviable existential position through no guilt of their own.** One of such petitioners is the Centre for Social Work unjustifiably annulled the decision on the recognition of financial assistance because he was supposedly not entered in the register of unemployed persons. He was one of the so-called *erased*, and recently regulated his status by obtaining a temporary residence permit on the basis of the second paragraph of Article 51 of ZTuj-2, i.e., for other *justified reasons*, after he had been allowed to stay in the Republic of Slove-

6 In accordance with the seventh paragraph of Article 181 of the ZPlaSSIED.

nia for at least two years. Holders of a temporary residence permit under the second paragraph of Article 51 of ZTuj-2 are persons who have previously been allowed to stay in the Republic of Slovenia for a period of at least 24 months – persons who previously at least two years (or longer) did not have a regulated residence in the country, and consequently they could not be legally employed during this longer period. Therefore, these are individuals from whom, due to prolonged exclusion from the labour market, it is not realistic to immediately expect an active solution to their own social problems (in the direction of employment, etc.), and consequently, the regulation under ZTuj-2 also enables them a slightly easier access to financial assistance, as is otherwise the case for persons entitled to financial social assistance under social security legislation. The same applies to holders of a temporary residence permit under Article 50 of ZTuj-2 (temporary residence permit issued to a victim of trafficking in human beings, a victim of illegal employment or a victim of domestic violence) from whom, due to the fact that they are victims of serious (usually ongoing) criminal offenses, who are supposed to participate in the criminal prosecution of the perpetrator as witnesses, immediate proactive action in the direction of job search cannot be expected. According to the Ombudsman, such an arrangement stems from the assumption that **these are particularly vulnerable groups of foreigners who, in order to ensure their dignity and security, must exceptionally be granted the right to financial assistance on the basis of a temporary residence permit if they do not have means of subsistence.**

It should not be overlooked that ZTuj-2 explicitly refers to social security legislation only regarding the amount of financial assistance and the method of payment, but not regarding the conditions for granting financial social assistance, defining the right to financial assistance for two different categories of foreigners: for those who are allowed to stay and do not have access to the labour market at all (they cannot be legally employed in Slovenia, which is why they cannot actively seek employment) and therefore cannot be entered in any records of the employment service (not even in records of job seekers), and those who have a temporary residence permit under the second paragraph of Article 51 of ZTuj-2 and can otherwise be employed (under the conditions specified in the law governing the employment and work of foreigners). Since ZTuj-2 recognizes the right to financial assistance in the same way to these two categories of foreigners, between whom there are significant differences in access to the labour market (the only difference is that in the case of persons with a residence permit, the Office of the Government of the Republic of Slovenia for the Care and Integration of Migrants decides on the granting of financial assistance, and in the case of persons with a temporary residence permit the competent social work centre), it does not seem that for those who have a temporary residence permit under the second paragraph of Article 51 of ZTuj-2, the centres for social work could require the fulfilment of some additional conditions. Namely, this would mean that the right to financial assistance in the case of persons with a residence permit under the second paragraph of Article 51 of ZTuj-2 is narrower in comparison with the linguistically equally defined right of persons with permitted detention; at the same time,

it is not clear from the legislative material that the proposer of the valid legal regulation intends to limit the right to financial assistance for persons with a temporary residence permit under the second paragraph of Article 51 of ZTuj-2 by determining the conditions otherwise applicable to obtaining financial social assistance. The Ombudsman also presented all this and more in detail in his opinion under Article 25 of the ZVarCP, which he addressed to the MDDSZ as a body of appeal – but the Ministry of the Address did not take this into account and rejected the initiator's complaint and confirmed the decision of the Centre for Social Work decisions on monetary social assistance. It is good that he then filed a lawsuit with the Labour and Social Court, as the State Attorney's Office finally recognized the plaintiffs' claim, and the court subsequently issued a judgment granting the petitioner and annulling the decision of the Centre for Social Work to annul the decision on financial assistance – the petitioner is supposed to receive the confiscated financial aid retrospectively.

Of course, the difficult life situation of a foreigner is not always the result of wrongdoing by the Slovenian authorities. For example, one of the petitioners has problematized the length of the procedure regarding his application for the extension of the single residence and work permit (which would expire at the end of November, and he applied to the administrative unit at the end of October). It turned out that the application of the petitioner for the extension of the single residence and work permit was not yet complete at all, despite the fact that he had been repeatedly asked to supplement it with certain evidence; the official also informed him that he could also provide a statement on the change of application, which could be used to resolve his application on another legal basis, but he did not even use this option. Due to unemployment, the petitioner found himself in a difficult life situation, but in this case the Ombudsman did not find any circumstances that would confirm that the administrative unit was responsible for this.

B. Substantive fields discussed

2.10 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION

Similar to last year, in 2020, the cases of equal opportunities for people with disabilities were in the forefront. We have received almost as many cases as last year (which we attribute to the Ombudsman's emphasized involvement in this field since the new head of our institution took up the post; this included number of meetings with organizations for people with disabilities). There was a particularly pronounced increase in cases of equality before the law or the prohibition of discrimination, in which there were connecting circumstances for which we do not have elaborated special sub-fields.

In general, we observe that persons relatively quickly see various inequalities in the treatment they receive from authorities compared to that received by others. However, it often turns out that the answer to how (in-)comparable their situation fundamentally is with the position of the other person they are comparing themselves with, is not as simple as they see it themselves. If the two situations are not essentially the same, then there can be no inadmissible inequality – and even if there is, the determination of the constitutional admissibility of an interference with the right to equality before the law or the right to non-discriminatory treatment is just beginning. Neither of the mentioned two rights is absolute; under certain conditions, different treatment of essentially the same situations may also be constitutionally permissible. Therefore, not every established inequality before the law or discrimination necessarily means a violation of constitutional requirements.

In some cases, in response to their allegations of unjustified inequality before the authorities, we provide people with quite detailed or at least presumably very reliable explanations that they should not hope for success in their search for justice. These are mainly situations in connection with which there is already a relevant assessment of the Constitutional Court of the Republic of Slovenia, or the European Court of Human Rights – in view of her allegations of discriminatory treatment, we informed one of the initiators in this field that in its practice, the Constitutional Court of the Republic of Slovenia has consistently declared itself incompetent to assess the constitutionality and legality of the provisions of collective agreements. On the other hand, we also encounter cases where even a careful examination of the relevant materials may not be sufficient to prepare a response with positions for which we could be

convinced that they will certainly be the same as the positions of other authorities, especially judiciary, if the initiator eventually decides to seek protection of their rights (also) with them. This is usually mainly due to the fact that there is simply not enough relevant case-law on the issues in question to be able to do more than speculate on definitive answers. One of such open questions is, for example, what can be considered as a personal circumstance – an indispensable element of any discrimination is always a personal circumstance, on the basis of which an individual is treated worse than others. Valid legal sources list personal circumstances (understandably) only in references (gender, nationality, race...) and the circle of thus defined personal circumstances is open, as discrimination is also prohibited on the basis of (any) “*other personal circumstance*”. Personal circumstances are “*different innate or acquired personal characteristics, traits, conditions or statuses that are permanently and inextricably linked to a particular person, their personality and identity, or are not easily altered by a person and on the basis of which different groups and the relations of their belonging to these groups are formed.*»¹ The Constitutional Court of the Republic of Slovenia has, for example, already stated that “[t]he permanent residence is not explicitly stated in the first paragraph of article 14 of the Constitution, but the Constitutional Court has already adopted the position that permanent residence is one of the circumstances from the first paragraph of article 14 of the Constitution.» In concrete cases, we had to explain that one of the personal circumstances explicitly stated in the Protection Against Discrimination Act (ZVarD, or ZDR-1) is not the title with which the individual performs the work, or, for example, performing student work², but at the same time it is uncertain whether this would be considered a “*other personal circumstance*” at all.

In any case, there is another important aspect regarding the treatment of cases in this area – it is often clear from the documentation submitted to us that people turn to several addresses at the same time, in addition to the Ombudsman, e.g. also to the Advocate of the Principle of Equality. Regarding such cases, it should be remembered that the European Commission against Racism and Intolerance (ECRI) has also made a recommendation³ to coordinate

1 From the explanation to Article 1 of the ZVarD proposal.

2 In this case, the initiator asked the Ombudsman for an opinion on possible discrimination regarding (non-)consideration of student work in work experience. As he stated, he was selected as the most suitable candidate for a vacant position in one of the ministries, but was later rejected with reasoning that he did not have enough work experience and that his student work could not be considered, because it was performed before he reached the required level of education. He also pointed out that when applying, he provided a certificate from the employer with whom he performed student work and by whom was later employed, stating that work through a student referral and a regular employment relationship did not differ in any way, neither in scope nor in content. The initiator was of the opinion that student work, which has all the elements of an employment relationship, should also be taken into account, and that the described case concerns discrimination and human rights violations in the treatment of student work, especially students.

3 See recommendation no. 22 in the CRI Report (2019)²¹ of the European Commission against Racism and Intolerance on Slovenia (fifth phase of monitoring), p. 12.

the functions of the Ombudsman and the Advocate in order to avoid overlaps. Therefore, we try to avoid conducting simultaneous proceedings between the Ombudsman and the Advocate of the Principle of Equality – unless, of course, we consider that the matter should be dealt with (also) within the framework of Ombudsman-specific competences or authority.

Also, it is interesting to note that we are occasionally confronted with statements by individuals which seem to have never really ended up in the ash heap of history of the Western civilization. For example, one of the callers, in a telephone conversation, discussed in a rather incoherent way that *a manifesto on the rights to duty should be prepared, as more and more rights create chaos and are sought by those who contribute nothing to society, while the humans do not even respect the 10 commandments, so everyone should have a duty of tolerance, respectful behaviour and the like, but we are not all equal – the last time she sat next to a black man on a bus, she had a cramp in her stomach, she was overcome by horror and felt sick*. It's like listening to someone from the front of a bus in the 1950s in the American South, and at the next stop, Rosa Parks is only just about to enter!

With regard to the people with disabilities, the decision of the Constitutional Court of the Republic of Slovenia No. UI-168/16 of 22 October 2020, which ruled that there is no alleged inconsistency with the Constitution of the Republic of Slovenia (URS) in the procedure for assessing the constitutionality of the National Assembly Election Act (ZVDZ), should also be highlighted as an important new change. The initiators alleged inconsistency with the right to vote (Article 43 of the URS), the prohibition of discrimination (the first paragraph of Article 14 of the URS and Article 14 of the ECtHR), the right to free elections under Article 3 of the First Protocol to the ECtHR and Articles 9, 21 and 29 of the Act ratifying the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities (MKPI), because persons with disabilities are not provided with personal, independent and secret ballot casting at polling stations. The question was, in essence, whether the legislation, which abolished the possibility of voting for disabled people by special voting devices and instead provided for other forms of voting (voting with the help of another person, i.e., an assistant), provides disabled people with the possibility of personal, independent, and secret ballot casting in a manner that does not discriminate against them when they exercise their right to vote. The Constitutional Court took the position that **voting with an assistant cannot be denied adequacy from the point of view of the right to personal, independent, and secret ballot casting (second paragraph of Article 43 of the Constitution) and the right to non-discriminatory treatment (first paragraph of Article 14 of the Constitution)**. Such an assistant should (like a device) be only an extended hand of the voter – the assistance of another person must therefore be limited to technical assistance in filling in or submitting the ballot, while the decision to vote must be made and expressed by the voters themselves. A special aspect of the decision in question was the use of a comparative law argument. Namely, the Constitutional Court also

relied, among other things, on the fact that voting with the help of electoral machines or devices is not generally established in comparative law (electoral devices are currently used only in three European countries, namely in Belgium, France, and Bulgaria) – on the other hand, however, voting with an assistant is much more established and is used under different conditions in almost all European countries.

2.11 PROTECTION OF DIGNITY, PERSONAL RIGHTS, SAFETY AND PRIVACY

Even though we have not received any concrete initiative in this regard, had we received it, we would have included it in this field. A comment must be made that the issue of *femicide* has repeatedly arisen in public discourse, and it was also mentioned by a representative of the parliamentary group Levica¹ during consideration of the Ombudsman's 25th annual report at the plenum in the National Assembly on 22 October 2020. On the topic of femicide, in early November, the Ombudsman, as a national human rights institution, also received a questionnaire from the UN Special Rapporteur on violence against women, its causes and consequences, specifically on women killed by their intimate partners. The Ombudsman therefore considered this questionnaire with particular attention and carefully prepared the answers.



Today, it is difficult to imagine a dignified life without at least a basic payment account open – and the Ombudsman has been noticing for some time that many people in this country face this type of financial exclusion. For example, some people point out that banks in Slovenia refuse to open an account for them, at which they could receive social assistance, even if a basic payment account would be appropriate for such purpose, as the fee for maintaining such an account is low and at the same time offers essential payment services (or, for example, that the bank, citing '*business reasons*',¹ does not even open a (basic) bank account where a pension could be received). As we have assessed that with the Ministry of Finance of the Republic of Slovenia, which is responsible for the preparation of systemic solutions and regulations in the field of banking in the Republic of Slovenia, and with the Bank of Slovenia, which performs supervisory tasks related to basic payment account access, we can no longer hope to receive appropriate response to the problems presented to them – the essence of which is that access to a basic account in some places appears to be inadequately regulated, as banks have a wide array of possibilities to deny a consumer this right, especially when there are elements indicating their poor financial situation or past breaches of obligations to the bank – the Ombudsman decided to present the matter to the European Commission. Namely, the Payment Services, Services for Issuing Electronic Money and Payment Systems Act (ZPlaSSI²) transposed Directive 2014/92/EU² into Slovenian law, and some provisions of the law could be non-compli-

1 "In Levica, we also draw attention to the problem of children, victims of crimes of violence and sexual violence caused by their parents, and to the problem of femicide, about which there is complete silence."

2 *European Parliament and the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account changes and access to basic payment accounts*

ant with the directive, in the part defining the right to a basic payment account – in accordance with Article 258 of the Treaty on the Functioning of the European Union, only the European Commission has the power to initiate proceedings against a Member State as guardian of the Treaties if it considers that it has failed to fulfil its obligations under EU law (ultimately, only the Court of Justice of the European Union can make a binding decision). According to the Ombudsman, the wide margin of discretion that banks actually have when deciding on the right to a basic payment account is contrary to the objectives of Directive 2014/92/EU.

2.11.1 About the field of personal data protection

In general, we can say that in this area, in specific cases, in accordance with the principle of subsidiarity of the Ombudsman's intervention, we had to instruct the initiators to first contact at least the Information Commissioner, i.e., the state body designated under a special Act as responsible for supervisory inspection over the implementation of the Act and other regulations governing the protection or processing of personal data or the export of personal data from the Republic of Slovenia, and the performance of other tasks determined by these regulations; as well as for making decisions on individual's complaints when the personal data controller does not comply with the individual's request regarding the individual's right to be informed of the requested data, to printouts, lists, insights, certificates, information, explanations, transcripts or copies under the provisions of Act that regulates the personal data protection.

Particularly interesting aspects of the subject matter for the purpose of maximum transparency are reported below in special sections.

What will be the ultimate national implementation of the General Data Protection Regulation?

In 2020, no amendment or new law on personal data protection was adopted with appropriate national implementations in relation to the General Data Protection Regulation (GDPR), which otherwise began to be used (directly) as early as 25 May 2018. In terms of one aspect of this issue, we would like to recall in particular that the Ministry of Justice (MP), as we have already reported in relation to that year³, initially included the Ombudsman in the proposal⁴ for a new Personal Data Protection Act among the exceptions to personal data protection supervisory inspections, which was based on *“the sui generis constitutional position of the Ombudsman under Article 159 of the Constitution of the Republic of Slovenia and their non-authoritative supervisory function”*⁵.



3 The Ombudsman's annual report for 2018, p. 92–93.

4 EPA 2733-VII.

5 To Article 59 (see also the explanations to Articles 46 and 74).



However, this later changed and, as far as we know, in the latest version of the proposal, the Ombudsman (not even in the section that considers cases on the basis of received initiatives to initiate proceedings, which the Human Rights Ombudsman Act (ZVarCP) in the first paragraph of Article 8 explicitly stipulates are confidential) is no longer exempt from the control of the Information Commissioner. **If such a law enters into force, the initiators will have to take into account that despite confidentiality of the proceedings with the Ombudsman, regulated by the ZVarCP, that their documentation may still be inspected by at least the executive branch** – at least by the state data protection controllers. These could even be cases when there are no concrete suspicions of encroachment on goods that are so highly protected that they have criminal law protection, and mere interest of the authorities for a possible misdemeanour treatment could suffice. **The Ombudsman is of course not left indifferent by such low evaluation of the – now more than a quarter of a century long – legally established confidentiality of relations between him and his initiators. Of course, it would be all the more worrying if, in the end, the legislator himself, by adopting such a bill, actually confirmed such a low evaluation of the mentioned basic postulate of confidentiality of proceedings with the Ombudsman**, especially after the latest legislative amendments were prepared and adopted in showing confidence that the same institution would achieve the highest possible status under *the Paris Principles on the Status of National Human Rights Institutions*, adopted by the UN General Assembly Resolution 48/134 of 20 December 1993 (According to the above principles, the Ombudsman then actually achieved the ‘A’ status, with which the Republic of Slovenia acquired such a highly ranked institution for the first time in history). In addition, it should not be overlooked that the Information Commissioner is also one of the state bodies and that the Ombudsman has authority, or rather, authority over him in accordance with Article 159 of the Constitution of the Republic of Slovenia (URS). Sooner or later, it will happen again⁶ that an initiator will complain against the Information Commissioner; if the confidentiality of the proceedings with the Ombudsman is really supposed to be valid, it seems absurd that such a case would also be open to inspection precisely by the representatives of the body on whose behalf the complaints were made.

The Ombudsman is not surprised that the Information Commissioner wants to perceive the Ombudsman as yet another processor of personal data and, of course, as a subject to inspection. However, we would also like to take this opportunity to **emphasize that outside our borders, the issue of the application of the GDPR in relation to national ombudsman institutions has not been resolved so unequivocally**. For example, the Estonian Personal Data Protection Act, which came into force in 2019,⁷ explicitly states, inter alia,⁸ that this

6 Such a case was last reported on p. 94–95 of the Ombudsman's Annual Report for 2018.

7 Orig. Personal Data Protection Act, also available in English at <https://www.riigiteataja.ee/en/eli/523012019001/consolide>.

8 See § 2 (2).

Act and the GDPR apply to constitutional institutions *“insofar as this does not concern the performance of their constitutional duties and is not regulated in the specific Acts that concern them”*⁹. One of the Estonian constitutional institutions is, as in Slovenia, the ombudsman (Õiguskantsler¹⁰, who, like the Slovenian Ombudsman, is also accredited as a national human rights institution with ‘A’ status according to the Paris Principles). This exception, understandably, does not apply to the processing of personal data in the performance of the ombudsman’s support functions (tasks of his secretariat - management of his human resources and property and other similar tasks). In Estonia, the arrangements described were based on the combined effect of Articles 4¹¹ and 5¹² of the Treaty on European Union, as well as Article 2¹³ of the General Data Protection Regulation - and therefore concluded on this basis that exceptions to certain constitutional categories, including the Ombudsman, were permissible. The Ombudsman informed the MP about this as early as the end of 2019.

There have been significant developments regarding the transposition of EU secondary legislation and towards the ratification of amendments to the first binding international instrument for the protection of individuals against abuse in the processing of personal data.

Special praise should be given to the state’s activities, which (after a delay of almost two years and a half) led to the transposition of Directive (EU) 2016/680¹⁴ into national legislation and at least a partial proceeding for the implementation of the amended Convention no. 108 of the Council of Europe.

9 The official English translation reads: “This Act and Regulation (EU) 2016/679 of the European Parliament and of the Council shall apply to: [...] 2) constitutional institutions insofar as this does not concern the performance of their constitutional duties and is not regulated in the specific Acts that concern them.”

10 Orig. Chancellor of Justice.

11 More specifically: “2. The Union respects the equality of the Member States before the Treaties as well as their national identity, which is inextricably linked to their fundamental political and constitutional structures, including regional and local self-government. It respects their fundamental state functions, in particular ensuring territorial integrity, maintaining public order and protecting national security. In particular, national security remains the exclusive responsibility of each Member State.”

12 More specifically: “2. In accordance with the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Member States shall retain all the powers not conferred on the Union by the Treaties.

13 More specifically: “2. This Regulation shall not apply to the processing of personal data: (a) in the context of activities outside the scope of Union law; [...]”.

14 The European Parliament and the Council on 27 April 2016, on the protection of individuals with regard to the processing of personal data processed by the competent authorities for the prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and on the repeal of Council Decision 2008/977/JHA.

On 10 September 2020, the Government of the Republic of Slovenia adopted the proposal for the Act on the Protection of Personal Data in the Area of Treatment of Criminal Offences (ZVOPOKD)¹⁵, which was adopted by the National Assembly with 58 votes in favour and none against, and came into force on the last day of 2020, after its publication in the Official Gazette of the Republic of Slovenia. In addition to the implementation of the said Directive, the ZVOPOKD also includes some legal solutions regarding the implementation of Directive (EU) 2016/681¹⁶, i.e., in the part relating to the position and tasks of the persons authorized for the protection of personal data. Given the content regulated by law, it is to be expected that its provisions or their interpretation will often be called into question in the context of this or that court procedure.

With the adoption of the above-mentioned ZVOPOKD, at least in part, there was also the enactment of compliant provisions, as amended by Convention no. 108. As explained by the MP in response to our previous annual report¹⁷, it is now necessary to *“adopt a new Personal Data Protection Act (ZVOP-2) – this will allow for the ratification by law of the revised Convention no. 108 (its Protocol).”*

Unfortunately, even several years of absolute priority treatment of the case was not enough for the questions regarding the (un-)certainty of the air passenger data defined by the Directive to be submitted to the Luxembourg court for a preliminary ruling, first from Slovenia.

Already in 2017, the Ombudsman filed a request with the Constitutional Court of the Republic of Slovenia to assess the constitutionality of the police processing of passenger name record (PNR), legalized by the Police Tasks and Powers Act (ZNPPol-A). In this request for the assessment of constitutionality, in addition to the disputed provisions of the Slovenian law itself, we also pointed out the equivalent from Directive (EU) 2016/681 in connection with the excessive uncertainty regarding the data that could be processed. The question therefore arose as to whether even the directive itself, on which the Slovenian legislature relied, was not in conflict with the guarantees of the Charter of Fundamental Rights of the European Union. Unfortunately, it was still more than two years after that, i.e., at the end of October 2019, when the Belgian

15 EVA 2020-2030-0006.

16 The European Parliament and the Council on 27 April 2016, on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offenses and serious crime.

17 In the Response Report of the Government of the Republic of Slovenia to the Twenty-fifth Regular Annual Report of the Ombudsman for 2019 (p. 189–190 of the Joint Report of the Government for 2019, number 07002-2/2020/23 of 30 September 2020).

Constitutional Court was the first¹⁸ to submit certain questions of the sort¹⁹ to the Court of Justice of the European Union; in 2020, more similar cases from Germany²⁰ followed, and only after that did those from Slovenia²¹ finally arrive. Namely, in the procedure for assessing the constitutionality initiated by the above-mentioned request of the Ombudsman, the Constitutional Court of the Republic of Slovenia decided by Resolution No. UI-152/17-53 of 3 September 2020 that the Court of Justice of the European Union, based on Article 267 of the Treaty on the Functioning of the European Union, is referred for a preliminary ruling with two questions concerning the compatibility of Directive (EU) 2016/681 with Articles 7 and 8 and the first paragraph of Article 52 of the Charter of Fundamental Rights of the European Union (aspect of the requirement for clarity and precision of the rules encroaching on the right to privacy and the right to the protection of personal data) and suspended the procedure for assessing the constitutionality of point 31 of the first paragraph of Article 125 of the ZNPPol until the decision of the addressed Court. The President of the Court of Justice of the European Union adjourned the proceedings already in November, pending the delivery of judgments in Joined 'German' cases C-215/20 and C-222/20.

2.11.2 Specifically on the issue of human trafficking

When the Ombudsman introduced a special sub-area of work on human trafficking in 2018, recognizing that this is a (increasingly) current aspect of human rights protection, we were aware that it would primarily require our proactive action, but also that the treatment of matters from the point of view of fulfilling the positive duties of the state will prevail. It is therefore not surprising that, as in the previous year, we opened all cases in this sub-field on our own initiative.

The Council of Europe Convention on Action against Trafficking in Human Beings²² is of particular regional relevance to the issue, and globally, the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime²³ (Palermo Protocol).

18 See p. 146 of the Ombudsman's Annual Report for 2019.

19 Case C-817/19.

20 Cases C-148/20, C-149/20, C-150/20, C-215/20, and C-222/20.

21 This is kept under number C-486/20.

22 The Act on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (MKUTL) was published in the Uradni list RS, no. 14/09 and entered into force on 5 August 2009.

23 The Act on Ratification of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime (MPTLMOK) was published in the Uradni list RS no. 15/04 and entered into force on 1 May 2004.²⁰ Cases C-148/20, C-149/20, C-150/20, C-215/20, and C-222/20.

The said Protocol, which complements the said United Nations Convention, obliges States to prevent and combat trafficking in human beings, to protect and assist victims of trafficking, and to promote cooperation between States to achieve those objectives. At their meeting in Vienna in October 2018, the Parties to the Convention adopted Resolution 9/1 entitled *“Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”*, which contains rules for the operation of the mechanism for reviewing the implementation of the Convention and its protocols. At the next session, i.e., in October 2020, Resolution 9/1 entitled *“Launch of the review process of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”* was adopted. This resolution adopted self-assessment questionnaires to review the implementation of the Convention and its Protocols, guidelines for the implementation of country reviews and a plan for observation lists. The evaluation is expected to take place over a total of eight years (2020–2029). **Slovenia is expected to be evaluated by Mauritius and Armenia in 2022 (before that, Slovenia is to evaluate Latvia together with Lebanon in 2021, and Senegal together with Gabon in 2023).**

The monitoring mechanism, which monitors the implementation of the obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, consists of two pillars, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties. The Convention requires Parties to cooperate with the GRETA in providing the required information. In the process of preparing a report on a country, the GRETA forwards the draft to the government, which can comment on it, which is taken into account in the preparation of the final report. The latter shall be adopted by the GRETA in a plenary session and forwarded to the Party invited to submit any concluding observations. After the expiry of the one-month period for comments, the report and decisions, together with any comments from the national authorities, shall be published and transmitted to the Committee of the Parties. It shall be composed of representatives of the Committee of Ministers of the Contracting Parties to the Convention and of representatives of the Contracting Parties which are not members of the Council of Europe. On the basis of the GRETA reports, the Committee of the Parties may adopt recommendations for each Party regarding the measures to be taken to implement the GRETA decisions. So far, two rounds of evaluation have been carried out for the Republic of Slovenia - the first evaluation was in 2013 and the second in 2017. **Due to the COVID-19 pandemic, the third round of Slovenia's evaluation was postponed from September 2020 to May 2021, when the GRETA questionnaire will be sent first, and the deadline for response will be October 2021. The GRETA visit is then scheduled to take place between January and March 2022.**

Specifically, the mentioned convention of the Council of Europe, for example in Article 12 requires Parties to provide victims of trafficking in human beings

with access to emergency medical assistance as well as necessary medical and other assistance when they are legally residents in its territory and do not have sufficient resources. According to the Slovenian Foreigners Act (ZTuj-2)²⁴, victims of human trafficking are entitled to emergency health care on the basis of a detention permit or a temporary residence permit in accordance with the law governing health care and health insurance; according to Health Care and Health Insurance Act (ZZVZZ), emergency treatment includes urgent medical services of resuscitation, preservation of life and prevention of deterioration of the health condition of the sick or injured person. The Action Plan to Combat Trafficking in Human Beings for the period 2019-2020²⁵ states that experience in dealing with victims of trafficking shows that the provision of emergency treatment is not sufficient, as victims suffer from poor health, trauma, various injuries and disabilities as a result of exploitation, and they need long-term and comprehensive health care. The action plan envisages²⁶ a comprehensive and systemic regulation of the field of health protection of victims of human trafficking on the basis of the provisions of the Convention and thus provides victims of trafficking assistance or adequate health care and health insurance through the programs *Care for Victims of Trafficking in Human Beings – Crisis Accommodation and Care for Victims of Trafficking in Human Beings – safe accommodation*.

In 2020, the Ombudsman addressed several stakeholders in action against trafficking in human beings. We addressed the National Coordinator for Combating Trafficking in Human Beings (Coordinator) with the question of whether he had already cooperated with the Ministry of Health and others, and prepared a comprehensive and systemic regulation of health care in order to ensure access to local public health for all victims of trafficking in human beings and how non-emergency or long-term treatment is provided for all victims who need long-term and comprehensive medical care due to poor health, trauma, various bodily injuries and disabilities resulting from exploitation. In this context, the Coordinator stated that under current legislation, foreign nationals who are victims of trafficking are in fact only entitled to emergency medical services, but that in practice, each individual victim and their specific needs are treated individually within the framework of multidisciplinary groups for dealing with cases of placement of victims of trafficking in human beings – they should also decide on the eligibility of additional costs incurred due to victims' special needs, including in terms of providing additional health services covered by the Ministry of Health through direct assistance, counselling and care programs for vulnerable, at-risk persons and patients with rare diseases, carried out by humanitarian organizations. The coordinator also explained that the number of victims included in the safe accommodation pro-

24 Specifically, the eighth paragraph of Article 50 and the first paragraph of Article 75.

25 Page 30.

26 In point 1.3 of Chapter V.

gram is relatively low, and so far, they have always managed to find a solution for an individual victim, while medical services have practically always been provided.

The Ministry of Health (MZ), in response to the Ombudsman's inquiry, emphasized that special groups were given special care by the health care system; victims of trafficking in human beings are provided with emergency medical care as well as additional medical services that are recognized as necessary by the doctor treating such a person; health care as well as all other forms of assistance are provided to victims of human trafficking are provided, despite the fact that their countries of origin generally deny them any assistance; regular information on the number of such persons and their needs by authorized institutions, non-governmental organizations and inter-ministerial working groups to help ensure that no such person is left without comprehensive medical care and assistance. The Ministry also explained that in the process of changing health legislation, a proposal will be made to legally regulate the status of insured persons in the process of health care also for victims of trafficking in human beings.

Good cooperation was also confirmed by non-governmental organizations (Društvo Ključ, Slovenska Karitas, Delavska svetovalnica), with which the Ombudsman held information meetings on his own initiative. They are generally satisfied with the medical care of victims of human trafficking in their programs (crisis accommodation, safe accommodation and reintegration), and the MZ is supposed to cover the costs of medical services in excess of emergency care and take care of each such case separately. However, they also pointed out that it would be necessary to systematically regulate wider access to health care for victims of trafficking in human beings, as victims need specific medical treatment (addiction, HIV, tuberculosis, mental health problems, etc.), which often exceeds emergency medical care. As we understood, we would propose ourselves to arrange basic health insurance on the basis of a detention permit lasting 90 days (during which time the victim decides whether to participate in criminal proceedings). As a special problem related to health care, non-governmental organizations also pointed out victims of trafficking in human beings who came to Slovenia on the basis of work permits and have or do not have arranged insurance on this basis - if there is a change or, for example, an injury, victims may be left without insurance or without coverage for medical expenses.

The Ombudsman criticizes the current legislation, according to which foreign nationals who are victims of trafficking in human beings are only entitled to emergency medical services. Article 12 of the Convention clearly stipulates, inter alia, that victims of trafficking in human beings be provided with the necessary medical and other assistance when they are legally residing in its territory and do not have sufficient resources. According to the GRETA, the Slovenian authorities should also ensure access to local public health care for

all victims of trafficking in human beings²⁷. Providing emergency treatment alone may not be enough, as victims need long-term and comprehensive medical care due to poor health, associated problems, trauma, various bodily injuries and damage resulting from exploitation. **The Ombudsman welcomes the efforts to ensure that, despite legal and formal shortcomings in the care of vulnerable groups, comprehensive treatment, and medical care for victims of human trafficking is provided on a case-by-case basis**, and above all assurances that the status of insured persons in the health care process is also regulated for victims of trafficking in human beings.

However, **the Ombudsman addressed the Ministry of Justice (MP)** with regard to the lack of legislation to ensure the right of access to compensation for victims of trafficking in human beings. Article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings requires Contracting Parties to guarantee victims the right of access to compensation in their domestic law - each Contracting Party is required to adopt such legislative and other measures as possibly necessary to provide compensation to victims in accordance with the conditions laid down in its domestic law, for example by setting up a victim compensation fund or adopting measures or programs to support social assistance and (social) integration of victims. The GRETA has repeatedly (in 2013 and 2017) called on the Slovenian authorities to take measures to facilitate and ensure access to compensation for victims of human trafficking, in particular by ensuring that victims of human trafficking are systematically informed of the right to compensation and the procedures they must be taken into account in a language they can understand; enable victims of human trafficking to exercise their right to compensation by providing them with effective access to legal aid; compensation for victims should be taken into account in training programs for prosecutors and judges; all victims of trafficking in human beings should be included in the Crime Victim Compensation Act (ZOZKD), regardless of their citizenship, whether force has been used, or whether sexual integrity has been violated. Article 17 of Directive 2011/36/EU also stipulates that all victims of trafficking in human beings must be guaranteed access to national compensation schemes.

Article 5 of the ZOZKD defines the formal conditions for the recognition of compensation, but only for applicants who are citizens of the Republic of Slovenia or citizens of another EU Member State – in the Action Plan on Combating Trafficking in Human Beings for the period 2019–2020, due to equal treatment of all victims, regardless of citizenship, the aim was to amend the ZOZKD, so that in Article 5, the reference to “*citizenship of the Republic Slovenia and the European Union*” is crossed out.

27 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, SECOND EVALUATION ROUND 2017, 108th paragraph.

The MP responded by explaining that in connection with the proposed amendment to the said formal condition, they examined comparative legal arrangements in other EU Member States and found that the formal condition was mostly not related to citizenship but to (permanent or legal) residence of the victim, on reciprocity, or there was no restriction for foreigners at all. However, the MP emphasized that the mere amendment of Article 5 of the ZOZKD or the deletion of the condition of citizenship would not satisfy the goal of including (all) victims of trafficking in human beings in the circle of eligible claimants for compensation – under the formal condition, the law also determines the material conditions for the recognition of compensation, and above all is the relevant legal definition of violent intent, which is derived from Directive 2004/80/ES on compensation to victims of crime, which was implemented in our national legislation by ZOZKD. Thus, providing access to compensation to victims of trafficking in human beings would not only be a simple amendment to one of the articles of the law, but also a complex issue of regulating the entire compensation system.

The MP also pointed out that at the EU level in 2019, a report of a special adviser was issued to the (then) President of the European Commission in the field of compensation to victims of crime, following which the European Commission adopted the EU Strategy on Victims' Rights (2020–2025), which contains certain guidelines for Member States, including in the field of compensation to victims. The MP insured us that they would also take these guidelines into account when preparing amendments to the ZOZKD. In conclusion, the MP assessed that the preparation of amendments to the law requires a more detailed examination of the entire scheme or regulation of compensation under the ZOZKD, both in terms of current guidelines at EU level, regulations in the field of victims' rights and in terms of providing rights to particularly vulnerable groups, such as victims of domestic violence, child victims and also victims of human trafficking. In this regard, in 2020, the MP has already begun a detailed study of the implementation of the provisions of the ZOZKD, the practice of the Commission, European legislation and comparative arrangements, with the aim of preparing a draft of a more comprehensive proposal for an amendment to this Act.

It is interesting to note that when asked by the Ombudsman whether they have already met with cases of applicants who were denied compensation under the ZOZKD due to non-compliance with the formal condition of citizenship, the MP announced that they did not keep special records on this, however after reviewing the resolved cases, they estimate that there have been seven such cases since the Act entered into force (since 1 January 2006), while in none of these cases has the claimant been a victim of human trafficking.

In 2020, the Ombudsman also turned to the Specialized State Prosecutor's Office of the Republic of Slovenia to clarify whether they had already encountered cases where due to the lack of regulation of (special) procedural protective measures, any of the child victims or witnesses of human trafficking

under the age of 18 have not been adequately protected in proceedings. The Council of Europe Convention on Action against Trafficking in Human Beings requires, in Article 28, that in the states of Contracting Parties, inter alia, that victims of trafficking in human beings under the age of eighteen receive special protection measures, taking into account the best interests of the child. Article 30 also stipulates that each Contracting Party shall take such legislative or other measures as may be necessary to ensure the protection of the privacy of victims during legal proceedings and, where appropriate, their identity, security, and the protection of victims from intimidation, in accordance with the terms of its domestic law and, in the case of victims under the age of eighteen, with special care for the needs of children and the guarantee of their rights to special protection measures. In this context, it is also worth mentioning the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, which address the issue of the position and role and opinions, rights and needs of children in court proceedings and alternatives to such proceedings. The guidelines aim to ensure that in such proceedings all children's rights, including the right to information, representation, participation and protection, are fully respected, with due regard for the child's maturity and understanding and the circumstances of the case. The Action Plan to Combat Trafficking in Human Beings for the period 2019-2020, in the light of the immediate action of the GRETA recommendations, states²⁸ cooperation with the listed prosecutor's office in reviewing existing legislation and preparing proposals for implementation of the extension of procedural safeguards (e.g. Articles 178, 240, 331 of the ZKP), which are currently intended for children under the age of 15, to include all child victims and witnesses of trafficking in human beings up to the age of 18, taking into account the best interests of the child and to bring these measures fully in line with the Convention. The addressed Prosecutor's Office informed us that they generally have a poor experience with questioning victims of human trafficking in the courts, regardless of age; the situation in the exposed area is such that in the presence of the accused (human traffickers), the victims do not largely identify as victims; they deny the acts committed by the accused to their detriment, are ashamed or minimize the acts; in an informal interview with the police or the public prosecutor, they often state that they are afraid of the accused, but this is not repeated in the courtroom in the presence of the accused, and the courts are only ready to act based on clear statements of the victims; also that it is not appropriate that witnesses - victims of the crime of trafficking in human beings - wait together with the accused for the beginning of the hearing or the main hearing in the corridor in front of the courtroom; victims are heard at least twice during the proceedings, which undoubtedly means for them to relive repeatedly the relationship in which they were trapped; the quality of testimonies in evidential terms is getting worse and that the interrogation of victims of trafficking in human beings would be the only effective and fair to the victims when it would be carried out through a video conference, at another location and spatially separated from the accused.

28 P. 32-33.

The Specialized State Prosecutor's Office of the Republic of Slovenia also informed us that in recent years, no indictments have been filed in which victims of trafficking in human beings were under 18 years of age - they dealt with individual cases in which victims of trafficking in human beings were suspected to be under the age of 18, but no court proceedings have taken place, or the cases are still in the pre-trial phase. In particular, they praised the good work of NGOs in dealing with victims of trafficking.

The above-mentioned allegations of the Specialized State Prosecutor's Office of the Republic of Slovenia are worrying - however, we have not managed to clarify the matter enough to be able to address a sufficiently concrete recommendation in this regard. We therefore continue to address this issue in this regard as well.

Towards the end of 2020, the Ombudsman met with the National Coordinator for Combating Trafficking in Human Beings, in particular on the possible entry of the Ombudsman into the role of National Rapporteur on Combating Trafficking in Human Beings. The establishment of a Slovenian rapporteur on combating trafficking in human beings was also recommended by the GRETA – already in the first round of evaluation, one of our recommendations to the authorities was *“to consider appointing an independent national rapporteur or establishing a different mechanism to monitor the activities of state institutions in the fight against trafficking in human beings. (see paragraph 4 of Article 29²⁹ of the Convention and Article 298 of the Explanatory Report)”*³⁰; in the second round of evaluation, it was also explicitly pointed out that the national coordinator actually fulfils the role of national rapporteur, but the GRETA believes that one of the key characteristics of a national rapporteur should be the ability to critically monitor the activities and performance of all state institutions, including that of the national coordinator, saying that structural separation (the Slovenian National Coordinator for Combating Trafficking in Human Beings operates under the auspices of the Ministry of the Interior) enables an objective assessment of the implementation of relevant regulations, policies and activities and shortcomings, as well as the formulation of recommendations – therefore, the GRETA also proposed on this occasion to set up an independent national rapporteur.³¹ The Ombudsman is already a constitutional category intended for the protection of human rights and fundamental free-

29 There, the Convention specifically provides: “4. Each Party shall consider appointing national rapporteurs or other mechanisms to monitor the activities of national institutions to combat trafficking in human beings and to implement national legislative requirements.”

30 Report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Slovenia GRETA (2013) 20), p. 15.

31 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia GRETA (2017) 38, p. 9.

doms³², and is also legally *independent and autonomous* in their work³³, and does not fall under any branch of state authority, and has been as a national human rights institution also internationally accredited with the highest possible status. In some other countries as well, the role of national rapporteur for monitoring the activities of state institutions in the fight against trafficking in human beings is already performed by ombudsman institutions. The already comparative view of the legal regulations on the fight against trafficking in human beings, prepared in 2016 by the Research and Documentation Sector of the National Assembly, stated that for example, in Finland “*the functioning of the national rapporteur is defined in the Ombudsman Act.*”³⁴ The tasks of the Finnish national rapporteur are thus to monitor the phenomena related to trafficking in human beings, compliance with international obligations and the effectiveness of national legislation; making proposals and recommendations relevant to the fight against trafficking in human beings and to the implementation of victims’ rights; maintaining contacts with international organizations on issues related to human trafficking. Due to its independence, it is not part of the working group dealing with human trafficking in Finland (the Slovenian equivalent of such a group is the Interdepartmental Working Group for Combating Trafficking in Human Beings³⁵). It can obtain relevant data not only from the authorities, but also from all those who receive state funds to combat trafficking in human beings.

It is also worth mentioning that with the Ombudsman’s **recent accreditation as a national human rights institution with ‘A’ status under the Paris Principles on the Status of National Human Rights Institutions, adopted by the UN General Assembly Resolution 48/134, it was explicitly recommended that for it to continue its efforts to address all human rights issues affecting the society in which it operates, including trafficking in human beings.** At the same time, it should not be forgotten that national human rights institutions, which have been accredited with the highest status, should continue their efforts to improve their efficiency and independence.³⁶

Thereby, at the request of the National Coordinator for Combating Trafficking in Human Beings, we have already agreed in principle to include in the Action Plan for Combating Trafficking in Human Beings for the period 2021–

32 Article 159 of the URS.

33 Article 4 of the ZVarCP.

34 National Assembly of the Republic of Slovenia – Research and Documentation Sector (2016): Legislation against human trafficking - Comparative Review (PP), p. 14.

35 The decision (No. 01203-9/2019/6) on the establishment of the current one was adopted by the Government of the Republic of Slovenia on 17 October 2019. Representatives of nine ministries and government offices, the Police, the Financial Administration of the Republic of Slovenia and the Labour Inspectorate of the Republic of Slovenia continue to be involved, as well as representatives of the Specialized State Prosecutor’s Office of the Republic of Slovenia, the National Assembly of the Republic of Slovenia, Društvo Ključ, Slovenski Karitas, Slovenska filantropija, Pravni center za varstvo človekovih pravic, and Zveza svobodnih sindikatov Slovenije.

36 GANHRI Sub-Committee on Accreditation Report - December 2020, p. 22.

2022 the establishment of a National Rapporteur for combating trafficking in human beings within the institution of Ombudsman. The Ombudsman is ready to take over this function, of course with a clear definition of this new mandate and the provision of all necessary legal bases and additional powers, especially in the context of court proceedings, and relations with regional non-governmental organizations. It is clear that monitoring the activities of state institutions in the fight against trafficking in human beings should also include monitoring court proceedings for criminal offenses under Article 113 of the KZ-1, so in order to avoid complications in interpreting the competences or powers of the national rapporteur, it would be best to clearly regulate the level of informing the Ombudsman about scheduled hearings, his presence at main hearings, where the public is otherwise excluded, etc.

2.11.3 There is a long shadow of events related to the Second World War

This year, too,³⁷ we can report that one of the thematic constants remains the events, in one way or another connected with the greatest war in the history of mankind. This time it should be pointed out that in the beginning of the year, the decision³⁸ of the highest court in the country to overturn the final conviction of probably the most famous Slovenian collaborator, Leon Rupnik, who was sentenced to death after the war and executed, caused a lot of public opposition. In this regard, we also received several concrete initiatives as the Ombudsman, including due to the affected dignity of the members of the *Association of Fighters for the Values of the National Liberation War of Slovenia*. Expectations for us were different, from joining the new trial before the first instance court to turning to the Constitutional Court of the Republic of Slovenia. None of this happened then, either because there were no real possibilities for the Ombudsman's intervention, as envisaged by the initiator, given the lack of legal powers or authority, or because it was obvious that the Ombudsman's involvement was not actually needed (mainly due to authorship or participation of various doctors of law and some well-established law firms or lawyers in the preparation of applications for the court).

The possibility of lodging a constitutional complaint is exceptional among the Ombudsman's statutory powers, as this is the only case when this body may³⁹ submit an application before a judicial body of the state authority formally challenging an individual act by which a state body, local community body or holder of public authority has decided on the right, obligation, or legal benefit of someone. The Ombudsman, of course, also decides on the filing of con-

³⁷ E.g. see p. 148 of the Ombudsman's Annual Report for 2019.

³⁸ Judgment of the Supreme Court of the Republic of Slovenia, case ref. no. I Ips 3425/2014 of 8 October 2019.

³⁹ Cf. the second paragraph of Articles 50 and 52 of the ZUstS.

stitutional complaints independently. As a rule, the main guideline for such decisions is the answer to the question whether the circumstances of the case show that the affected party cannot file a constitutional complaint by themselves or that they will obviously not be adequately represented in the constitutional complaint procedure. It also happens that a constitutional complaint has already been submitted, and at least some kind of *letter of support* is expected from the Ombudsman. However, the Ombudsman never decides to exert such pressure on the Constitutional Court, as we consider it to be completely unnecessary. If it does not appear that the Ombudsman's mediation could actually improve the legal position of the complainant (mostly because there is simply nothing more important to add to the already existing allegations of allegedly violated human rights and the reasons for the alleged violations), then it cannot be correct for the competent court to be burdened with any of the Ombudsman's writings.

In any case, according to the information available to us, the most up-to-date fact so far is that in one of the proceedings for examining the constitutional complaint against the above-mentioned judgment of the Supreme Court, the Constitutional Court issued a decision⁴⁰ in November 2020 that the constitutional complaint in question (which was lodged by a descendant of a victim of war violence – his grandmother, stating, inter alia, that he would no longer be able to assert a “*violation of the right to dignity and other rights*”) is accepted for consideration.

In the exposed (and not surprisingly controversial for the public) judgment of the Supreme Court of the Republic of Slovenia, the Ombudsman saw primarily (one of) decisions in concrete criminal proceedings – and not as a value change in historical views on the behaviour of those involved in the events on Slovenian soil at the time. Regarding the latter, the Ombudsman himself, similarly to The European Court of Human Rights, considers that it is not his task to resolve “*the issue that is part of the discussion among historians about the events in question and their interpretation*”⁴¹ – but it has been pointed out several times that the memory of the Second World War and the post-war events must be actively and consciously preserved as a reminder of the horrors that must never be repeated.⁴² The need to preserve the memory of

40 No. Up-253 / 20-12 of 5 November 2020.

41 From the judgment of the European Court of Human Rights in *Lehideux and Isorni v. France* (55/1997/839/1045) of 23 September 1998.

42 See public release *Ob mednarodnem dnevu spomina na žrtve holokavsta varuh Svetina nagovoril udeležence slovesnosti*, dated 19 January 2020 (<https://www.varuh-rs.si/sporocila-za-javnost/novica/ob-mednarodnem-dnevu-spomina-na-zrtve-holokavsta-varuh-svetina-nagovoril-udelezence-slovesnosti/>), or *Ob svetovnem dnevu spomina na holokavst: “We do not allow the dark part of history to happen again!”*, Dated 27 January 2021 (<https://www.varuh-rs.si/sl/sporocila-za-javnost/novica/ob-svetovnem-dnevu-spomina-na-holokavst-ne-dovolimo-da-se-mracni-del-zgodovine-ponovi/>); an example of an older public statement is the one entitled *Nagovor na slovesnosti v spomin na pobjoju udeležencev partijske šole v Cerknem januarja 1944*, dated 27 January 2018 (<https://www.varuh-rs.si/sl/sporocila-za-javnost/novica/nagovor-na-slovesnosti-v-spomin-na-pobjoju-udelezencev-partijske-sole-v-cerknem-januarja-1944/>).

Europe's tragic past in order to honour the victims, condemn the perpetrators and lay the foundations for reconciliation based on truth and memory is also recalled in the European Parliament's resolution of 19 September 2019, on the importance of European historical memory for the future of Europe (2019/2819 (RSP)) and other related international documents.

Among the more prominent events is that the **Government of the Republic of Slovenia has adopted a legally non-binding working definition of Holocaust denial and distortion**⁴³, prepared by the International Holocaust Remembrance Alliance (IHRA), in which governments and experts participate to strengthen, develop and promote education and research on the Holocaust, to preserve the memory of it and to honour the commitments made in the 2000 Stockholm Declaration; the above-mentioned association also prepared **Recommendations for teaching and learning about the Holocaust, which were also translated into Slovene in the spring**. As these recommendations state, *the Holocaust was the systematic persecution and killing of Jews by Nazi Germany and its collaborators between 1933 and 1945*, according to the non-binding working definition, and distorting the facts about the Holocaust meant trying to justify or downplay the impact of the Holocaust or its key elements and actors, including collaborators and allies of Nazi Germany; claiming that there were far fewer Holocaust victims than reliable sources show; to try to blame the Jews themselves for the genocide; to portray the Holocaust as a positive historical event (such statements do not imply Holocaust denial, but are closely linked to it as a radical form of anti-Semitism, as they may suggest that the Holocaust did not achieve its key goal, i.e., the final solution to the Jewish question); to try to erase the responsibility for the establishment of concentration and extermination camps opened and run by Nazi Germany by attributing blame to other nations or ethnic groups. At the end of 2018, the Republic of Slovenia adopted a legally non-binding definition of anti-Semitism at the national level⁴⁶ (*"Anti-Semitism is the perception of Jews in a way that can express hatred towards them. Verbal or physical expression of anti-Semitism is directed against Jewish or non-Jewish individuals and/or their property, against the institutions and religious buildings of the Jewish community."*). In 2020, **a commemoration of the Holocaust victims was organized in Ljubljana, with the laying of an additional 17 stumbling stones (Stolperstein** ⁴⁷).



43 Decision on the adoption of a legally non-binding working definition of Holocaust denial and distortion of facts, number 50102-11/2018/16 of 13 February 2020.

46 See web address <https://www.holocaustremembrance.com/sl/resources/working-definitions-charters/delovna-opredelitev-antisemitizma-mednarodnega-zaveznistva>.

47 The project was designed by German artist Gunter Demnig. It is the largest decentralized monument to the victims of atrocities in the world - it is the erection of memorial plaques in front of the residences where the victims of Nazi terror lived.

In 2009, the Republic of Slovenia was among the signatory states to the Terezin Declaration in Prague, which recognized, among other things, the importance of restitution of property seized and confiscated from victims of the Jewish community between 1933-45 and urgent care for the survivors. When the United States Department of State issued a special *Justice for Uncompensated Survivors Today Act Report (JUST)* in 2020, we also noted that Slovenia (in the company of other countries such as Croatia, Bosnia and Herzegovina, Bulgaria the Czech Republic, Russia, etc.) has not yet adopted appropriate legislation in this area. The Ombudsman did not receive any concrete initiative in this regard, but on the basis of Article 9 of the ZVarCP we decided to consider the intertwining of the Holocaust and the aspect of restitution at least as a broader issue and to contact the Ministry of Justice. This highlighted that the territory was occupied here during the Second World War and no special collaboration in connection with the Holocaust was carried out, which would be comparable to the collaboration in some other former entities (e.g. Independent State of Croatia, Slovak Republic, Vichy France, etc.), and is of the opinion that the 1991 ZDen comprehensively, systematically and non-discriminatory regulates the issue of restitution of nationalized property after the war (natural persons could apply until the end of 1993, legal entities until 13 May 1995). Otherwise, talks have been held for years with the World Jewish Restitution Organization (WJRO), as the representative of the Jewish Community of Slovenia (JSS), whereby the Ministry is of the opinion that there is no systemic problem regarding the return of Jewish property - both the property of owners of Jewish nationalities or religions and the property of Jewish religious communities could be claimed back under non-discriminatory conditions within the deadlines prescribed by ZDen, which has been implemented in practice; it was also possible before that, in the period immediately after the Second World War, to demand the return of confiscated property of members of the Jewish nationality or religion under the legislation of 1945 and 1946, which was also carried out in practice. According to the Ministry of Justice, the only category of property not covered by ZDen is Jewish property without heirs. Regarding its identification, a special study began in 2018, but has not yet been completed. In principle, the Ministry still allows the possibility of at least symbolic satisfaction (i.e., *goodwill gestures*) by the Republic of Slovenia.

In the absence of concrete initiatives, the content of which would otherwise dictate, the Ombudsman considers the described response of the Ministry of Justice regarding the issues of restitution of Jewish property at this point to be sufficient.

2.12 FREEDOM OF EXPRESSION

The situation regarding freedom of expression remains strongly connected with current social events, both in terms of number and content. We are still expected to publicly respond, whether directly or indirectly, to various publicly expressed opinions, particularly of politically exposed persons. Due to the importance of freedom of expression alone, the Ombudsman does not take a stand lightly in such matters. The Ombudsman's main guideline in assessing whether to react publicly in such cases is, generally, the constitutional prohibition (Article 63 of the Constitution) of any incitement to national, racial, religious, or other inequality and inflaming of national, racial, religious, or other hatred and intolerance, as well as any incitement to violence and war. Many expectations regarding our public response therefore often remain unfulfilled, but the **Ombudsman's assessment that their public opinion is not (yet) necessary for an expressed opinion is never motivated by a desire to contribute to the legitimacy of any form of inequality, hatred, or intolerance. It, of and in itself, is not a sufficient indicator of general (dis-)approval – it is always necessary to take into account other circumstances**, e.g., whether further public commentary would help spread such a statement, which the author probably wanted the most, and often issued provocations with this goal in mind; or that even a well-reasoned critique of such a statement will not really convert anyone, because the issue is distinctly polarizing and mostly emotionally charged, etc. The case from 2020, which raised quite a bit of dust on the political and media scene, but the Ombudsman did not respond to in particular was the Twitter post of one of the state secretaries (the day before International Day for Tolerance) that *all the diversity we need in Europe* (judging by the images in all four accompanying photos) were white women. As the Ombudsman has repeatedly emphasized, what is in principle **the most important is that the response is immediate and, if possible, takes place where the unacceptable statements occur (i.e., if it manifests within political circles, the politicians should respond; if it appears on forums, the participants should respond, etc.)**. However, on the following day, i.e., on the International Day for Tolerance, the Ombudsman issued a press statement recalling the Declaration on Principles on Tolerance, stressing that tolerance is the fundamental precondition for a peaceful coexistence. He expressed his belief that an adequate level of respect for and promotion of human rights could not be achieved without the decision to practice tolerance.

Of course, there are also situations when one simply has to respond to some unacceptable actual manifestation of someone's thoughts. Although the Ombudsman has powers and authority under the ZVarCP only in relation to public authorities, but not to subjects of private law and not to political parties, he has repeatedly condemned the obvious expressions of constitutionally prohibited (Article 63) incitement to inequality and intolerance, and violence and war, even if they could not be attributed to a state body, a local self-

government body or a holder of public authority. This included cases such as the one with a Slovenian journalist's statements on Twitter that he would *"allow refugees to approach the Slovenian border only from 500 meters away, otherwise he would shoot them"*, or graffiti with unequivocal expressions of hostility against Christians (*"Christians – we slaughtered you in 1945 – we will slaughter you in 2013"*). We have already reported also that one of the initiators acquainted us with the hostile content that was published on the forum of one of the online media, where an anonymous user perversely suggested that *due to the constant increase in the number of foreigners who do not know Slovenian, the sixth block of Thermal power plant Šoštanj should be transformed into a crematorium, "before we become Velebania"*. On the basis of this specific case, the Ombudsman reiterated that the **legal order of the Republic of Slovenia does not have effective protection in connection with the ban from Article 63 of the URS concerning media, and is far from providing protection on social networks or forums that are not editorially designed**. It is interesting to note that the fact that such statements cannot enjoy the protection of freedom of expression was also confirmed in the judgment of the European Court of Human Rights in the case of *Beizaras and Levickas v. Lithuania*¹, where (one of the) online commentators stated that they would (in this case to two homosexuals) *"pay for a free honeymoon trip to the crematorium"*. The previous paragraph with the mention of the tweet of the Secretary of State, however, cannot be equated with the records mentioned in this paragraph. However, less than a month later, the Ombudsman issued a new public statement that *in the recent period, a growing number of opinions of more or less prominent individuals inciting to 'the cleansing of society or nation' could be seen in some of the media*, and issued a reminder that freedom of expression has limits where it excessively encroaches on the rights of others, such as the right to life; that individuals must be held accountable for their words, and that editors must refuse giving space to such content.

We have already mentioned politicians and the media. In connection with them, let us at least briefly recall that **e.g. the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has already emphasized the need to raise the standards of journalism and ensure the accountability of all media professionals²; he has also already pointed out that the authorities have a special responsibility to condemn the phenomenon of hate speech³, but also pointed out that hate speech by the authorities themselves undermines not only the right of those affected to non-discrimination, but also the trust in the institutions, and thereby also the democratic participation⁴.**

1 Complaint no. 41288/15, the judgment was issued on 14 January 2020 and became final on 14 May 2020.

2 See point 74 of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/67/357), of 9 September 2012.

3 See point 64 of the aforementioned source.

4 See point 67 of the aforementioned source.

In any case, the Ombudsman is still often (and it seems increasingly) expected, directly or indirectly, by various sides to publicly respond to various publicly expressed thoughts, especially of politically exposed persons. It is often claimed, both by individuals and the media, that the Ombudsman is biased in this direction. The Ombudsman's actual practice to date clearly testifies to the unfoundedness of such allegations, and it also shows that the authors disclose these erroneous claims either in ignorance or intentionally, because this is in line with their agenda at the time. Without going into details on which of the two options was involved in specific cases, we illustrate by way of example that in 2020, the Ombudsman was wrongfully accused *of not being concerned about the tweet of the then Secretary of State, who last Christmas addressed Christians as dirty animals; that the Ombudsman apparently does not distinguish between hate speech and incitement to violence* (saying that he did not respond to the cries of "*Kill Janša*"⁵ during the so-called *Rally against the Coalition of Hate* on 28 February 2020, after a coalition agreement was signed in the previous week); that the Ombudsman, *of course*, did not respond to the inscription "*Christians, we slaughtered you in 1945, we will slaughter you today*", etc. The reader is invited to compare the above statements with the undeniable facts listed below.

The Ombudsman definitely and unequivocally condemned the calls such as "*Kill Janša*", "*death to Janšatism*" and "*death to Janša*" on March 2, 2020 in the TV show *Odmevi*, when he was a guest in the national television studio, and did the same on 28 February 2020 (after the so-called *Rally against the Coalition of Hate*) in a statement for Nova24 TV – both times, the Ombudsman said that calls for lynching or killing are unacceptable for a democratic society and humanity and that we should never agree to such a discourse or to get used to it (he also expressed his concern over the impatient rhetoric when he spoke for *Radio Ognjišče*.). Calls for the death of the Prime Minister or anyone else were also condemned by the Ombudsman in a statement to the media and in posts on social networks (including Twitter) on 3 June 2020, and he reiterated his position on 4 July 2020, when he responded on the social network Twitter to the announcement of the Prime Minister, Mr. Janša, when he asked him "*Will @VaruhCPRS respond to the months-long organized call to kill those who think differently? Or is the right to life no longer a human right?*" In a video post, the Ombudsman reiterated that death threats to an individual or a group are not permissible.

Furthermore, the current Ombudsman was not in office at all in 2013, when the aforementioned unacceptable graffiti against Christians appeared – he took office at the beginning of 2019 – but the previous Ombudsman addressed this issue directly and reported on it several times. Furthermore, the current Ombudsman has repeatedly condemned manifestations of religious intolerance through various communication channels (media, the Ombudsman's website and social networks, etc.). The Ombudsman has, for example, condemned the

5 Surname of the Slovenian Prime Minister at the time.

vandalism of some sacral buildings and pointed out that these events not only caused material damage, but also spread hatred and caused unrest among the people. As the topic also had great polemical potential, the Ombudsman, as many times before, condemned any hostile writing or response.

On last year's post of the now former State Secretary at the Ministry of Education, Science and Sport on his Twitter (*Merry Christmas, you dirty animals*), the Ombudsman expressed concern over the impatient rhetoric of public figures and condemned this, among other things, for the main News show on Planet TV. At the time, he also emphasized that holders of public office must be an example, as their behaviour gives legitimacy to certain forms of expression and behaviour. He urged them to refrain from discriminatory or hostile statements and written or spoken words that humiliate, intimidate or otherwise harm anyone, which we also wrote in the posts on the social network Twitter. The Ombudsman also reported on this 'Christmas greeting' in the previous annual report.

Be that as it may, last year we had to report that the National Assembly had still not adopted a parliamentary code of ethics and formed a tribunal that would respond to individual cases of hate speech in politics that would deserve public condemnation. This is no longer the case – **on 12 June 2020, the Collegium of the President of the National Assembly with a two-thirds majority adopted the Code of Ethics for Members of the National Assembly of the Republic of Slovenia**, which sets out *the principles for members to follow while performing their duties*. It is an encouraging move that is commendable – but even more crucial, of course, will be how this self-regulatory mechanism works in practice. As we do not want to be pessimistic, let us take this opportunity to recall that the Ombudsman has already warned that this must not in fact be just a convenient tool to stifle criticism of prevailing views, stamp out unpleasant different opinions or otherwise suppress the political opposition.

As can be seen from the text, in accordance with Article 10 of the Code, *unethical conduct or violations of the Code* are to be considered by the Collegium of the President of the National Assembly (in a session, closed to the public), whereby the proposal for the assessment of the violation of the Code is submitted to the Collegium for consideration by the President of the National Assembly or the Vice-President of the National Assembly (the proposal and materials for decision-making are internal and not available to the public). If the Collegium finds that the code has been violated, it may, as a sanction, issue a reprimand to the Member of Parliament without public announcement (if there was a minor violation), a reprimand to the Member of Parliament via publication on the National Assembly website (if there was a serious violation), or by publishing it on the website of the National Assembly and announcing the violation at the next session of the National Assembly (if the member has repeated a serious violation). The Collegium finds violations and imposes sanctions if the ruling is supported by the leaders of parliamentary groups whose members represent two thirds of all members in the National Assembly. The latter provision can be seen on the one hand as a safeguard,

which is supposed to reduce the possibility that the coalition (which will probably not have the prescribed two thirds) would abuse the opposition – but on the other hand, it poses the question of whether the opposition will actually ever be able to hold a realistic hope of sanctioning a violator from the coalition. Furthermore, it would be possible to count on, for example, the fact that for at least some members, sanctioning could actually be welcome, since they might count on additional promotion on the websites of the National Assembly. In any case, **the Ombudsman considers in principle that the essence of such autonomous regulation is that the addressees themselves take it as their own – and that in any case, this Code will be at least a kind of an indicator of political culture level – if the latter is relatively high, then it will be effective. Otherwise, it will die out relatively quickly or degenerate into something other than the declared purpose.**

Regarding the deputies of the National Assembly, it is interesting to note that in 2020, the Ombudsman also received an e-mail in which the sender wrote to us *“about the very controversial cover of the newspaper Demokracija, on which the heads of some opposition members were photoshopped on hyena carcasses”*, along with the title *Marching hyenas*; on top of that, they pointed out that Adolf Hitler also used this syntagm in his book *Mein Kampf* and were of the opinion that *“it is discrimination on the basis of political orientation and the worst form of dehumanization”*. The Ombudsman, of course, has no power or authority over the publisher of the said medium or towards the author of the publication or the editor-in-chief, nor was it a specific term such as the ones mentioned above regarding shooting, slaughter, etc. Of course, even in such cases, (among other things) Article 134 of the Obligations Code applies, according to which *all persons shall have the right to request the court or any other relevant authority to order that action that infringes the inviolability of the human person, personal and family life or any other personal right be ceased, that such action be prevented or that the consequences of such action be eliminated* – but we do not know whether any of those affected actually used at least this legal protection. Due to similar circumstances, it is appropriate to remind of the publication in the weekly magazine *Mladina* entitled *Not every Dr G is De Goebbels* (along with a photo of the family of one of the members of the National Assembly, and next to it a photo of the German Nazi politician and Nazi propaganda minister Joseph Goebbels with his family) and the related multi-year judicial proceedings.

2.13 ASSEMBLY, ASSOCIATION, AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS

We have not discussed any substantiated claims regarding the right to vote, although this does not mean that we have not been attentive to general happenings connected to it; on the contrary, we have recorded everything from the publicly expressed views of individuals, such as that stating that the non-recognition of votes from underage citizens prevents the appropriate consideration of their interests, which could be amended through the parental right to vote, to more formal activities, such as those connected to the later adopted amendment to the ZVDZ-D or amendment proposal of the ZLV-K (in this regard, e.g., the Advocate of the principle of equality addressed several recommendations to the MJU, including that “the change of the ZLV-K enables the realisation of the right to vote at local elections for people who have been deprived of legal capacity or have the parental rights extended”, referring, among others, also to the positions of the Committee on the Rights of Persons with Disabilities according to the MKPI that this Convention prohibits deprivation of the right to vote or that its Article 29 upon the systematic definition does not allow for any reasonable limitation or exception from equally enjoying the right to vote for any group of people with disabilities and that thus the deprivation of the right to vote based on the detected or actual intellectual or psychosocial disability, including a restriction based on the individualised assessment, means discrimination based on the disability under Article 2 of the Convention).

One of the shifts in this area was the adoption of the amendment of the ZVDZ-D, which changed the postal voting options for those who are placed in detention, in a hospital, or in a social welfare institution prior to the day of voting in an election according to the ZVDZ. For a number of years, the Ombudsman recommended (to the MJU as well as members of the National Assembly) the amendment of legislation, in which for the purpose of voting by post the circumstances from the previous sentence would have to be communicated to the county electoral commission ten days prior to voting at the latest. Through the years, the Ombudsman drew attention to several actual cases when individuals in the described situations were not even able to vote by post due to the mentioned time limit.

Towards the end of 2020, an amendment proposal was resubmitted which also included the amendment of the relevant Article 81 of the current law. In this part, the proposer explicitly referred to the warning of the Ombudsman, which was very encouraging to see. The stated amendment was finally adopt-

ed which is in an area as demanding as the electoral legislation a success in itself. The time frame in which it is possible to inform the county electoral commission on time was extended (from the previous 10 days prior to the election to the current five days prior to the day of the vote), which can be estimated to be a shift at least slightly for the better; however, we believe that it still does not present the optimal response to the essence of the problem. The latter remains in the fact that **even if someone has not been deprived of the right to vote, they are still actually not able to vote (e.g. if they are unexpectedly admitted to a hospital for treatment three days prior to the election due to an accident, detained four days prior to the election, etc.), while the reason for the violation of their active right to vote is purely systemic.** Thus, some people can be de facto deprived of their right to vote or the electoral legislation does not enable them to efficiently realise their right to vote. Therefore, the question of whether all interventions into a citizen's active right to vote intended with the valid legislation are constitutionally permissible, remains everything but indisputable at least in this context. Furthermore, according to the Ombudsman's estimate, the question of the necessity of such intervention into the right to vote is especially prominent.

In annual reports, the Ombudsman has been warning for the longest time about the issue in question, i.e. the question of ensuring efficient realisation of the right to vote in the circumstances described above. To sum up the essential points, we would like to underline that the Ombudsman stressed this issue to the MJU back at the beginning of 2016 and then received an explanation that the (then current) amendment to the ZVDZ as a solution to the issues highlighted presumes an addendum to Article 79a which would enable persons affected to be visited by the electoral committee from the so-called OMNIA voting station on the day of voting. Upon the adoption of this amendment proposal to the ZVDZ, the electoral committee would visit the voter in the premises where they would be residing if the voter informed the county electoral committee in the area of which they are listed on the electoral roll one day prior to voting at the latest. This amendment was not adopted at that time; however, the working draft of the amendment to the ZVDZ in May 2019 stated that the draftsman of the regulation once again addressed this question, this time with a different solution than in 2016: "Voters who had been detained or admitted to a hospital or into the institutional care of a social welfare institution unexpectedly or had received a disability decision after the deadline from the previous paragraph can vote by post if they communicate this to the county electoral committee, in the area of which they are listed on the electoral roll, five days prior to the day of voting at the latest and attach appropriate proof, certificate or decision." This too, was later not enacted into a law; nevertheless, as a consequence of this, a reasonably similar solution was finally adopted in the amendment from December 2020.

In 2020, the Ombudsman again turned to the MJU with the critical opinion that the solution of voting through the so-called flying committees seems much more appropriate (and which in our estimate would not significantly increase costs or impose an unreasonable burden on the authorities), and the

question of why is it no longer proposed as a solution that the affected voters would be visited by the electoral committee from the so-called OMNIA voting station. At that point, the Ministry informed the Ombudsman that in 2019, within an extended working group that dealt with the preparation of solution proposals for the implementation of the decision of the Constitutional Court of the Republic of Slovenia¹, it was determined that, considering the financial and human resources capacity as well as regular workload of electoral committees, the solution proposal from 2011 is not realistic or feasible and that in practice, other problems might occur due to which the so-called flying committees would be unable to carry out their work (efficiently). The Ministry added that implementation problems should not occur since that could cast doubt on the work credibility of electoral committees and thus about the election itself and that it also needs to be considered that if the solution from 2011 were adopted, the electoral system would have to be newly arranged with the so-called conditional voting paper, which has not been previously defined in the currently valid system. According to the MJU, after a thorough deliberation of a realistic framework and capabilities, the extended working group in 2019 estimated that the described issue should be approached through a solution that is proportionate and through which in such, more or less unpredictable, circumstances certain voters will be additionally enabled to vote, keeping in mind realistic capabilities.

The Ombudsman was not convinced by the arguments of the MJU, which were not substantiated by actual estimates of additional financial and human resources strains to electoral committees, nor did they explain which “possible other problems” could arise upon the implementation of so-called flying committees. The same is true today, i.e. after being informed about the explanation of the proposed amendment to the ZVDZ-D and its adoption.

1 Number U-I-32/15-56 from 8. 11. 2018.

2.14 RESTRICTION OF PERSONAL LIBERTY

In this chapter we address the initiatives related to the restriction of personal liberty. It includes the individuals who were deprived of liberty or whose freedom of movement was restricted. These include detainees, convicted persons serving sentences (home, alternative) in confinement, persons at the unit of forensic psychiatry, minors in juvenile prison, correctional and residential treatment institutions and special education institutions, certain people with mental disorders or diseases in social and health care institutions, and foreigners at the Aliens Centre or the Asylum Centre.

2.14.1 Detainees and convicted persons

The initiatives of detainees and convicted persons were continuously verified (in some cases with visits) with the competent authorities (e.g. courts), particularly with the Prison Administration of the Republic of Slovenia (URSIKS), prisons or the Ministry of Justice (MP). **We must commend on this cooperation as the authorities we contacted regularly responded to our requests.** We also participated in the training of the new generation of judicial police officers, to whom we presented the institution of the Ombudsman and implementation of the tasks and powers of the national preventive mechanism.

Our work in this field is still aimed at finding whether, if, and to what extent the state observes the rules and standards to which it is bound by the Constitution of the Republic of Slovenia (constitution) and international conventions to respect human rights upon depriving people of their liberty, particularly human personality and dignity. **When convicted persons are subject to penal sanctions, they must be guaranteed all fundamental human rights, except those explicitly taken away from them or restricted by law.** This is also pointed out by the European Court of Human Rights (ESČP) in its convictions of our state due to established violations of the rights of prisoners, and expressed in lawsuits by prisoners for compensation payment due to unsuitable conditions during the serving of a prison sentence or/and detention.

Initiatives of the detainees concerned long duration of detention or trial, the conditions in detention, activities during detention, treatment of requests, hygiene maintenance and other problems. Some initiatives of convicted persons also concerned the conditions in ZPKZ (e.g. concerning conditions in ZPKZ Maribor), and their other complaints concerned the provision of health care, judicial police officers' conduct, professional and disciplinary treatment, urine testing and therapies. Some initiatives of imprisoned persons (detained and convicted persons), as well as of their relatives, concerned the measures taken to prevent the spread of coronavirus in prisons. We address these problems separately, in Part 3 of the Annual Report, which refers entirely to the Ombudsman's activities in relation to the COVID-19 situation.

In 2020, there were less initiatives of imprisoned persons related to overcrowding, as measures taken to prevent the spread of the epidemic caused the number of convicted persons in institutions to fall (due to early releases and termination of serving a prison sentence). We infer that due to the limited operation of courts, the number of cancelled escorts was lower, too (although we handled such complaints again). The situation in the field of prisons remains almost the same as in 2019, when we emphasized the problem of overcrowding in (at least some) prisons, which is also due to a **substantial inflow of foreigners** (whose treatment results in additional problems), **the shortage of staff in all fields of work, particularly in the field of expert work with prisoners, and security issues** (we report on the progress in this field in the chapter on realisation of the Ombudsman's past recommendation). These problems are still expected to be solved with the construction of new prison facilities in Ljubljana or the renovation of Ig prison (which is urgent as complaints from female convicted persons and detainees concern poor conditions, such as inappropriate rooms for visits from their children, impossibility of their partners and children spending the night), although, as we continuously highlight, overcrowding cannot be eliminated with the construction of new prisons alone. We still agree with URSIKS that **other measures will be required for a long-term solution of overcrowding not only within the prison system but with all other stakeholders, including those in the field of criminal policy.** More frequent use of alternative sanctions can also contribute to reduction of number of prisoners and we assume there are additional reserves here. We again draw the attention to the position of other vulnerable groups in prisons. For some time now, the Ombudsman has been striving to improve the position of the imprisoned persons who, due to age, illness or disability require additional assistance to meet their basic needs in the form of care or social care during imprisonment in order to ensure respect of their personality and dignity. During imprisonment, it is necessary to ensure suitable accommodation and dignity while they serve their sentences; otherwise, this may be considered inhuman or degrading treatment and violation of Article 3 of Convention for the Protection of Human Rights and Fundamental Freedoms. **Unfortunately, in 2020 the preparation of the act that will comprehensively regulate the treatment of juvenile offenders** (for example shorten the duration of detention, introduce mandatory defence by an attorney from police detention onwards etc.), **was delayed again.**

2.14.2 Unit for Forensic Psychiatry

The implementation of measures of mandatory psychiatric treatment and protection in a health care institution, and the hospitalisation of detainees and convicted persons if they need psychiatric treatment, is still provided by **the Unit for Forensic Psychiatry of the Department of Psychiatry at Maribor University Medical Centre (the Unit)**. If necessary, observation to prepare an expert psychiatric opinion regarding sanity or ability to participate in proceedings is also carried out.

When considering initiatives in this field, the Ombudsman **frequently reveals problems with the implementation of security measures of mandatory psychiatric treatment in a health care institution and outside prison**. We have already warned of these in our previous Annual Reports. In cooperation with competent ministries he strives for their elimination as quickly as possible or for implementation of “comprehensive system of specialised care, which will enable a multi-disciplinary-designed specialised treatment, suitable for and targeted to persons’ needs, with the goal to achieve their more autonomous and independent life in the society”, as written in the renewed project task prepared by the MP in December 2015 titled Organisation of forensic psychiatry in Slovenia. It clearly warns that **forensic psychiatry in Slovenia needs to be modernised**. In our report for 2019 we have already reported that we contacted the Expanded Professional Board of Psychiatry of the MZ as the highest expert body in the field for information on whether and which activities are in progress or planned **to modernise forensic psychiatry in Slovenia (particularly for the implementation of security measures of mandatory psychiatric treatment and institutional care, and mandatory treatment outside prison)**, but we had not yet received a response (despite urgency).

Already in 2017, when dealing with the regulation of rights, duties, benefits, and complaint channels and the operation of the Unit in general, the Ombudsman warned UKC Maribor that they should ensure that **necessary acts are adopted**, regulating both, complex field of operation of the Unit and rights, duties and obligations of the patients placed in the Unit. We were informed that the Unit follows the same house rules as UKC Maribor, so we expressed our doubts that, considering forensic psychiatry is a highly specialised professional field of work connecting health care and judicial system, house rules for the Unit could be the same (with no regard to special rules in the Unit) as for other wards of UKC Maribor. As UKC Maribor agreed with the Ombudsman’s opinion that the Unit presents professionally specific field of work, and promised that they are going to review their internal acts once again, and, if necessary, adequately supplement or amend them according to positive law, **we addressed a new enquiry to UKC Maribor upon handling a concrete initiative in 2020, asking whether they have already regulated the rights, obligations and duties of the patients** placed in the Unit, the implementation of these rights and legal protection, and which internal acts regulate the addressed matters and operation of the Unit at present.

UKC Maribor notified us that the Unit now follows *House rules on the implementation of treatment, detention and prison sentence in the Unit for Forensic Psychiatry*, but otherwise the Unit treats persons in compliance with regulations according to the individual status of each patient (i.e. detainee, convicted person, patients with imposed measure of mandatory treatment and supervision in hospital), thus observing the provisions of the ZIKS-1, Criminal Procedure Act (the ZKP) or the ZDZdr.

2.14.3 Persons with restricted movement in psychiatric hospitals and social care institutions

As in previous years, the initiatives considered in 2020 also referred to **admission to treatment without consent to a ward under the special supervision of psychiatric hospitals or the admission and discharge of persons from the secure wards of social care institutions, and requests for relocation, the possibilities of going outdoors, exits and other.** Certain initiatives that were considered again referred to **living conditions (overcrowding), treatment, care and the attitude of medical and other staff to patients and people in care in these cases, and to the (still unsettled) payment of the costs of accommodation in the secure wards of social care institutions.** Several of the complaints related to this field referred to the measures for preventing the spread of virus during the COVID-19 epidemic, presented in the third part of this Annual Report, which relates to Ombudsman's work concerning the COVID-19 situation. These matters mainly referred to the ban of visits to psychiatric hospitals and social care institutions and prohibition of exit from the wards that were not secure wards. We are worried about warnings of problems which arise from implementation of national programme of mental health, including lack of political support and inter-ministerial cooperation at the implementation of inter-ministerial measures presented in Resolution on the National Mental Health Programme. Special importance should be given to protection of children's right to health and to accessible and interconnected services that enable holistic and early treatment of children and their families.

The proportion of justified initiatives remains high in the field of people in social care institutions. Most of these initiatives were again related to Mental Health Act (the ZDZdr) or unresolved systemic problems such as the accommodation of persons in the secure wards of social care institutions on the basis of court decisions and shortage of staff and problems with space that providers of social care services face. We were again notified about some instances of physical attacks of people in care (on other people in care or the employees), which is why one of the social care institutions again hired security service for night time. The social care institution pointed out that they urgently need help of the state to provide higher number of employees for all wards or smaller number of people in care. They would like to, at least temporarily, systematise the post of a guard, thus ensuring better safety of their employees. The social care institution again called on the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) **to take immediate action on the issue of overcrowding in social care institutions and to prepare adequate regulation of norms regarding staff, which will ensure safer work of employees and at the same time take into the account the needs of people in care.**

Unfortunately, we maintain that conditions in secure wards in all social care institutions (general and particularly special) still have not substantially changed, despite all warnings about urgency of taking action in this field and despite decisions of competent authorities concerning violations of hu-

man rights of the people in care. That is why we again warn of this matter and of the urgency to take measures in this field, as well as of an unacceptable fact that promises were not fulfilled, with appeals to competent authorities that action should be taken.

Problems in the field of restricted movement in psychiatric hospitals and social care institutions were resolved directly with representatives of competent ministries, managements of institutions and (inter-ministerial) working groups. As usual, initiators' claims were verified by making enquiries at the competent authorities, and the complainants were then informed about the Ombudsman's findings and explanations regarding procedures for admission to treatment and accommodation in social care institutions. We also answered their questions. We were available to initiators at a **dementia-friendly point** where information may be obtained by people with dementia, particularly those in the early stages of the disease, who are still independent and active, and their relatives and others who wish to obtain more information on how to help people with dementia.

The elderly is undoubtedly a particularly vulnerable group of people. Limited mobility, somatic and mental diseases and disorders, loosening and breaking of social ties and social isolation are elements that demand special care of this group. This is the reason why the Ombudsman has been paying attention to possible violation of these persons' rights; he regularly warns of the established weaknesses and shortcomings in his Annual Reports. In the past he also published a special bulletin on the rights of the elderly. In the context of the tasks he is carrying out as the Ombudsman and special tasks in the capacity of the NPM he visits the retirement homes and pays special attention to persons who were deprived of personal liberty due to problems with mental health (with particular emphasis on dementia, occasionally accompanied by other disorders). **In this field the Ombudsman puts special emphasis on cooperation with non-governmental organisations, especially with Spominčica – Alzheimer Slovenija**, organisation dedicated to raising people's awareness of dementia, helping people with these kinds of problems along with their family members, and preventing stigmatisation of these persons. Fruitful cooperation in the past, accomplished by cooperation between the Ombudsman's representatives at the annual conference on dementia, lecture of professionals working at Spominčica to the Ombudsman's employees regarding this problem of predominately elderly people, and opening the first dementia-friendly point in the scope of the Ombudsman's activities, was followed by the invitation to the Ombudsman to participate in preparation of an information leaflet titled **"Gospa Marija se izgubi ..."** (**"Mrs Marija gets lost ..."**), which was published in 2020. The leaflet is intended for general public, i.e. for employees who can come across a person with dementia, lost in time and space, who found him- or herself at the store, bank, post office, bureau, ... It is also intended for people who are often in distress when their relative with dementia wanders off without their knowledge and they do not know how to proceed. The information leaflet explaining how to step up to such person, how to communicate with him or her and above all, how to proceed and who to notify, will definitely be important for suitable treatment of persons with

such problems, with the aim to find these persons as quickly as possible and direct them or escort them to the environment where they feel safe.

2.14.4 Minors in residential treatment institutions and special education institutes

In Slovenia there are **9 institutions for children and adolescents with special needs** (residential treatment institutions, residential groups and youth homes) under the auspices of the Ministry of Education, Science and Sport (MIZŠ), which receive children and adolescents with emotional and behavioural disorders. The legal basis for placing children and adolescents in residential treatment institutions is a court decision pursuant to the act governing family relations or a court decision on imposing the correctional measure of committing to a residential treatment institution as per the act governing juvenile criminal offenders. Centre for training, work and care (CUDV) Črna na Koroškem, the institution under the auspices of MDDSZ, which provides treatment for persons with mental health disorders, is also responsible for the enforcement of correctional measure of committing to special education institutes.

In this sub-field, we also considered matters connected to the COVID-19 epidemics, which are covered in a special part of this Annual Report. We visited two residential treatment institutions as part of the implementation of powers and tasks of the NPM (more on this in a special report). **It is encouraging, however, that at the end of 2020 the Act on the Intervention for Children and Youth with Emotional and Behavioural Disorders in Education (ZOOMTVI) was passed.**

2.14.5 Foreigners and applicants for international protection

In this sub-field, we report the consideration of **initiatives by foreigners related to the restriction of movement or deprivation of liberty**. Other initiatives by foreigners are again included in the chapters Foreigners and Police Proceedings (where we, for example, consider a larger group of foreigners who illegally crossed the border), while visits to police stations (also regarding the treatment of foreigners) are subject to a report on the implementation of the tasks and powers of the NPM.

Individual problems in this field were again publicly exposed. There were **accusations regarding the work of police officers when dealing with foreigners apprehended for illegally crossing the state border and returning them to Croatia, and accusations regarding the accommodation and treatment of unaccompanied foreign minors, and the conditions at the Asylum Centre and the Aliens Centre**. The controversial practice in question is also addressed

in The Black Book of Pushbacks, published on 18 December 2021, the International Migrants Day.

We received information that several persons in the Aliens Centre claim that they do not have access to the asylum procedure or information about their legal status. The **question of effectiveness of access to refugee counsellors for applicants requesting international protection is in place**, as the counsellors represent the applicants only in the second instance or in case of administrative dispute, if the applicant for international protection announces filing a lawsuit against the order on detention. Namely, the Ombudsman met with accusations that refugee counsellors cannot effectively and successfully represent the detained applicants for international protection. In accordance with Article 84 of the ZMZ-1, the applicant has the right to file a lawsuit against the decision on detention before the Administrative Court within three days of the day on which decision imposing the restriction of movement was served. In conformity with Article 9(4) of Directive 2013/33/EU, the applicants are granted free legal assistance and representation provided by refugee counsellors.

We were notified that in 2020 the project where one of non-governmental organisations was committed to informing the applicants of their rights and also representing them in administrative procedures (filing applications, personal interviews, providing evidence) ended. The informing should now be carried out by the MNZ with the help of printed and video contents, but the practice is inconsistent. While the above-mentioned project was running, the non-governmental organisation was also a link between the applicants and their selected refugee counsellors – in case of applicant's detention it immediately forwarded documentation and authorisation to a refugee counsellor. Now the procedure seems to be different: the selected refugee counsellor is contacted by the MNZ, the counsellor has to obtain the applicant's authorisation from the Aliens Centre and only after the authorisation is sent to the MNZ, the counsellor gets the documentation of the case which is needed for the preparation of a lawsuit. Before the counsellor receives the needed documentation, a few days can pass and the counsellor is left with too little time to study the case thoroughly, the time limit for lodging the lawsuit being only three days. Filing lawsuits against detention orders is thus made difficult for the applicants, so it is feared that access to this appeal is no longer effective. This also means that non-governmental organisations, which could offer legal help to the applicants in asylum procedures, have a limited access to applicants, yet the access is one of the guarantees of respecting their rights.

In cases designated by the law, the state is obliged to provide all applicants for international protection with effective legal help and with effective access to refugee counsellors. Beside a short three-day limit for lodging the appeal in cases where one of the fundamental rights is being restricted, it is responsibility of the State to adopt all sensible amendments and measures to truly enable the access to the appeal, at the same time considering the fact that applicants come from areas with different language, culture, and legislation, have distinct distrust in authority and pronounced limitations in communication.

2.15 PENSION AND DISABILITY INSURANCE

2.15.1 Pension insurance

Initiators turned to the Ombudsman in connection with long-running decision-making of the Pension and Disability Institute of Slovenia (ZPIZ). As the reason for the delay, the ZPIZ stated numerous changes in software as a consequence of changes brought about by the Pension and Disability Insurance Act (ZPIZ-2G). In the past, the Ombudsman has adopted a position that the non-functioning or inadequacy of computer software cannot be a reason that could justify a delay in statutory and instructive deadlines and once again determined the violation of the principle of good administration.

The Ombudsman discussed the question of the right to a pension for policyholders of the Craftsmen and Entrepreneurs Fund (SOP) that has been unsolved for several years. The Ombudsman believes that the provisions of the second paragraph of Article 11 and the first paragraph of Article 12 of the Act Regulating the Settlement of the Liabilities of the Republic of Slovenia Arising from Pension and Disability Insurance (ZPFOPIZ-1) could present an interference with Articles 50 and 33 of the Constitution of the Republic of Slovenia, assuming that it was the decrease in the SOP's refund that significantly influenced the amount of pension of its policyholders in connection to the right to a pension. Thus, we called upon the MDDSZ, as a drafter of the legislation in the field of pension security to re-examine the disputed provisions of the ZPFOPIZ-1.

2.15.2 Disability insurance

The Ombudsman discussed the right to social security for economically incapable persons with mental health problems, which appears a seemingly neutral criterion, but puts primarily people with mental health problems in a less favourable position than other people with disabilities with comparable limitations based on the type of the impairment causing the disability, since they are acknowledged less or are not acknowledged certain rights from disability. In the Ombudsman's opinion, legal signs of indirect discrimination based on an invariable personal circumstance – mental health problem are given, according to Article 14 of the Constitution of the Republic of Slovenia, Article 5 of the Convention on the Rights of Persons with Disabilities, and Article 4 of the Protection Against Discrimination Act.

At the beginning of 2020, the Ombudsman was addressed by an initiator in connection to the right to **free public transport for persons with epilepsy and other medical diagnoses**, due to which these persons must not drive a car. The Ministry of Infrastructure (MI) declared itself noncompetent regarding the status of a disabled person. In its response, the MDDSZ stated that, in their opinion, individuals with epilepsy and who are not capable of operating a vehicle are not disabled persons. The Ombudsman adopted a position that people with epilepsy and other persons who cannot drive a car for medical reasons can be considered persons with disabilities who are guaranteed conventional and constitutional protection.

2.16 HEALTHCARE

The content of the problems with which the initiators addressed the Ombudsman can be summarized as dissatisfaction with health care, dissatisfaction with the attitude of health care workers, poor organization in health care institutions, long waiting times, lack of normative regulations in some fields, and the lengthiness and violations of procedures conducted by the HHS. **In justified cases we found especially violations of the right to health care, social security, principles of good administration, and unjustified delays in proceedings.**

2.16.1 Health insurance

The year 2020 was largely shaped by the COVID-19 epidemic, the consequences of which were also reflected in the field of health insurance. There is still no new Health Care and Health Insurance Act, the rights of insured persons continue to be regulated only by a Statutory Instrument, which is an inadmissible violation of Article 15 of the Constitution of the Republic of Slovenia, established by a decision of the Constitutional Court of the Republic of Slovenia. At a meeting with the Minister of Health held in January 2020, we were assured that the Health Care and Health Insurance Act would be ready for public hearing by the end of February 2020. This did not happen due to the COVID-19 epidemic, and also due to the change of government of the Republic of Slovenia.

Cooperation between the Health Insurance Institute of Slovenia (ZZZS) and the Ombudsman went well. The Ombudsman is still facing lengthy decision-making processes by the ZZZS regarding the rights of individuals, which is a matter of concern.

The HHS' decisions on the extensions of sick leave are often issued retrospectively. We have repeatedly pointed out this inadmissible practice to the ZZZS, both in direct contacts and in the annual report.

2.16.2 Healthcare

In 2020, several legislative proposals were presented in the field of healthcare, to which the Ombudsman also responded. The proposal of the Infectious Diseases Act (Proposal ZNB, EVA 2019-2711-0001), which was in public discussion and was examined by the Ombudsman at his own initiative, caused considerable turmoil. We also reviewed the Proposal of the Law on Long-Term Care and Compulsory Insurance for Long-Term Care. We submitted comments

and recommendations to the Ministry of Health (MZ) regarding both legislative proposals. We expect that the Ombudsman's comments and recommendations will be taken into account in the continuation of the process of adopting both legislative proposals.

The ombudsman monitors the »absence« of normative activity in the field of healthcare. In this regard, in the Annual Report in 2019, the Ombudsman again drew attention to the unregulated area of complementary, traditional, and alternative forms of diagnostics, treatment, and rehabilitation. Despite the Ombudsman's warning, the MZ has still not drafted a law. The MZ has been preparing a proposal for a new Act on complementary, traditional, and alternative forms of diagnostics, treatment, and rehabilitation since September 2015. The Ombudsman considers that the lack of a concrete timeline for the regulation of this field is unacceptable. At the meeting on 7 January 2020, the MZ did not give us clear answers as to when the Act will be prepared, since this issue is not one of the priority areas.

Despite the Ombudsman's calls for it, the year 2020 also did not bring any legislation in the field of psychotherapy. In 2020, the Ombudsman again put forward the need to regulate the field of psychotherapy to the MZ. We asked the MZ to let us know when they will (again) approach regulation of the field of psychotherapy. We did not receive a response from the MZ by the end of 2020.

For the second year in a row, the Ombudsman highlighted the issue of adrenaline autoinjectors in schools. In September 2020, the Ombudsman again called on the Ministry of Health to convene a meeting of all stakeholders as soon as possible, but the MZ did not respond to our call.

The Ombudsman also continued to address the issue of child development clinics, which we began to address in 2019. In 2020, we forwarded our findings to the Ministry of Health, the Ministry of Labour and Social Affairs, and the Ministry of Education, Science and Culture. The Ombudsman assesses that: (1) it is necessary to set up several teams of child development clinics according to the needs; (2) if it does not already exist, a coordinating body provided for by law must be established; (3) the coordinating body must prepare a proposal for the medium-term or a long-term plan for providing staff in accordance with the needs (enrolment in faculties, possible proposals regarding the content of education, etc.); (4) arrange the financing of specializations (clinical psychologists, speech therapists...) in the manner regulated for physicians (the ZZZS or the budget of the Republic of Slovenia); (5) regulate the appropriate remuneration of staff, and after the establishment of systemic solutions that will provide staff on the labour market, it is sensible to introduce and finance new teams.

The Ombudsman also addressed the issue of the GP shortage and the issue of rare diseases as a general issue. We also dealt with the inactivity of the MZ in the adoption of the Rules on the register and licences of nursing and midwifery providers (Rules). In the end, the MZ informed us that the Rules were in

the process of being signed by the MZ, which was followed by publication in the Official Gazette of the Republic of Slovenia.

In the Ombudsman's Annual Reports for 2018 and 2019, we wrote about the issue of prevention and control of hospital-acquired infections in retirement homes, which we discussed in depth in 2018. In 2020, we were unable to continue addressing the issue due to the COVID-19 epidemic.

The ombudsman received several petitions in which the petitioners encountered problems concerning the placement of relatives after completed hospital treatment. We found that there is a lack of capacity in Slovenia to accommodate individuals who have completed hospital treatment but are not able to live independently and need constant care from another person. Such individuals are often too demanding to be accommodated in a retirement home, as a retirement home does not have the health care capacity that such a person needs. Therefore, we proposed to the MZ to consider the establishment of »nursing hospitals«, where they could offer short- or long-term accommodation to individuals who would need this kind of help. The Ombudsman expects the MZ to plan and adopt measures that will represent a long-term solution to the described issues.

In Slovenia, homeopathy can only be performed by a doctor. However, a doctor who performs this activity is deprived of his license or is not issued a work permit. Slovenia is the only member of the European Union with such a regulation, and the MZ has been preparing a proposal for a new Act on Complementary, Traditional, and Alternative Forms of Diagnostics, Treatment, and Rehabilitation since September 2015. The MZ did not give clear answers to our inquiry as to when the Act will be prepared. They explain that legal bases are being prepared for priority fields, so they cannot predict when the Act can be expected to be prepared. The Ombudsman does not accept the response and conduct of the MZ. We believe that the MZ violates Article 74 of the Constitution of the Republic of Slovenia (entrepreneurship) and the principle of good governance by having failed to prepare an appropriate legal basis for several years.

2.17 SOCIAL MATTERS

In the field of social security, we perceived both systemic problems and individual problems that individuals had in exercising their rights. Among the systemic issues, it is worth mentioning the current legislation in the field of recognition of disability rights, in which persons with mental health problems are treated differently (worse) than other disabled persons with comparable restrictions. There is still no legally regulated field of long-term care. We commented on the proposed amendment to the Personal Assistance Act, which in our opinion does not pursue exclusively the interests of users of personal assistance. We also noticed a systemic issue regarding the inadequate recognition of the status of persons who cannot drive a car due to health restrictions, but are not provided with free public transport, which is a right that is otherwise granted to (some) people with disabilities. The duration of many decision-making processes on individual rights remains a major problem.

In 2020, in the field of social benefits, assistance and scholarships, **the initiators most often turned to us due to denied rights from public funds, lengthy decision-making procedures of social work centres on entitlement to rights from public funds and delays in deciding on appeals against decisions issued in these proceedings.** The Ombudsman has repeatedly criticized the delays of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) in deciding on appeals against decisions issued in matters of exercising rights from public funds. The MDDSZ managed to reduce the delays but did not completely eliminate them.

We also dealt with the length of decisions of the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia on the application for write-off of the Zois scholarships and the length of decisions of the MDDSZ on debt write-off from unjustifiably received state scholarships. From the data sent to us by the MDDSZ in November 2020, it was evident that in addition to a large number of unresolved applications for debt write-off from unjustifiably received state scholarships, there are also unresolved applications for debt write-off for other rights from public funds, since 2012. Given that 2,210 applications have been filed since 2012 and only a little more than a quarter have been resolved, we assessed the situation as worrying, regardless of the reasons. We called on the MDDSZ to eliminate the backlog and ensure that decisions on applications are made within a reasonable time.

We also noticed that in practice there are situations when an individual cannot sell or even divide his real estate worth up to € 50,000 for reasons that cannot be attributed to the individual. The reason may be only in the length of the court proceedings, which the individual cannot influence, the reasons may also be in the lack of interest of potential buyers for the real estate in question or elsewhere. In one of the real estate cases, even the bankruptcy trustee as an

expert could not cash in the bankruptcy proceedings, but the non-residential real estate worth more than € 50,000 was the reason why the initiator was not granted rights from public funds.

We drew the attention of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ) to the proposal, to find more appropriate solutions. Namely, we believe that an individual who does not actually have his own income and even if they have property that does not reach the value of € 50,000, with which he failed to provide means of subsistence in two years (The Social Protection Benefits Act (ZSVarPre) in the seventh and eighth paragraphs of Article 27 stipulates, *inter alia*, that financial social assistance may be granted to a person who owns real estate whose value does not exceed € 50,000 if the divestiture or division procedure of the real estate(s) is initiated for the purpose of obtaining a means of subsistence not exceeding 24 months) or who has property that exceeds the stated value, however, for objective reasons, this property does not enable him to support himself, should be entitled to social security provided by monetary social assistance and protection allowance. All the more so if such property has already been attempted to be monetarised by an expert for whom the state has regulated both his appointment and role. Otherwise, in the Ombudsman's opinion, the rights to personal dignity and security from Article 34 of the Constitution of the Republic of Slovenia and to social security from Article 50 of the Constitution of the Republic of Slovenia have been violated.

The MDDSZ did not accept the proposal. When we drew the ministry's attention to the problem again after the new Government of the Republic of Slovenia took office, we received an assurance that this would be taken into account in changes in legislation.

The Ombudsman also dealt with the case of the initiator, who was referred to the Centre for Social Work Kamnik (CSD Kamnik) where she was explained that her adult son cannot acquire the status of a disabled person under the Act on Social Care of Persons with Mental and Physical Impairments (ZDVDTP) as long as he has the status of a student. The Ombudsman did not find a provision in the ZDVDTP from which it would follow that the status of a disabled person under an aforementioned law could be granted to an adult only after the completion of schooling, so we turned to CSD Kamnik for clarifications on what legal basis they had replied to the initiator that they will be able to regulate the status of a disabled person for her son only when he no longer has the status of a student. CSD Kamnik did not directly take a stand on the Ombudsman's question. After several attempts to receive an answer and about half a year later, we received a reply from CSD Kamnik that the initiator's son and four other beneficiaries had been granted disability benefits from the time they came of age on (i.e., also retroactively).

Given that the initiator succeeded with our help, we concluded the consideration of the specific case. Pursuant to the second paragraph of Article 9 of the Ombudsman Act (ZVarCP) in connection with Articles 6 and 28 of the

ZVarCP, we asked other regional centres for social work to inform us how they applied the provisions of the ZDVDTP. On the basis of the replies received, the Ombudsman found that the practice of social work centres regarding the recognition of the status of a disabled person was different. **The Ombudsman considered as unacceptable and without a legal basis the practice of social work centres, where they categorically did not recognize the status of a disabled person to individuals who met the conditions for recognition of the status of a disabled person under the ZDVDTP after the age of 18 if they were educated.**

The Ombudsman also dealt with a number of initiatives relating to guardianships. The petitioners under guardianship complained about the work of the guardians or about the work of the centres for social work in the field of guardianship. Most often, we explained the ways of objection to them and acquainted them with the competencies of the MDDSZ and the social inspection. In some cases, we found a slow response from the Centre for Social Work to the information that a particular person would need to be placed under guardianship. We pointed out this issue in the annual report for 2019 (recommendation 112 (2019)). Of course, social work centres do not place persons under guardianship, but their task is to react quickly to such notifications or information and with their activity, they contribute to the appropriate protection of the rights and benefits of a person in need of such protection. In 2020, we also found different practices of social work centres in cases where a person whose parents had extended parental rights had their parents pass away. Appointing guardians for a special case to a person in need of comprehensive protection of rights and benefits is not an appropriate solution. Such proceedings are now also expressly prevented with the provision of the second paragraph of Article 267 of the Family Code.

In 2020, we also drew attention to various problems in the implementation of personal assistance, about which **in the beginning of 2021 we also gave our comments on the proposed amendment to the Personal Assistance Act (ZOA)**, which was submitted for public discussion at the end of 2020. Among other things, the proposed amendment narrowed down the conditions for acquiring the right and completely prevented any future, new appearance of new personal assistance providers, and prevented many existing ones from continuing to work, all without reasonable reasons. The amendment also did not take into account our comment regarding the reduction of hours of approved personal assistance in the event of the user's involvement in other services, as stipulated in the third paragraph of Article 9 of the ZOA.

The Ombudsman also received information that the MDDSZ was instructing the personal assistance providers to reduce the approved hours of personal assistance with the user by the number of hours of participation in a special education program. The legal basis for this reduction was the third paragraph of Article 9 of the ZOA. The MDDSZ announced that the Ombudsman's proposal on the proportional deduction of hours of user involvement in other services from hours of personal assistance services would be examined in the

preparation of amendments to the Personal Assistance Act, but this was not taken into account when preparing the amendment.

In addition to other issues, in 2020, we received several initiatives alleging that the MDDSZ does not conclude contracts for the provision of personal assistance under Article 13 of the Personal Assistance Act (ZOA). The Ministry of Health, the Ministry of Labour and Social Affairs (MDDSZ) explained that due to the measure of the Government of the Republic of Slovenia to suspend the implementation of the budget of the Republic of Slovenia, which was adopted at the session of the Government of the Republic of Slovenia on 11 April 2020 and restricts the conclusion of new contracts, which would create new financial obligations for the state budget. **The Ombudsman informed the MDDSZ of his position that in the implementation of personal assistance, additional costs for the system arise in the event of the appearance of a new user who is provided with assistance of a new personal assistant.** However, such a new user incurs an additional cost for the system in exactly the same amount if the personal assistant is provided by a personal assistance provider who already has a signed contract or who has yet to sign the contract, so referring to a government decision is unfounded. **The Ombudsman also asked the Ministry of Finance of the Republic of Slovenia for an opinion, which confirmed the Ombudsman's position. When the Ombudsman informed the MDDSZ about this, they responded by explaining that they had signed all the contracts.**

The increase in cases in the sub-field of institutional care can be attributed to the COVID-19 epidemic and the related, completely new issues. We write about it in a special chapter. Other issues in the field of institutional care most often referred to admission to institutional care, prices, and scope of services.

The Ombudsman addressed the issue of admission to a home for the elderly who have an inserted tracheal cannula. In this case, we obtained the position of the MDDSZ, which explained that they are aware of the challenges of providing adequate institutional care for persons who need a more complex set of nursing activities. We assume that, thanks to our intervention, a meeting was held between the Ministry of Health, SSZS, and MDDSZ, at which it was established that stakeholders support the introduction of additional types of nursing care, and there are differences in determining the amount of funding to be allocated to providers. As part of the preparation of the General Agreement, which provides for the financing of health services by the Health Insurance Institute, the SSZS prepared a proposal for an additional type of nursing care, which would include more demanding procedures and interventions in nursing care for residents who depend on the help of a graduate nurse in basic life activities, taking into account the actual costs of providers while taking into account the professional guidelines from the document Professional competencies and activities of providers in the activity of nursing. At the meeting, it was agreed that the Ministry of Health would decide in writing on the proposal of the SSZS. We have yet to receive a response from the Ministry of Health.

The Ombudsman took note of the difficulties in providing medical care in the DSOs due to the lack of doctors at the primary level. The Ombudsman was previously informed of this problem, which has now become systemic and means the inability to exercise the right to health care (Article 51 of the Constitution of the Republic of Slovenia). We called on the Ministry of Health and other stakeholders to take measures and orientations in the direction of mitigation, and in the long run also to solve the problems with the lack of selected personal physicians.

In the Ombudsman's Annual Reports for 2018 and 2019, we wrote about the issue of prevention and control of hospital-acquired infections in retirement homes, which we discussed in depth in 2018. We estimate that the Ombudsman's persistent intervention regarding the discussed issue has contributed to the progress in this area, also by including a special chapter in the proposal of the Infectious Diseases Act. We hope that the legal basis will contribute to a better management of this important public health issue. We see the role of health inspection primarily in the implementation of control over the prevention and control of infectious diseases. It is therefore questionable whether a health inspector (even if only on suspicion of infection) can have the option of ordering other measures from the bill (in addition to the ban on movement, ordering isolation).

In the annual report, the Ombudsman also presents the area of poverty, although we estimate that the issue of this area is a cross-section of all initiatives in the field of social, housing, employment, etc. The petitioners describe difficult living conditions associated with low incomes, long-term illness, disability and unemployment. They describe their distress due to the inability to repay debts and evictions.

We often find that the initiators, who are otherwise regularly employed, are below the poverty line for various reasons. The Ombudsman notes that the accompanying factors, such as shame, loss of dignity and the humiliation caused by the state of poverty, place a heavy burden on poverty and contribute to unenviable and difficult social situations.

The main theme of last year's World Poverty Day was "Working together to achieve social and environmental justice for all". It took place in the shadow of the COVID-19 pandemic, which seriously jeopardized global efforts to reduce severe poverty worldwide by 2020 and eradicate it by 2030¹.

In 2020, individual categories of victims of violence also turned to the Ombudsman, with women predominating, or rather, mothers and the elderly; the number of applications was slightly lower than in the previous year; in 2020, there were 12, and in the year before, 16. During the COVID-19 epidemic last

1 <https://www.stat.si/statweb/News/Index/9146> (online source, 19 February 2021).

year, as NGOs working with victims also publicly pointed out, the incidence of domestic violence escalated despite fewer reports of violent events, which is of particular concern from the point of view of the safety of the victim and her children.

The epidemic in 2020 caused people in this health and general social situation to find themselves in a situation where family members spent significantly more time together at home; there was more uncertainty about the future, a lack of sense of security and stability, and the job losses have also played an important role for many, but no circumstance is and should ever be an excuse for violent behaviour.

Inferring the dimension of the phenomenon of violence in society solely on the basis of reporting statistics is a one-sided indicator that speaks more about the level of awareness of people on how to seek help in cases of violence than about the actual trend of this phenomenon in society. Undoubtedly, victims with their children, in a situation of state closure, are much more vulnerable and for them, it is much more difficult to report violence.

The initiatives of people who turn to the Ombudsman show that they do not receive the same quality of services from institutions across the country, but they should. The elderly in particular who turn to the Ombudsman with their problem, often do not know which institution to report to in the event of domestic violence. This means that the information that is universally needed does not reach vulnerable social groups. The elderly are in a particularly difficult situation due to their life situation, because they have a narrowed social network, often have long-term illnesses or are physically handicapped, do not have the possibility of transport, are dependent on other people on a daily basis, usually family members, etc. Also, shame and fear are often present in this age category if the perpetrators of violence are their close relatives, often children. In such cases, where the initiatives were considered by the Ombudsman, it was usually a combination of psychological and economic violence.

Over a long period of time, the Ombudsman perceives that the information of particularly vulnerable groups of the population on the possibilities of assistance in cases of domestic violence is insufficient. Due to the lack of relevant information, victims remain in unhealthy relationships for much longer than they could, and above all, it is necessary to keep in mind the children living in toxic family environments, thereby adopting unhealthy family relationship behaviours.

Regardless of the nature of initiatives related to the treatment of domestic violence, the Ombudsman notes that in cases where violence has led to one or more domestic homicides, it often turns out that the perpetrator of the violence has already received measures prohibiting access to a particular place or person, often more than once. This raises the question of the effectiveness of such a measure in the long run, as it is crucial that the perpetrator of violence is immediately involved in social skills training, recognizing that violent

behaviour in society as a whole is unacceptable. The motive for participation in learning new skills and communication must be a critical insight into their own behaviour, which the perpetrator usually cannot do without appropriate help.

In 2020, the Ombudsman also dealt with cases of domestic violence, when a proposal was made for a child advocate. The Institute for Child Advocacy, which has a concrete legal basis in the Ombudsman Act since 2017, as well as in the Family Code and the Non-litigious Procedure Act, is intended to ensure that the child's voice is heard in all administrative and judicial proceedings in which the future of the child is decided. The purpose of the advocate is therefore to make the child's voice heard and, on the other hand, to empower the child, as parents often forget about the child in their conflicts, or the child is just a means of manipulation between them. Most cases where a child receives an advocate refer to divorce proceedings, in which there are more and more highly conflicting divorces, in which relationships are also permeated with violence by one partner against the other or against the child. Children repeatedly write in their statements that they want their parents to have a different attitude towards them, not to shout at them, beat them or punish them in any other way.

2.18 OTHER ADMINISTRATIVE MATTERS

This field of work refers to administrative matters which cannot be classified as any other special area of the Ombudsman's work, where it is also possible to deal with various special administrative procedures.

By the very nature of things, it is not surprising that the sub-field of taxes is always relevant. In 2020 the Ombudsman considered several initiatives of landlords who, upon failing to submit VAT returns, even where there were no business events, received a EUR 2,000 payment order from the tax authority (while considering one of the initiatives we obtained the information that in 2019 the Financial Administration of the Republic of Slovenia sanctioned 125 landlords in the sum of EUR 250,000.00 due to the failure to submit VAT returns within the prescribed time limits). Therefore, we were being asked **a question about the (dis)proportionality of the fine imposed due to non-delivery of VAT returns**. After a detailed examination of these matters, **the Ombudsman did not establish any disproportion in offence proceedings of the Financial Administration of the Republic of Slovenia in case of non-delivery of VAT returns for carrying out the service of renting out rooms**. As this information could help out people who have no knowledge of it, we present this issue in more detail.

We could receive all claims of such complainants – that they did not harm the state with their offence and that they were not acquainted with the liability of submitting (empty) forms, as well as about ignorance of the operation of eDavki system, problems with digital certificate or overlooking electronically served documents – with understanding, but this is not enough for the Ombudsman to establish a violation of any human right.

The offence referred to in Point 8 of the first paragraph of Article 141 of the ZDDV-1 is committed by taxable persons who do not submit or fail to submit VAT returns in a prescribed way or within the prescribed time limits or they fail to state the prescribed data in VAT returns (Articles 87, 88, and 88a). The first and second paragraphs of Article 88 of the ZDDV-1 state that taxable persons are obliged to submit VAT returns to the tax authority before the last working day of the month following the expiry of the tax period. **A VAT return must be submitted irrespective of whether they are liable to pay VAT for the tax period for which they submit the return**. Failing to submit VAT return within the prescribed time limits is stated as a **serious tax offence**, for which, in the time of committing the offence under question and under the then-valid Act, a fine from EUR 2,000 to EUR 125,000 was imposed.

The fundamental guideline in determining sanctions is the principle of proportionality, indirectly deriving from Article 26 of the ZP-1, which imposes

rules for determining sanctions: the authority shall determine the sanction according to the gravity of the offence and the perpetrator's fault. Thus, the ZP-1 foresees different effects according to the severity of offence (the possibility of imposing a certain type of sanction or different procedural actions). An authorised official of the tax authority establishes a decisive fact that for a certain period a taxable person failed to carry out the obligation of submitting VAT returns in the prescribed time period only by accessing the VAT application. Since the fact is established by one's own observation or perception, the conditions for issuing a payment order are met. Because this is the case of the so-called simplified, fast-track proceeding, the payment order cannot impose the caution, as in such case certain circumstances have to be determined and its imposition has to be well founded with the statement of the grounds (a caution may be imposed only by a decision – and a decision is issued in cases when the conditions for the issuance of a payment order are not met). For this reason, the ZP-1 introduced a warning, whose nature is similar to a caution – a preventive measure which can be imposed by an authorised official of the offence authority if the perpetrator would otherwise be sanctioned by a payment order. It is also essential to note that a warning is intended solely for the perpetrators committing a petty offence – but as already stated, the legislator identified non-delivery of VAT return as a serious offence.

The Financial Administration of the Republic of Slovenia carries out various “preventive” activities for achieving a higher level of voluntary payments of tax liabilities, meaning that as many taxable persons as possible, timely and in accordance with the legislation in force, voluntarily fulfil their tax liabilities. Liable persons are notified about their obligations, planned inspections, and the inspections' effects via public announcements and via individual requests (sent out after the expiry of the prescribed time limits for submitting calculations, returns), with sanctioning proceedings (offence proceedings) coming last, when other measures are not successful. This applies also to liabilities related to the service of renting out rooms or short-term renting of real estate. In the Ombudsman's opinion, this adequately pursues the purpose of the warning (if not even exhausts its contents), which is intended to affect the liable persons' awareness that they should (in the future) fulfil their prescribed liabilities in a timely and correct manner. In addition, it is worth noting the institute of self-declaration – taxable persons who violated the provisions set out in the ZDDV-1 may avoid the liability for offence if, on the basis of self-declaration, they subsequently submit a VAT return or adjust errors in the submitted VAT return on their own initiative (but no later than at the start of tax inspection, the service of the notice of assessment, the start of the offence proceedings, or the start of criminal proceedings).

Whereupon issuing a payment order the offender files a request for judicial protection, the court may (depending on the circumstances of the offence or other facts, relevant for the decision) impose a fine in the prescribed amount, or discover the existence of mitigating circumstances that substantiate the imposition of a more lenient sanction, or abolish the offence proceedings. Ar-

ticle 23 of the ZUstS states that if in the course of adjudication the court finds the competent Act or a part of such Act unconstitutional, it may also suspend the proceeding and file a request to initiate proceedings for assessment of its constitutionality. **The Constitutional Court of the Republic of Slovenia has repeatedly pointed out that, in the field of public finance, the legislator should be left a wide area for free assessment, not only in the area of the subject to taxation, but also in terms of measures that prompt liable persons to carry out tax compliance and to increase tax culture.** Under Article 146 of the URS, the state can only provide its tasks if the tax system is effective.

Neither the court nor the tax authority may act arbitrarily when determining the sanction for an offence, as they have to abide by the substantive guidelines of the regulation. In accordance with the first paragraph of Article 21 of the ZP-1, the court may impose a caution for an offence committed in such mitigating circumstances that they render it “particularly minor”. To impose a caution, the court must determine the existence of both objective (the level of threat to or violation of a protected good and circumstances in which the offence was committed) and subjective (for example, the level of the liability for the offence, the perpetrator’s motives and his or her previous conduct) mitigating circumstances. If the court determines only subjective mitigating circumstances, this shall not justify the imposition of a caution, but might be the reason for a more lenient sanction (according to the ZP-1, the imposition of a caution does not reduce the sentence!) or for the release from the sanction. As the case law¹ states, the imposition of a caution for offences where the level of threat to or violation of a protected good is higher shall be even more exceptional or limited to cases where particularly sound mitigating circumstances exist.

Considering the fact that the offence under question is included in Article 141 of the ZDDV-1, detailing serious tax offences, and from comparison between amounts of imposed sanctions for this offence with sanctions imposed for other offences set out in the ZDDV-1, it follows that the legislator has already assessed that late submission of VAT returns poses a high-level threat to society. Namely, it may not be true that due to the late submission of a VAT return to the tax authority, a harmful consequence has not occurred or is insignificant. Although the offence does not have a direct prohibited consequence, it does not mean that it cannot cause any harmful consequence. Harmful consequences cover all material and non-material damage and various inconveniences caused by the committed offence in the sphere of different persons or in different areas, and may have wider scope and effects than the direct prohibited consequence. Here we add that in case of non-submission of a VAT return, without performing the control, the tax authority cannot know what the amount of the return should be and expects a return, even if it does not show liabilities or the amount of liability is low. Thus, non-delivery of VAT return cannot be regarded as a petty offence under Article 6a of the ZP-1, where

¹ Judgement VS RS no. IV Ips 9/2011, IV Ips 61/2012 and other.

the absence or insignificance of harmful consequences² is a separate criterion that needs to be met together with (cumulative) committing the offence in circumstances that render it particularly minor. In case of unfavourable financial conditions, the perpetrator can ask for payment in instalments or suggest that the payment of the fine is substituted by community service.

We summarise that **the very non-delivery of VAT return is a serious tax offence**. Next, we should not ignore the well-founded fact that an individual economic operator bears the burden of monitoring and timely observance of the regulations affecting their business, or authorises the professionals (tax advisors, accounting services) to do that, and that all business entities have been obliged to operate with the tax authority via the eDavki portal for several years now, starting with a longer transitional period which allowed for timely adjustment to the liability of electronic submission of the returns. At the same time, the Financial Administration of the Republic of Slovenia is actively informing taxable persons about obligations and planned inspections in various ways. Considering another fact, namely that at the time of committing the offence, the tax authority was imposing fines in the minimum fine amount³ prescribed for the non-delivery of a VAT return, and that the actual circumstances of the case could be judged only by the court while considering the request for judicial protection (for which the complainants did not opt), the Ombudsman found no disproportion between the imposed sanction and the committed offence, and no evident abuse of power by the offence authority.

Of course, we dealt with other matters in the field of taxes too. Among them we would again like to draw extra attention to the matter which (again) confirmed that **all necessary attention shall be directed to the reference when settling the compensation for the use of building land. Only properly made payment of compensation for the use of building land (in the correct manner and with the correct reference) ensures the balance between the accounts of the Financial Administration of the Republic of Slovenia and the accounting situation in the records of a taxable person**. For example, the Ombudsman considered the matter of a complainant who problematised the event where compensation for the use of building land was paid under the wrong reference, the Financial Administration of the Republic of Slovenia consequently issued an order for tax enforcement, on the basis of which her employer deducted the amount from her salary. In this particular case, the problem was not on the authority's side. We should nevertheless add that in case the liable person overpays the tax or any other tribute, or uses an incorrect reference number, he or she can submit an application for refund or rebooking of overpaid or wrongly paid taxes with a special form.

2 Čas P., Jenull H., Orel N. (ed.): Zakon o prekrških s komentarjem, GV Založba, Ljubljana 2018, p. 61.

3 In accordance with Article 143, ZDDV-1, by means of a decision issued in a fast-track procedure, a fine may also be imposed in an amount exceeding the minimum fine amount laid down in this Act, which the provisions of the ZP-1 do not allow.

2.19 JUDICIAL SYSTEM

In the wider field of the judicial system, **we considered 270 cases in 2020 and 140 at the entry point** (377 cases in 2019); in the narrower field of judicial proceedings, we considered 226 cases (314 in 2019) and 107 within the entry point. Of these numbers, 37 were related to criminal proceedings (48 in 2019), within the entry point an additional 7, 149 with civil proceedings and relations (191 in the year before) and 91 at the entry point, 9 with proceedings before labour and social courts (16 in the year before) and 2 at the entry point, 26 with minor offence proceedings (50 in 2019), with 7 at the entry point, and 5 with administrative judicial proceedings (9 in 2019). In the sub-field of pre-trial proceedings – prosecutor’s office, 20 cases were considered (19 in 2019), 5 in the sub-field of attorneys and notaries (17 in 2019) and 19 other cases (27 in 2019). **The number of considered cases in the wider field of judicial system, together with the cases considered at the entry point (410), has thereby increased slightly.** We note, however, that this increase cannot be linked to an increase in the number of petitions relating to the length of judicial proceedings, but that most of the petitions relate to the quality of trials and other (judicial) decision-making issues. The initiatives once again focused on the right to judicial protection, equal protection of rights, the right to a legal remedy, legal guarantees in criminal proceedings and other rights, including the principle of sound administration. Some issues in this area were also related to the management of the COVID-19 epidemic.

On the basis of the cases considered by the Ombudsman, it can be concluded again that a trial within a reasonable time frame is no longer a systemic problem (this also follows from the European Commission's first report on the state of the rule of law in the European Union). With regard to the operation of courts, we believe that the warnings of the judiciary at the opening of the judicial year 2020 should not be ignored, namely that despite repeated warnings there are still no tangible measures aimed at improving working conditions, operations organization and financial situation of judges and some groups of employees. For several years, the issue of resources for providing adequate staff has not been resolved – especially the appropriate support of court staff and spatial conditions that are unworthy of professional business with clients. The proposals regarding a uniform first-instance judge and the career developments of senior judicial consultants have also not been implemented. In particular, the unfulfilled proposals regarding a uniform judge present exceptional problems in practice, which seriously affect the course of court proceedings and the organization of operations in court proceedings, and consequently the financial operations of courts. The main challenges for the judiciary in 2020 were the increased number of important, usually more demanding, new cases (e.g. transfer of competences in family matters from social work centres, administrative procedures) and preparation for the implementation of a large number of specific procedures (judicial protection of holders of qualified liabilities of banks).

The share of the validity of initiatives regarding judicial proceedings is otherwise very much related to our (limited) competences in relation to the judicial branch of government. As a rule, the Ombudsman may intervene in ongoing judicial proceedings only in the event of an unjustified delay in the proceedings or obvious abuse of power. The Ombudsman is not a body which, on the basis of its intervention to other state bodies, including the courts, would give guidelines or even instructions for deciding on matters within their competence. Exceptionally, the Ombudsman may intervene in the role of the so-called “friend of the court” (*amicus curiae*) under section 25 of the Human Rights Ombudsman Act. The Ombudsman is also not another body for determining the correctness and legality of court (and other state bodies’) decisions. In case of a disagreement, the party in the proceedings has available legal remedies (regular and extraordinary), with which it is possible to ensure that the correctness and legality of the decision of the lower instance court is assessed by the directly superior court. In relation to the judiciary, our actions can only be such that they do not jeopardize the independence of judges in the performance of their judicial functions. The Ombudsman’s intervention therefore does not extend to the field of court trials, but mainly to the judiciary or judicial administration. We therefore reiterate that the assessment of the work of the judiciary cannot be based solely on the number of such initiatives to the Ombudsman and/or on their merits.

In dealing with cases in this area, we continued to address (as a rule) court presidents and other competent persons (e.g. heads of prosecution offices) through our inquiries and other interventions. If necessary, we also turned to the Ministry of Justice for clarifications when it came to systemic issues or questions regarding the legal framework for the functioning of the judiciary, and to the Ministry of the Interior when it came to the procedures of the Police as an authority for minor offences, as well as individual Warden Services, if their procedures were involved. **We were satisfied with the responses of the authorities in considering the initiatives, as they regularly responded to our inquiries and other interventions.**

We also attended a meeting of the working group for the implementation of the provisions of the Act Amending the Criminal Procedure Act (ZKP-N), which relate to the rights of crime victims. At this meeting, as an example of good practice, experiences in working with victims of the Victim Support Service at the District Court in Ljubljana and the District Court in Maribor were presented. The preparation of a leaflet for crime victims by the working group is also commendable, as well as the preparation of an individual victim threat assessment form, which in practice represents an important working tool for the police and the public prosecutor’s office.

In 2020, we also participated in the process of preparing several amendments in the field of justice. **We participated with comments in the process of preparing the draft Act Amending the Criminal Procedure Act (ZKP-O).** This amendment to the Act also implements Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural guaran-

tees for children suspected or accused in criminal proceedings (Directive (EU) 2016/800), which sets out minimum procedural guarantees. According to the original plans, this directive should be transposed into the legal order of the Republic of Slovenia by an Act that will deal with juvenile offenders. **Therefore, we would like to issue another reminder that it is high time that the criminal law for minors, announced by Criminal Code (KZ-1) at the time of its entry into force, came into force; also, the deadline for transposing the directive into internal legal order expired on 11 June 2019.** In the proposed legal solutions aimed at regulating the procedural position of minors in accordance with the requirements of the Directive, we also referred to the comments made by the Peace Institute, which otherwise cooperates with the Ombudsman in carrying out the tasks and powers of the State Preventive Mechanism (DPM) based on the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – MOPPM.

We especially supported the changes and the amendments to the ZKP-O (Article 18), which **solve the problems of witness hearings of foreigners who have illegally crossed the state border**, so that the course of parallel minor offence proceedings (in which they are deprived of liberty) is also taken into account and that it is consequently ensured that these persons will actually be heard before the investigating judge as witnesses in pre-trial proceedings (Article 149 of the ZKP) – more on this in the chapter Police Proceedings. We are also pleased that, taking into account our comments, the Ministry of Justice, together with the Ministry of the Interior and the Police, **has formulated a final solution (Article 9 of the amendment) to reimburse travel expenses of persons summoned by the police in pre-trial proceedings.** We have explicitly pointed out this issue in the past. As part of the discussion of a concrete initiative (no. 16.1-62 / 2018), the Ombudsman received a reply from the Ministry of the Interior no. 092-1369/2018/8 (22-15) of 19 November 2018, that after examining the initiator's requests for reimbursement of travel expenses and additional verification, it was established that the police collected notifications from the initiator on the basis of provisions of Article 148 of the ZKP. The Ministry wrote that on the basis of the normative regulation of summons, only persons summoned on the basis of Articles 35 and 37 of the Police Duties and Powers Act (ZNPPol) are entitled to reimbursement of travel expenses. On this basis, the method of reimbursement of travel expenses is defined in more detail in the Rules on the reimbursement of travel costs to summoned persons (Rules), due to which the provisions of the ZNPPol in this part do not apply to persons summoned on the basis of ZKP. The Ministry of the Interior also explained that it is aware of the issue of reimbursement of costs to persons summoned by police officers on the basis of Article 148 of the ZKP, so it will continue to actively strive to regulate this area in the amendment to the ZKP. We considered it necessary to take into account that travel expenses may also be incurred by a suspect who has stated that he will not take counsel and on whose statement the police draws up an official note on the basis of the sixth paragraph of Article 148 of the ZKP. The evidential value of statements given

to the police, in these cases, cannot otherwise be a criterion for (non-)recognition of travel expenses. **Therefore, we were of the opinion that it would be necessary to include in the proposed amendment also travel expenses incurred due to obtaining a statement from the suspect, on which an official note is drawn up (sixth paragraph of Article 148 of the ZKP).**

Given the importance of a broad public debate on the proposed redefinition of the crime of rape and sexual violence in KZ-1, **in the process of preparing the Bill on Amendments to the Criminal Code (KZ-1)**, we also made comments and suggestions on the bill in the chapter on criminal offenses against sexual inviolability (to Articles 170 and 171 of KZ-1). The Ombudsman considers that criminal law is one of the pillars of statehood, so all interventions in the fundamental institutes of this law should be carefully considered, a wide public debate should be ensured and for key changes, the consent of the experts should be reached. This, of course, also applies to this amendment to the KZ-1. **In the Ombudsman's opinion, the envisaged changes and additions in the field of crimes against inviolability of sexual integrity represent an important step forward from the current incriminations and strengthen the position of victims of crime**, as the bill moves away from the model of force and threat, where the victim is “unable to defend oneself”, and towards the model of consent. The proposed veto sub-model or the “no means no» sub-model is also supplemented to cover circumstances and situations where the victim may not have been able to express a refusal, thus eliminating one of the expressed shortcomings of the veto sub-model which in its basic form does not take into account the fact that many victims for various reasons do not express or cannot express their disagreement with the sexual act. **However, we noted that the question remains whether the proposed legislation meets the requirements of the Council of Europe Convention on preventing and combating violence against women and domestic violence** (the Istanbul Convention), which explicitly requires consent for sexual conduct (“consent must be given”) and that at the same time, the initial assumption of the proposed sub-model that we humans are available for sexual interaction at all times and to everyone except or until we explicitly reject this possibility, remains problematic. In mediating with the Ministry of Justice, we highlighted the commitments under Article 36 of the Istanbul Convention, to which Slovenia is also a party.

The Ombudsman therefore suggested that the Ministry of Justice further examine whether the proposed legal solutions really complied with the requirements of the Istanbul Convention, which explicitly highlights the element of consent (or assent), or the absence of consent. We also point out that the European Court of Human Rights ruled in 2003 in *M. C. v. Bulgaria* (application no. 39272/98) that the absence of consent is the decisive factor in determining whether it is a crime of rape. Consent must be given voluntarily, as a result of free will, assessed in the context of the circumstances. Concepts based on consent thus take greater account of the human rights principle of the right to the protection of the body integrity. From the point of view of the requirements of the Istanbul Convention, we also proposed to examine the ad-

equacy of legal solutions so that in case of rape or sexual violence committed against a person with whom the perpetrator lives in a marital, extramarital, or registered same-sex community, prosecution begins on motion. According to the existing legislation, the conditions for prosecution are therefore different in these cases, and the perpetrators and victims who are in a partnership are treated differently in relation to rape and sexual violence. However, the Istanbul Convention stipulates that the states must ensure that the prosecution of such crimes does not depend entirely on the will of the victim and that the proceedings may continue even if the victim withdraws their statement. This amendment to the law has not yet been adopted by the end of 2020.

Information on progress in enforcing ECtHR judgments is also encouraging.

According to the Ministry of Justice, at the end of 2020, our country had 8 final judgments yet to be executed and belongs to the group of countries with the lowest number of unexecuted judgments. It is also right that the efficient and prompt enforcement of an ECtHR judgment remains one of the Ministry of Justice's priorities. However, in the proceedings against our country in 2020, the ECtHR also found violations of the Convention in two cases. In the Gros case, it found a violation of Article 6 of the ECtHR regarding access to court, as well as a violation of Article 6 of the ECtHR, namely a violation of the right to a fair trial, and a violation of Article 10 of the ECtHR in the Cimperšek case. In this regard, the decision of the Administrative Division of the Supreme Court, case ref. no. X Ips 22/2020 of 26 August 2020, must be noted, which established a clear rule that in administrative disputes it is necessary to decide at main hearings. In addition to legal issues, the factual situation will also be assessed, which will enable the parties to administrative disputes to receive a more effective judicial protection against the decisions of the executive branch.¹

Public prosecutors are entrusted with **important tasks in the prosecution of criminal offenses and other tasks determined by the law governing** criminal proceedings. The State Prosecutor may also file proposals and legal remedies in minor offence cases under the conditions determined by the Minor Offences Act (ZP-1). The state prosecutor also files procedural acts and performs other tasks in civil and other court proceedings and in administrative proceedings. A state prosecutor is independent in the performance of the state prosecution service and is bound by the constitution and by the law. In accordance with the Constitution, they are also bound by the general principles of international law and by ratified and published international treaties. Decisions of a state prosecutor in specific cases may not be interfered with, except by general instructions and case take-over in the manner determined by the State Prosecution Service Act (ZDT-1). In performing the state prosecution service, the public prosecutor must act impartially, protect constitutionality and legality, the principles of the rule of law, human rights and fundamental freedoms.

¹ News article, published on 1 September 2020 at: <http://www.sodisce.si/vsrs/objave/2020090210114618/>.

We also agree that appropriate tools are needed for successful and efficient performance of prosecutorial tasks, from stable legal solutions to appropriate human and material conditions, which was especially pointed out by the representative of the Supreme State Prosecutor's Office of Slovenia at the consideration of the 2019 report.

The State Prosecution Service, competencies and incompatibility of the function of a state prosecutor, regulation and competencies of state prosecutor offices, state prosecutorial and judicial administration, composition, competencies and operation of the State Prosecutorial Council, relations between state prosecutors and other issues important for the work of state prosecutors and state prosecutor offices are regulated by ZDT-1. This was amended in 2020 by the Act Amending the State Prosecution Service Act (ZDT-1D). **An additional amendment to the Act is already being prepared. We participated with comments in the process of preparation of the draft Act Amending the State Prosecution Service Act (ZDT-1E).** We welcomed the regulation of the status of police officers of the Special Department, including the envisaged solution that police officers will be transferred to the Special Department permanently. We believe that the proposed changes and amendments to the existing legislation in this part will contribute to the independence and impartiality of the detection and investigation of criminal offenses within the scope of work of the Special Department police officers.

In particular, we welcomed the **regulation of the procedure for handling complaints against Special Department police officers.** This need was explicitly pointed out by the Ombudsman in his 2016 report (p. 270–275). The correctness of the appeal decision depends primarily on the correctly and carefully conducted transitional procedure for resolving the appeal. According to the bill, it was intended that the appeal commission would make a decision on the merits of the appeal on the basis of established facts, circumstances, and evidence in the proceedings (the first paragraph of Article 202d of the bill). In this regard, we missed a more detailed regulation of the appeal procedure, as we believe that the reference to the reasonable application of the provisions of the law governing general administrative procedure (third paragraph of Article 202b of the bill) is not the best solution, also regarding the role of the complainant (as well as the police officer of the Special Department against whom the complaint is directed) in the procedure of resolving the complaint, including the possibility of his co-contribution in gathering evidence and establishing the decisive factual situation. The appeal procedure cannot be goal in and of itself, so we also missed the regulation of measures in the case of justified appeals. **According to the Ministry of Justice, these comments were also taken into account** by adding new third and fourth paragraphs in Article 202b of the ZDT-1 and a new fifth paragraph in Article 202d of the ZDT-1, which regulate the exposed contents. This amendment to the Act has not yet been adopted by the end of 2020.

In **the sub-field of attorneys,** we dealt with significantly fewer cases in 2020 (i.e. only 5 cases and one at the entry point) than in the previous year, when

we dealt with 17 cases in this field. **Complaints again prevailed among the cases, accusing attorneys of carelessly rendered service, or showing dissatisfaction with the attorney's work.** We therefore explained to the initiators the route of appeal due to violations in the practice of the legal profession and the possibility of claiming damages if the attorney's gross negligence, error or waiver of professional duty caused damage. Only in one of the considered cases did we turn to the Bar Association of Slovenia (OZS), to which we turn with inquiries and other mediation when necessary. The Ombudsman does not have direct powers to act in relation to individual attorneys, but he takes action especially when the circumstances of the case show that the OZS or its disciplinary bodies in the role of exercising public powers do not exercise these powers carefully enough. The basis for the intervention of the Ombudsman at the OZS or its disciplinary bodies is thus given especially in the case when the chamber does not respond to the individual's application or the procedure of processing the application with the Association's disciplinary bodies takes too long. As a new issue, we can highlight the issue of disposing of funds in the fiduciary account of an attorney in the event of their death, but we have not yet finished addressing this issue in 2020.

We have already reported that at the end of 2019, we **approached the OZS with a request to consider a proposal for the OZS to prepare a draft of the necessary changes or amendments to the current legislation** (including the necessary changes and amendments to tax legislation) to increase the availability of pro bono legal aid and send them for consideration to the Ministry of Justice and Ministry of Finance. At the end of January 2020, the OZS announced that the amendments to the current legislative regulation for the elimination of tax obstacles to pro bono legal aid were being examined by the working group on tax law at the OZS. The OZS assured us that they would inform us about the findings and normative solutions, but we had not received such a notification by the end of 2020. Although the necessary changes in this area have not yet taken place, it is encouraging that the OZS continues the »day of pro bono legal aid«, in which attorneys provide free legal advice to those who need it.

2.20 POLICE PROCEEDINGS, PRIVATE SECURITY SERVICE, DETECTIVES AND TRAFFIC WARDENS

2.20.1 Police proceedings

Leta In 2020, complainants who were dissatisfied with the (in)activity of police officers were generally still encouraged to **actively utilise the complaint channels pursuant to the Police Tasks and Powers Act (ZNPPol)**, with which they may submit their reservations and comments about specific police proceedings. We believe that considering the rule of subordination, it is appropriate that the affected person first contacts the appellate body within the system in which the claimed irregularity appeared. Only if this route of appeal failed to meet the expectations of the complainant or in other cases that required our intervention, did we take action in the case. This way of working is reflected in the proportion of justified complaints, whereby we point out again that the assessment of police officers' actions in terms of respect for human rights and freedoms cannot be based solely on the number of such complaints filed with the Ombudsman and/or their justification. We should bear in mind that the reason for (un)founded complaints is frequently the lack of cooperation by complainants.

As usual, we predominantly enquired about procedures relating to complaints about the work of police officers at the Ministry of the Interior (MNZ), and in certain cases, directly (during the visits) at police stations. **We must again commend the responses and cooperation of the MNZ and the Police in regard to our inquiries and mediation with critiques, opinions and suggestions.** We also worked together with a special department of the Specialised State Prosecutor's Office responsible for the handling of criminal offences committed by official persons.

Also in 2020, complaints in this **field referred to various aspects or areas of police officers' activities** such as: responses to reports (e.g. neighbour disputes, domestic violence), responses to applications, proceedings involving foreigners, actions of police officers regarding detention, confiscation of items, proceedings against protesters, etc. The complainants accused police officers of inappropriate or unequal treatment, failure to accept or address the reported criminal offences or unresponsiveness of the police, lengthy examination of criminal offences, excessive use of force, bias when addressing disputes between neighbours, inappropriate communication, and other. Also in this area, many activities of the Ombudsman were directed to issues connected with measures relating to the COVID-19 epidemic.

Also in this year, as part of the preparation for the development of guidelines and mandatory instructions for the planning of the police plan of work and the supervision of the Police, we met **with the Police and Security Directorate at the MNZ**. The Ombudsman expects that his observations and suggestions will again help with the planning of future supervisions and the development of the guidelines for police work, especially in the field of human rights protection. **We also met with the Minister of the Interior and his colleagues** and discussed further cooperation in the consideration of the complaints of individuals against police officers' proceedings. Deputy Ombudsman Ivan Šelih continued to work in the Expert Council on Police Law and Powers, a permanent, autonomous and consultative body of the Police and the Police and Security Directorate at the MNZ. The Council continues to connect the external and internal expert community when ensuring lawful and proportionate use of police powers, and contributes to improving the trust of the internal and external expert community in the professional integrity and operational autonomy of the work of the Police.

2.20.2 Private security service, detectives, and traffic wardens

In this field, we mostly explained to complainants the tasks and actions of security guards and the powers of wardens as well as potential complaint channels. If the complainants did not contact us further, we could not continue the procedure in their cases. The Ombudsman does not have any direct authority to take action in such cases. **When examining cases in this field, the issue of effectiveness of the existing complaint or monitoring mechanisms over the work of security guards and wardens** was questioned again. In 2020, we concluded considering two cases in which we detected a need for a more active role of the police in the comprehensive examination of reports on the use of measures by security guards as determined in paragraphs three and four of Article 57 of the Private Security Act (ZZasV-1). This provision authorises the police to act appropriately not only when establishing illegality or professional incompetence in the use of measures but also when they find that there is a possibility that security personnel used a measure in an illegal or professionally incompetent way. We believe that only consistent implementation of these provisions can result in the realisation of effective supervision of the legality and professionalism of the measures used by security guards, which was entrusted to the police by the legislator. The assessment provided by the police in such cases contributed to the situation in the field of work of security guards who encroach upon the right of individuals on a daily basis as they carry out their tasks. By examining these cases and some others we also established that the **police rarely talk to the "injured party" when assessing the use of measures by security guards**. This is why we already told the MNZ that in general, but especially in situations in which the state entrusts the security of premises, people and assets to a private security service (as was the case with

the Asylum Centre), it is important that in order to assess the professionalism and lawfulness of the use of measure implemented by a security guard based on Article 57 ZZasV-1, the police aims to acquire as much information as possible also from the person who was affected by said measure (and of course all other persons who have useful information on the measure used by the security guard). In such way, the view of the person affected by the used measure would also be acquired, which would contribute to the unbiased assessment of the police. To this end, we proposed that the MNZ discusses this proposition and informs us about the potential measures with which the police will additionally highlight the situations in which acquiring such information from the injured party, witnesses, and participants is at least recommended if not obligatory.

The MNZ informed us that **based on the Ombudsman's suggestions, the Guidelines for police work in the field of private security** were changed or amended as follows:

“As part of the assessment of each report on the application of the security guard's measure, the police station will assess compliance with the procedural and substantive provisions of the law. On each assessment, the police department management prepares a written »assessment of the security guard's action«, which is attached to the file (case). The assessment verifies compliance with the provisions of Articles 44 and 57 of ZZasV-1, whereby in sections I. and II. of the form an assessment is given on whether the measure or other means was used (un)professionally and (il)legally. The application of security measures must be comprehensively verified and all necessary attention must be paid to this area. This means that the facts must also be established by conducting interviews with persons against whom the security guard's measure has been used (in most cases these persons are at the scene), as well as with other persons who may have useful information on how the security guard's measures were used, and record the findings accordingly (police officer's report, on duty officer's report, official note). Monitoring the work of security guards must also be carried out in other procedures, when there is no obligation for private security entities to report in accordance with ZZasV-1, but the police are informed about them.”

Amending the aforementioned Guidelines which define in more detail some of the tasks the police carry out withing their assignments according to ZZasV-1 in this field, shows additional efforts of the police when monitoring the legality of the work of security guards who, when preforming their tasks, daily encroach upon the rights of individuals. This is why we commend these measures that were taken.

Some of the issues addressed in this area also pertained to the conduct of security guards, in particular the use of their measures to prevent the spread of COVID-19 disease.

2.21 ENVIRONMENT AND SPATIAL PLANNING

In 2020, the Ombudsman addressed initiatives from which it is apparent that local communities interpret and use the Decree on the method of using sound devices emitting noise at public events and public meetings very differently.

Noise strongly affects the quality of life of individuals. The Ombudsman is concerned that with constant delays in statutory timelines regarding revisions of individual operational noise protection programmes (OPH) the MOP unjustifiably allows excessive noise pollution for residents. The Ombudsman estimated that these cases include the violation of the right to a healthy living environment under Article 72 of the Constitution of the Republic of Slovenia. Hence, it recommended to the Ministry of the Environment and Spatial Planning that it should accelerate currently planned activities regarding the revision of the Operational Noise Protection Programme (OPH), simultaneously perform a thorough analysis of the causes for the backlogs to date, and adopt appropriate measures which will ensure the timely adoption of the OPH in the future.

The Ombudsman finds that based on the flood risk reduction plan the MOP wrote a report on the implementation of non-construction and construction flood protection measures. Based on this report, the Ombudsman positively accepts the progress in the field of watercourse management and maintenance.

The Ombudsman also **addressed a proposal to the MOP to study the appropriateness of the current arrangement which directly or indirectly regulates waste incineration and co-incineration activities in terms of transparency, clarity, and definiteness, and at its own discretion prepares appropriate amendments of relevant regulations that will strictly follow the principles of legal predictability and clarity of regulations as components of the principle of the rule of law from Article 2 of the Constitution of the Republic of Slovenia. It was also suggested that the MOP consider the adequacy of the current method of control over potential violators, both in terms of the adequacy of the monitoring systems and the adequacy of the inspection control system. The MOP accepted the Ombudsman's proposal, but has not implemented it yet.**

2.22 REGULATED ACTIVITIES

We again find that this includes matters relating to the circumstances of those who do not have access or their access to water, electricity, heating, the internet, or telecommunication has been made difficult, have trouble with traffic connections or cannot pay for services rendered and goods delivered or do not receive appropriate information from competent state bodies.



The field of accessing drinking water is of key importance. The Ombudsman again emphasises that the right to drinking water is essential in ensuring the most fundamental human rights, which will be substantiated in detail hereon.

In 2010, the General Assembly of the United Nations defined the right to water as a fundamental human right (Resolution 64/292). Slovenia joined their goals by entering the unalienable right to drinking water **into the Constitution.** Article 70a entered into the Constitution stipulates that everyone has the right to drinking water, that water sources are a public good managed by the state, and that they serve as a priority and sustainably for the supply of citizens with drinking water and water for supply to households and in this part are not tradeable goods. The Constitution now also reads that the supply of drinking water to citizens is ensured by the state through self-governing local communities directly and non-profitably. The first paragraph imposes on the state and indirectly also municipalities that every citizen of the Republic of Slovenia, in accordance with the infrastructure (access to network, public and village water supply, drinking water delivery, etc.), is guaranteed drinking water. In remote locations, isolated hamlets and farms in mountainous and hilly areas, the inhabitants assume the duty of municipalities and the state in ensuring the right to drinking water through self-sufficiency. The duty is not valid for real estate which does not meet the legal requirements for the acquisition of a water supply connection. The text of the second paragraph of the regulation excludes the proprietary concept of water sources: this protects all water sources from privatisation. The state solely manages water sources and, naturally, with this also assumes the duty of their protection. The supply of drinking water and water needed in households to the population is not a marketing activity and is exempt from market rules and the European Union internal market. This also means that the water supply is handled by the mandatory utility public service. **With the definition of the right to drinking water as a fundamental human right, we also assume the duty and clear commitment to preserve natural sources, including Slovenian waters and water sources, for our descendants.** For water sources to sustainably serve the supply of citizens, measures need to be adopted that will enable future generations access to high-quality drinking water; therefore, it is essential to prevent and reduce pollution, protect the environment, and act preventively.

Water is not only essential for the life and health of people but is a strategic resource of the 21st century. Thus, international law has developed the human right to drinking water which should guarantee every individual without discrimination appropriate access to a sufficient amount of safe and clean drinking water under economically acceptable conditions. Despite the fact that the Slovenian Constitution has safeguarded the right to drinking water and drinking water as an environmental good through some of the constitutional regulations, Slovenia, too, has seen an increasing number of public calls for Slovenian water sources and access to drinking water to be explicitly protected on the constitutional level, which have originated from the fear that the European Union wants to leave the management of water sources to foreign corporations¹. The essential conditions regarding the constitutional protection of drinking water are:

- **Availability:** Everybody has to have regular access to a sufficient amount of water for drinking, washing, cooking, personal hygiene, and cleaning the home, in accordance with the WHO guidelines.
- **Quality:** Water for personal and home use must be safe and acceptable. It must not contain microbes and parasites, or chemical or radioactive substances posing a risk for human health, and must be of appropriate colour, smell, and taste.
- **Physical accessibility:** Water must be physically accessible and at at least a safe distance, adapted to the needs of various groups, especially women and children.
- **Affordability:** Water must be affordable for everyone. Water costs for households must not present a disproportionate strain and above all, no individual may be prohibited access to safe drinking water for the reason of non-payment.

If a person does not have enough water at their disposal, their right to life is endangered. If the water is not of a suitable quality, the right to health is endangered and the appropriate living standard without physical and economic accessibility. At the same time, water is necessary for a dignified life. Thus, the right to drinking water should be understood as the hybrid of the above-mentioned right. Since the constitutional regulation is formulated as an (independent) human right the state is bound to guarantee appropriate access to sufficient safe and clean drinking water to everyone without discrimination under economically acceptable conditions². We are worried because the competent authorities, especially the MOP, have still not prepared proposals for the synchronisation of legislation with Article 70a of the Constitution, even

1 Glavaš, Analiza 70.a člena Ustave Republike Slovenije: Pravica do pitne vode, Pravna fakulteta v Ljubljani, 2019.

2 Ibid.

though the deadline for the synchronisation of legislation expired in May 2018. Potential ambiguities regarding the interpretation of the constitutional regulation cannot be an excuse for not preparing relevant regulations.

In regards to what is written above, the Ombudsman stresses that the role of environmental aspects has been seriously underestimated in the past. Environmental research was based on natural and healthcare sciences as well as engineering, which discusses questions such as the health risks of individual substances, functioning of environmental processes and ecosystems, influences of changes on them, and development of technologies for pollution monitoring. Environmental research in the social sciences so far has focused primarily on the economy, including the measuring of economic costs and benefits of pollution control as well as the relative effectiveness of regulatory powers and market-oriented instruments of environmental policy, and government decisions, and less on deciding about environmental decisions of individuals and households, such as saving energy, recycling, and environmental aspects of consumer behaviour. The most important question pertains to conditions strengthening the environment, increasing competitive advantages, and other social goals. Answers to these questions are essential for environmental decisions of both companies and governments.

Concerning other matters, we would like to emphasise that the Ministry of Infrastructure agreed with the Ombudsman regarding the noticed anomalies connected to consents for the disconnection of electricity metering points.

2.23 SOCIAL ACTIVITIES

In 2020, much like in years past, the field of education dominated the discussion on social matters. The Ombudsman's work in the field of education in 2020 revolved, for the most part, around measures taken in order to control the COVID-19 epidemic.

The right to education is the pivotal first step in establishing suitable opportunities for both the development of the child as well as society as a whole. A situation in society where only a select few had access to appropriate education would be undemocratic and would stifle the overall social climate. **Education also acts as the foundation for the development of tolerance and acceptance towards others.** Only when all children are met on an equal platform of accessible education, especially those coming from disenfranchised backgrounds, can a society hope to harvest its full potential. Social equality is unattainable without an equal footing in education accessibility.

If proper access to education cannot be secured, the child's **human dignity is impaired. Human dignity is the root from which all human rights and fundamental freedoms stem. It also defines the core of how humans interpret their own existence.** The safeguarding of human dignity, civil rights, human privacy and safety feature strongly among the law-granted human rights and civil liberties (e.g. Articles 34–38 of the Constitution, Article 17 of the International Covenant on Political and Civil Rights, Article 8 of the European Convention on Human Rights).

The legal order of the Republic of Slovenia discusses the right to education at multiple levels. Hierarchically, the topmost jurisdiction, the Constitution of the Republic of Slovenia, addresses education and schooling in Article 57, which states that education is free: primary education is compulsory and financed via public funds. It is up to the state to provide its citizens the opportunity to attain appropriate education. The Constitution of the Republic of Slovenia also treats the education of disabled people separately in the second paragraph of Article 52, where it states that children with physical deformities and mental disorders or others with severe types of disability have the right to education become active members of society. We should note that Article 14 of the Constitution of the Republic of Slovenia grants equal human rights and fundamental freedoms to all citizens, regardless of nationality, race, sex, native language, religion, political or any other kind of opinion, material wealth, birth, education, social status, disability or any (other) kind of personal circumstance.

A broader question we have addressed in the field of education, pertained to the use of a calculator in the written part of maths examination for candidates with special needs. It is the opinion of the Ombudsman that all candidates, including those with special needs, should merit the basic demands of the

curriculum, and that any available adjustments they have at their disposal should not act as a substitute for knowledge. That being said, we support and welcome the option for candidates with special needs be permitted certain adjustments that will help them achieve good results or pass the Matura examination. What is evident from a letter from the State Commission for General Matura (DK SM) and the National Subject Commissions for the General Matura is that candidates with special needs will be eligible to use certain adjustments or several of them, but it is not left to the Ombudsman to pass judgement regarding their suitability and expertise.

These are very real problems for which practical and child-friendly solutions need to be sought. The right to education is not absolute which makes certain limitations possible. The principle of respect for the child's best interest should, particularly under current circumstances, take pride of place. **The Convention on the Rights of the Child decrees that the child's best interest should be the guiding principle in all activities pertaining to children, regardless of whether the institutions are state-run or private institutions for social security, courts, the administrative authorities or the legislature.** The Ombudsman stresses that this should be borne in mind, especially in the current circumstances.

In 2020, we also discussed the question of potential unconstitutionality and predictability in the workings of establishments of higher education. **All legislation in the Republic of Slovenia needs to be in accordance with the Constitution (governed by Article 153 of the Constitution).** This makes any reference to the law, if in obvious contradiction with the Constitution, unfounded. It is difficult to explain the opinions of any official body in the Republic of Slovenia (all of which are required to act in accordance with the law) if there is an obvious unconstitutional breach of the human rights of the individual. This represents devastation and threatens the rule of law. **If a national authority finds itself in a situation where the law is not in accordance with the Constitution, certain mechanisms need to be triggered to achieve compliance with the law and ensure a constitutional interpretation of the law, if it is possible.** In the aforementioned case, the initiator was unable to enrol, given the circumstances that were beyond the scope of their jurisdiction, which is why it is logical, lawful and just, in our opinion, that the university enrolment procedure be enabled.

In 2020, the Ombudsman was also presented with a case in connection with the setting of tuition fees in establishments of higher education and advancement between academic years, where there was a 21 per cent increase in tuition fees. The Ombudsman observes **that it is reasonable to expect that students are informed of the amount** of their fixed tuition fees, while enrolling in their first year, and which, if diligent, would not change by a large amount. The Ombudsman stressed that predictability of state-run institutions is crucial to social security and one of the fundamental criteria that a county where there is rule of law should maintain. The Ombudsman turned to the Ministry of Education, Science and Sport with a recommendation concerning the respective regulations.

2.24 HOUSING MATTERS

Just like in previous years, this year again we do not report on significantly different issues and questions. **Problems are connected to the search for non-profit apartments and their maintenance, a duty municipalities frequently want to avoid. Problems also arise in communication with municipalities.**

It has been proven again and again that municipalities do not have a sufficient fund of non-profit apartments for rent in order to ensure appropriate housing for their citizens. Here, the Ombudsman again emphasises the issue of vulnerable groups, such as people with disabilities, the elderly, the young, families living in violence, the homeless, etc.

Initiators also turned to us because of inappropriate living conditions in market rent apartments and problems with neighbours and building managers. In such cases, in accordance with its competences, the Ombudsman can only refer them to other competent authorities.

Unfortunately, when dealing with initiatives the Ombudsman also encounters the inappropriate attitude of local communities or municipalities towards citizens and found the violation of the principle of good administration, since a municipality did not answer the initiator's letter. We informed the municipality about that and recommended that they should respond to the initiator's letter and those of other senders who write to the municipality under the conditions and within the deadline stipulated in the Decree on administrative operations. The municipality accepted our recommendation.

When studying initiatives, we found that statutory rights and obligations of non-profit apartment renters are not related to joint liability for debt.

On its own initiative, the Ombudsman got familiarised with the issue of rental relationships between non-governmental organisations and the state; more precisely with the example of non-governmental organisations which operate at the address Metelkova 6. The Ombudsman called upon the Ministry of Culture to start a constructive dialogue with the NGOs that operate at Metelkova 6, to which in October 2020 the Ministry sent a proposal for an amicable termination of the lease and an invitation to vacate the premises by January 2021. We suggested to the Ministry that they try to find solutions together with the NGOs and these solutions should enable the NGOs working in the field of human rights and freedoms uninterrupted operation. Furthermore, we asked the Ministry at hand to also devote the same care to other non-governmental organisations at the same address since they also significantly contribute to our common society.

By the end of 2020, we had not received a response from the Ministry of Culture; it came in January 2021. It can be derived from the response that this Ministry

called a meeting; however, the Ministry and NGOs cannot agree on how these meetings should be convened. The Ombudsman insists on its recommendation. Thus, the Ombudsman recommended that the Ministry of Culture and other ministries help the NGOs that operate at Metelkova 6 and other NGOs to realise their mission and eliminates the unnecessary, illegal, and arbitrary limitations to the space of civil society, especially those that pertain to the freedom of assembly, association, and expression.

In 2020, the Ministry of the Environment and Spatial Planning (MOP) prepared and submitted for discussion the draft of the **Act Amending the Housing Act (SZ-1E)**. The Ombudsman prepared comments and suggestions in response to the draft act and sent them to the MOP. After we had studied the draft act, we determined that it (partly) regulates certain fields to which the Ombudsman has already drawn attention in the past. Nevertheless, we believed that the solutions were not prepared comprehensively enough. Namely, despite several years of the Ombudsman's warnings, the MOP did not prepare a comprehensive renewal of the housing legislation, which postpones the regulation of a series of questions that significantly influence the life of citizens of the Republic of Slovenia into an indefinite future.

In connection to the draft act, the Ombudsman welcomed the fact that the set of tasks of the Housing Inspectorate is widened and defined in detail, since we have warned the MOP several times of the (too) small competences of this inspection service. Nevertheless, we expressed our concern since it can be discerned from the draft act that the means for additional employment of housing inspectors (and implementation of other changes predicted in the act amendment!) are not provided in the budget.

The MOP took a stand towards the comments and recommendations of the Ombudsman; it should be emphasised that the Ministry informed us that it realises that the suggested act amendment, if adopted, means only the first step towards the calming and regulating of the state in the field of housing. They wrote that the future will surely demand comprehensive reform of the housing field and the preparation of a new act. According to the MOP, the systematic renewal of the housing legislation will be approached after the completion of the implementation of necessary changes within the amendment of the existing Act; while within the amendment of the SZ-1E, it will consider that part of the Ombudsman's suggestions pertaining to the content of the open articles of the existing Act. At the time of writing this annual report, the act amendment has not yet been adopted.





3.

WORK CONTENT AND AN OVERVIEW OF MATTERS DISCUSSED CONNECTED TO THE COVID-19 EPIDEMIC

- A. Vulnerable groups discussed
- B. Subject areas discussed

3.1 STATISTICS OF DISCUSSED MATTERS CONNECTED TO THE COVID-19 EPIDEMIC

FIELD OF WORK	MATTERS DEALT WITH CONNECTED TO COVID-19			
	COVID-19 MATTERS	From this COVID-19 matters at the SEP	COVID-19 the SEP interviews	TOTAL COVID-19
1. Equality before the law and prohibition of discrimination	106	25	56	162
2. Protection of dignity, personal rights, safety and privacy	82	48	42	124
3. Freedom of conscience and religious communities	8	1	0	8
4. Freedom of expression	5	7	1	6
5. Assembly, association and participation in the management of public affairs	5	0	1	6
6. National and ethnic communities	6	2	2	8
7. Foreigners	9	2	1	10
8. Restriction of personal liberty	40	3	45	85
Pension and disability insurance	4	1	4	8
Health care and health insurance	66	72	85	151
9. Social security	72	38	62	134
10. Labour law matters	24	39	40	64
11. Unemployment	0	2	4	4
14 Other administrative matters	4	5	8	12
15 Judicial system	16	17	10	26
16 Police proceedings, private security service, detectives and traffic wardens	11	7	7	18
17 Environment and spatial planning	14	3	2	16
18 Regulated activities	2	1	4	6
19 Social activities	37	28	15	52
20 Housing matters	1	3	5	6
21 Protection of children's rights	37	19	29	66
22. Other	343	18	63	406
23 National preventive mechanism	7	1	0	7
24. Child advocacy	28	0	1	29
TOTAL	927	342	487	1414

3.2 ACTIVITY OF INTERNAL ORGANISATIONAL UNITS IN CONNECTION WITH THE COVID-19 EPIDEMIC

Similarly to the entire operation of the Ombudsman, the work of the Ombudsman's internal organisational units was adjusted to the epidemiological situation. The first session of the **Human Rights Council** was devoted to the discussion about the measures due to the epidemic (see Chapter 1.8 of this Annual Report).

The work of the **National Preventive Mechanism** was adjusted to the epidemiological situation both in the manner of work and, in certain part, also in the content of visits (see the Report on the implementation of tasks of the NPM in 2020).

Additional activities of the Center for Human Rights and Child Advocacy connected to the COVID-19 epidemic are presented hereon.

3.2.1 Review of the Center for Human Rights' work in connection to the COVID-19 epidemic

During the COVID-19 epidemic, the Center for Human Rights has been performing a series of activities in accordance with its competences that pertained to the COVID-19 epidemic. The most important ones are highlighted below.

Informing and promotion

Soon after the epidemic was declared on 20 March 2020, in the first (spring) wave, the Center for Human Rights cooperated in the establishment of the informative subpage of the Ombudsman, where the Ombudsman published various items of information warning about the importance of respecting human rights and fundamental freedoms as well as the rule of law in curbing the spread of the COVID-19 epidemic. Two topics are stressed hereon, i.e. the preparation of the Ombudsman's informative news about the adopted meas-

ures in the first wave of the COVID-19 epidemic and the **review of warnings and recommendations of international institutions and experts in the field of human rights.**

The Ombudsman's information about measures adopted in the first wave of the COVID-19 epidemic

The Center prepared and regularly updated the **Ombudsman's information about measures adopted in the first wave of the COVID-19 epidemic.** Frequently on a daily basis, we published current information about general (administrative) acts (mostly about by-laws such as orders, ordinances, decisions), adopted by various bodies (the Government, the Minister of Health, the Minister of Education, the Supreme Court President, the Bank of Slovenia) and with which measures for curbing and containing the COVID-19 epidemic were adopted in the Republic of Slovenia in the first wave of the epidemic (from 7 March 2020 to 30 May 2020), primarily those published in the Uradni list Republike Slovenije. In this time, a total of about 100 different orders, ordinances, decisions, or other by-laws of the Government and other authorities pertaining to the epidemic were adopted, and the Center regularly updated different measures in the form of a chart – summaries alone constituted for the corpus of 185 pages of text in the end. These acts were gradually arranged in different topical groups, with the following 15 different groups having been established by the end of the first wave of the epidemic:

- Temporary general prohibition of movement and assembly of people in public places and areas in the Republic of Slovenia;
- Healthcare activities and health insurance;
- Personal data exchange;
- Other (public) services, sale of goods, free economic initiative, temporary exemption from contributions and taxes;
- Protective and other medical equipment and medicine;
- Disinfection;
- Border crossings – temporary cessation of operations and conditions of entry;
- Healthcare workers and healthcare assistants;
- Public officials;
- Judicial system;
- Schools, including higher education;
- Sports activities and sports competitions;
- Inadmissibility of the referendum;

- Financial compensation for loss of income and assistance to citizens and the economy;
- Declaration and cancellation of the epidemic of the infectious disease COVID-19 in Slovenia.

The purpose was to provide transparency of adopted measures since, considering the state of the epidemic, they changed rapidly and were adjusted to the demands of experts for the curbing of the coronavirus disease. The majority of orders and ordinances was adopted, published, and enforced from one day to another, they changed rapidly, and got supplemented, and repealed.

In the second wave of the epidemic, such monitoring of adopted general acts or measures was suspended since we believed that the public was well acquainted with the adopted measures – namely, in content these were mostly not new, but presented a variant or adaptation of measures imposed in the first wave of the epidemic. However, this did not mean that we stopped warning about the fact that the adopted measures still needed to be legitimate and proportionate to the danger, urgent, limited in time, substantiated by experts, and legal.

Review of warnings and recommendations of international institutions and experts in the field of human rights

In March 2020, the Center for Human Rights established and then, during the spring wave of the epidemic, regularly monitored, summarised, translated, and published the positions of international bodies in the field of human rights within the UN and the Council of Europe about the significance of human rights in the fight against COVID-19, the influence of the epidemic on the respect for human rights, and their recommendations for action. A short overview of warnings and recommendations of international institutions and experts in the field of human rights pertaining to the measures adopted as a response to COVID-19 is available at the Ombudsman's webpage: www.varuh-rs.si/covid-19/informacije-mednarodnih-organizacij/.

Analyses and broader questions

COVID-19 and violence against women – increase in violence, operation of safe houses and counselling services

Soon after the beginning of the epidemic, warnings started pouring in about the increased violence against women and domestic violence. According to the data acquired by the Ombudsman after the first wave of the epidemic, the police dealt with 351 people as victims of criminal offences of domestic violence between 16 March and 31 May 2020, which is a 10.93 per cent increase

in comparison to the average in the last five years.¹ 84% of victims of violence were women. Between 1 January and 30 November 2020, the police dealt with 1,346 criminal offences of domestic violence for which a criminal complaint was instigated (12.9% more than the year before when the number was 1,192).² However, the data about reports of violence and observations of NGOs which offer support to victims of violence do not reveal a complete picture since the majority of domestic violence remains unreported; furthermore, in this time victims are under constant or greater surveillance of the perpetrator and it is thus harder for them to seek help.

The police also brought attention to this saying that violence “mostly remains unreported due to the stigma, fear, shame, or the feeling of humiliation. This year has been all the harder for victims due to the measures to curb the spread of the virus. Due to restrictions of movement and other measures, the victims were at home all the more exposed to threats, violence, and abuse, their home not presenting what it should: security, relaxation, and a loving relationship between people who live together. Victims who are part of violent relationship at home, isolated and practically cut off from the world, also have few opportunities to call for or seek help.”³

In June 2020, the Ombudsman turned to societies and CSDs which run safe houses and crisis centres with a request to communicate the data to the UN Special Rapporteur on violence against women, who had turned to the Ombudsman with a questionnaire about violence against women in the time of the measures against the spread of COVID-19.⁴ Among other information, we asked for data about the provision of counselling services; about the operation and accessibility of the safe house and crisis centre in the period from 16.3. to 31.5.2020; about the existence of alternatives in case the safe house or crisis centre were closed or due to a lack of space could not admit all who needed it, and about possible obstacles brought about by the measures imposed to restrict the spread of COVID-19.

Replies⁵ indicate that victims of violence still received counselling during the epidemic. Some used new ways of communication through Skype, Messenger, or Facebook calls. The Association for nonviolent communication extended the availability of telephone counselling to seven days a week, 24 hours a day.

1 The Ombudsman acquired this data from the Ministry of Internal Affairs on 6 July 2020.

2 <https://www.policija.si/medijsko-sredisce/sporocila-za-javnost/sporocila-za-javnost-gpue/107037-naj-bo-vsak-dom-napolnjen-le-s-praznicnim-vzdusjem-ne-nasiljem>.

3 www.policija.si/medijsko-sredisce/sporocila-za-javnost/sporocila-za-javnost-gpue/107037-naj-bo-vsak-dom-napolnjen-le-s-praznicnim-vzdusjem-ne-nasiljem.

4 We turned to CSD Maribor with document no. 0705-39/2020-11-TUR from 15.6.2020.

5 We received replies from the following: Društvo regionalna varna hiša Celje, Društvo SOS telefon, Društvo Ženska svetovalnica, Društvo za nenasilno komunikacijo, Društvo za pomoč ženskam in otrokom žrtvam nasilja - Varna hiša Gorenjske, Društvo varnega zavetja Pomurja, Društvo življenje brez nasilja, CSD Maribor, CSD Spodnje Podravje, CSD Posavje, and SCD Južna Primorska.

Non-governmental organisations tried to reach victims of violence additionally by increasing media attention and displaying posters with telephone numbers for help in big supermarket chains. One of the NGOs, which carries out a programme of psychological help to victims of violence, also highlighted the support of the City Municipality of Ljubljana by publishing help line numbers in pharmacies, healthcare centres, and the local publication the Municipality of Ljubljana delivers to all mailboxes in the city.

Between 16 March and 31 May 2020, some NGOs and CSDs recorded an increase in the number of calls to telephone counselling lines. Others did not record increased need for their services; however, they did express their suspicion that in this time victims had less opportunities to call since, due to the measures of restricted movement, they were in the constant presence of the perpetrator.

Based on these replies, we found that during the epidemic safe houses and crisis centres were open and accessible to new users.

NGOs and CSDs mentioned the following problems and challenges brought about by the measures connected to the epidemic:

- a lack of space and staff for the implementation of isolation or quarantine;
- the sharing of kitchen, toilets, and other common rooms presents greater risk for the transfer of infection, which demanded even greater consistency in compliance with all hygiene measures of disinfecting hands and premises, and observance of safety distance;
- employees were afraid that, despite abiding by safety measures, infections would arise, since such small spaces which have no option for preparing rooms for quarantine or “red zones” to separate healthy from sick people, neither in hallways nor in the toilets, cannot be organised for operation, as well as lacking staff for doing so;
- guidelines and instructions for accommodation programmes issued upon the reception of new users are impossible to implement in the available premises; likewise, it is not possible to continue to provide them as they are prescribed for newly accommodated users (isolation room, seven-day quarantine in order to prevent contact with other users);
- the accessibility of tests for COVID-19 for users who needed accommodation were missed, since users belonging to the high-risk group had previously been accommodated (users older than 65, those with cardiovascular diseases, lung diseases, etc.) and their health would be gravely endangered upon the arrival of infected persons;
- at the beginning of the epidemic, they lacked personal protective equipment (later this was sorted out);
- problems in organising the transfer of users, since public transport did not operate;

- it was impossible to assemble multidisciplinary teams for new accommodation of users which somewhat limited the options for comprehensive treatment and support in the treatment of victims of domestic violence;
- interpersonal frictions between users due to 24-hour coexistence without the possibility of retreating due to restrictions around exiting the house for guaranteeing the safety of all, significant psychological distress of users and their children in the form of fear, loneliness, and feelings of helplessness and intolerance towards the measures (restriction of contact with friends and relatives, restriction of crossing between municipalities, restriction of visiting playgrounds and playing on equipment in the parks, no group activities or gatherings, direct contact with volunteers, etc.);
- in addition to regular work, much time was dedicated to relieving the mental stress of the users (anxiety, fear, insecurity, worries about their own health and health of their children) occurring as the result of the new circumstances brought about by the epidemic, explanation of measures, help in distance learning, shopping, etc.

The society Varno zavetje Pomurja warned that action protocols should be upgraded, including in case of infection within the programme, and temporary accommodation units with appropriate organisation, staff, and equipment provided where users would be placed during the quarantine or for the needs of isolation. The opinion of CSD Posavje was similar.

In December 2020, the Ombudsman again turned to safe houses and crisis centres. While they entered the second wave of the epidemic better prepared, the problem of ensuring additional rooms in case of quarantine still remained. Another persisting problem was how to ensure the transport of users.

Schooling of Roma children during distance learning due to COVID-19

Due to the knowledge of socioeconomic circumstances of numerous Roma in Slovenia (living in settlements without electricity, life in poverty, frequent illiteracy of parents, comparatively lower percentage of children who complete the primary school education, etc.) and the fact that distance learning was mostly founded on access to information technology and, at least with younger students, demanded some degree of parental involvement, the Ombudsman presumed that students living in such circumstances would need adjustments and special attention so that during the measure of distance learning their right to education would be ensured and the differences between children regarding their access to education and success would not be (even more) increased in this time.

Therefore, in the beginning of April, the Ombudsman turned to the principals of 34 primary schools with Roma children on the school roll asking in which manner distance learning was being carried out, whether they made certain that children missing anything of the above still had equal access to education, and how that was done, etc. We received answers from 31 primary schools.

In June, the Ombudsman had questions for Roma assistants who, within the Skupaj za znanje project, are available to disposal to Roma children at 33 schools where they can turn to them for help in overcoming various problems (they participate with expert workers of the school or kindergarten), offer children help in easier inclusion into the learning process, and present an important link between the school, students, and parents members of the Roma community.⁶ Due to the epidemiological situation, the situation could not be checked in interviews with Roma children or their parents, since we could not visit them.

The schools' replies reveal that distance learning was carried out in online classrooms, with the help of eAsistent, through the schools' webpages where students and parents get all the instructions for work. Students communicated with their teachers over the telephone, e-mail, social media (Skype, Messenger, Viber, Facebook), and online tools for video communication (Zoom). In all schools, students needed electricity, an internet connection, and a computer or a tablet for their work. Replies indicate that schools mostly checked whether Roma children have these things at their disposal and found that they mostly do not have electronic devices needed for working from home through online classrooms and other online tools and methods. Numerous schools provided children who do not have computers with these with the help of the Ministry, their home municipality, and also donors, but added that they had noticed a lack of knowledge of how to use the information technology. Many reported that in individual cases where students did not have a computer or access to internet, the material was delivered or sent via post. It appears that Roma assistants have been of great help with the implementation of distance learning since they actively participated in the implementation itself – they helped children understand homework or in communication with Roma parents or copying and delivering material to Roma students. At some schools, teachers adapted the material to Roma children, which presents worries regarding the fact that some mentioned preparing material for Roma children according to “minimal standards”.

All the replies highlighted special problems and challenges faced by Roma children. Recurring ones were: children do not have access to technology or cannot use it, work with computers and tablets presents a great problem, living conditions make school work difficult, some children do not have basic requirements met: their own desk, chair, material for work (paper, glue, crayons, pens, etc.), motivation for learning is low, etc. Principals and Roma assistants

⁶ <http://www.skupajzaznanje.si>.

warned that some students do not have a supportive environment at home, parents often cannot help (also due to poor understanding of Slovenian), and some parents collaborate poorly with the school. Some principals had also noticed a lack of understanding in parents that school is important.

Based on the replies, the Ombudsman estimates that primary schools generally kept in mind the special circumstances of Roma students and that much effort and additional activities were invested in supporting Roma students – through communication, printing and delivering materials, and the provision of computers. Considering the replies received, it is worrying that all children were not efficiently included in schooling in this time (were not reached at all or were educated according to lower standards). Answers also indicate that numerous Roma children in schooling in general, and especially in distance learning, face deprivation, special challenges, and are in an explicitly poor and comparably worse situation than other students. Thus, in 2021 the Ombudsman will continue to monitor the realisation of the right to education for Roma children.

The urgency to respect the principle of equality and non-discrimination, including based on gender – distribution of the burden of care and protection of children due to force majeure between both parents

The Center warned about the significance of respecting the principle of equality and non-discrimination in connection to the use of care and protection of children until the 5th grade of primary school, who due to the closure of kindergartens and schools stayed home or were part of distance learning. We believed that this provision needs to be interpreted in the way that a parent or a guardian from this article can be excused from work in the following manner: that both parents (or other persons based on enforcement titles or both guardians) can enforce and realise this right either alternatively according to days or part-time in one day (e.g. every parent for 4 hours or one of the parents for 2 hours and the other for 6, etc.); and that an individual beneficiary can use this right fully, or to a lesser extent according to actual circumstances or needs (e.g. only 4 hours per day).

The MDDSZ confirmed that the content of the explanation by the Ministry regarding the implementation of Article 57 of the ZZUOOP in connection to the enforcement of absence from work due to force majeure for protection, as was also publicly presented, follows the principles of equality and non-discrimination, including based on gender and thus also the guidelines of the Ombudsman. The Ombudsman regarded the answer and solution of the MDDSZ as appropriate.

Review of “Human Rights Ombudsman and discussion of COVID-19-related matters”

The review of “Human Rights Ombudsman and discussion of COVID-19-related matters” was prepared by the Center in May 2020 and published it on the Ombudsman’s webpage. It was intended for reporting and raising awareness about issues discussed by the Ombudsman during the epidemic, and simultaneously for international reporting about events in Slovenia; hence, it was translated into English and forwarded to various international and regional institutions,⁷ including the Office of the UN High Commissioner for Human Rights, GANHRI, IOI, and ENHRI.

International reports

Numerous institutions and associations turned to the Ombudsman following the beginning of the epidemic which collected information about national measures about the curbing of the COVID-19 pandemic and analysis of the situation. Within its capabilities, the Center prepared reports for these institutions about the state of the epidemic and measures to it and related adopted measures in Slovenia from the perspective of respecting human rights, including the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance of National Human Rights Institutions (GANHRI), International Ombudsman Institute (IOI), the European Network of Ombudspersons for Children (ENOC), the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations (e.g. Committee on Economic, Social and Cultural Rights, special rapporteurs, UNESCO), the European Union Agency for Fundamental Rights (FRA), the Council of Europe, including the European Committee for the Prevention of Torture (CPT), the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and others.

Ombudsman Peter Svetina actively participated with his contribution at the IOI webinar about the activities of ombudspersons during the epidemic. He presented both the adjustment of work and the great increase in initiatives in comparison to previous years.

We reported to the ENNHRI about our observations of the influence of COVID-19 on the rights of persons with disabilities.

In an alternative report about the state of the rule of law in Slovenia, which, part of the ENNHRI report, was forwarded to the European Commission for the purpose of preparing the first European Commission report on the state of the rule of law in the EU and its member states, we presented measures connected to the COVID-19 epidemic.

7 See: https://www.varuh-rs.si/fileadmin/user_upload/Covid-19/Covid-19_adressing_issues.pdf.

The Center prepared the Answer to the questionnaire by the UN Special Rapporteur on violence against women, its causes, and consequences during the measures against the spread of COVID-19. The Center answered questions regarding the increase of violence, accessibility of safe houses and counselling services for women, victims of violence, about the influence of the epidemic on women's access to judicial protection, measures of restraining orders, and access to services of sexual and reproductive health. The answers are published in English at the Ombudsman's webpage.⁸ Findings about the increase in violence and problems faced in safe houses were included in the written contribution for the discussion of the initial report of Slovenia according to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which was sent to GREVIO.⁹

3.2.2 Review of the work of Child Advocacy related to the COVID-19 epidemic

In 2020, we faced numerous challenges we have not encountered before in modern history. The declaration of the epidemic in March also demanded adjustments to our work in the field of child advocacy. Children whose family does not present a safe environment pulled the shortest straw during this time and experience in advocacy confirmed that.

In the middle of March, the implementation of all advocacy activities was temporarily stopped, including meetings of advocates with children. Almost 30 children were then left without an advocate, some of them also without their confidant who helped them in need. After a few weeks, we realised that life was not about to normalise soon; therefore, in agreement with regional coordinators and advocates, we informed parents of children participating in advocacy that we would like to try distance meetings.

The previously opened cases of advocacy that had been temporarily stopped by the epidemic and also the majority of new proposals for the appointment of the advocate in 2020 revealed consequences of the epidemic. In the field of advocacy, the most problems were noticed in contacts with children. According to the reports of the courts, the number of proposals for the issuing of an interim injunction about contacts in this time doubled and the Supreme

⁸ Submission to the United Nations Special Rapporteur on violence against women on COVID19 and the increase of domestic violence against women, July 2020, https://www.varuh-rs.si/fileadmin/user_upload/CENTER_-_GREVIO/Slovenian_NHRI_s_submission_to_the_UN_SRVAW_on_COVID-19_and_the_increase_of_domestic_violence_against_women.pdf.

⁹ For more on this see Chapter 1.9 of this Annual Report.

Court published a clarification for the public that there are no reasons to prevent contacts between children and parents. They also appealed to the public that it would be in the child's best interest if parents themselves managed, with respect to all state-adopted measures for the protection of vulnerable groups of inhabitants, to form such a temporary agreement about the manner of executing contacts which would do the least damage to the child, parents, and their loved ones. The Ombudsman supported the position of the Supreme Court.

The advocacy primarily revealed that parents who had difficulty maintaining contacts before only deepened the conflict, while children consequently remained for a longer period of time (or even throughout the epidemic) with only one parent and had no contact with the other. Court settlements of the problem naturally did not bring the expected help, since CSDs also worked in a limited extent and the courts were swamped with proposals.

The reasons for opposing contacts varied – from the justified fear of infection of family members, especially if they involved members of vulnerable groups, to parental arbitrariness and the interpretation of government regulations in a manner suiting them. Children whose parents were still unable to agree about the joint care of their children, thus remained with one parent for a longer period of time and that strongly deepened their distress. Many children became so estranged from the other parent in this time that they later started rejecting contact, while others longed so much for contact with the other parent that they started rejecting the parent who did not enable their contact with the other parent during the epidemic.

During the COVID-19 epidemic, we received quite a few initiatives and calls from parents who could not reach their children despite the court-appointed contacts with the child. Such cases pertained both to regions in Slovenia and cases when one of the parents lived in a neighbouring country while the other one and the child live in Slovenia.

The lack of social contacts with peers significantly marked the time of the epidemic for children, since their social network is that preventive factor which significantly influences the healthy development of the child and the psychophysical stability of every individual, for after all, people are social beings.

In the first wave of the epidemic, the worrying fact was the closing of the institutions intended to help children and families – the CSDs, counselling centres, and other specialists, for which waiting times were long even prior to March. Advocacy cases revealed that at best children and parents received help over the telephone, which was not enough for many since their hardship was too great.

With the epidemic, children and parents faced the challenge of how to ensure schooling. Every family, according to its capabilities and circumstances, found its own way, which increased the distress of many parents and children, while

schooling presented a new source for conflict between divorced parents. Examples from advocacy have shown that during the epidemic, primarily teenagers wanted to stay with the parent who offered them more benefits and less duties, whereas the child spent most of their time there in front of screens playing computer games. The other parent was helpless in the situation, **while court proceedings regarding the new arrangement started being carried out after the first wave.**

In numerous families of divorced parents, in addition to all other changes brought on by the epidemic, children remained without contact with the other parent and other relatives, and supervised contacts were also not possible in this time.

During the second wave of the epidemic, it can be noticed that the contacts between children and parents are indeed better than in the first wave, while the institutions also did not completely close their doors. It is too early to determine the extent to which the latter contributed to the easing of children's distress.

A. Vulnerable groups discussed

3.3 FREEDOM OF CONSCIENCE AND RELIGIOUS COMMUNITIES DURING THE COVID-19 EPIDEMIC

In the field of freedom of conscience and religious communities the Ombudsman primarily operated at its own initiative. Few initiatives were received from others directly connected to this field, were received, while at the same time we believe that it is precisely the dire times of the epidemic when religious care can be especially important for many a person. Therefore, on our own initiative we checked the situation with religious communities themselves, with the police, army, prisons, and social security institutions. In addition, two initiatives we did receive from affected individuals are presented hereafter, since they involve questions that significantly reflect at least some of the dilemmas in the field at hand.

This field, too, faced normative changes that altered the previously problematic arrangements. Such a case was connected to the temporary restriction on the collective realisation of religious freedom. Connected to this, one of the initiators turning to the Ombudsman claimed that, with the prohibition of religious rites from the second paragraph of Article 2 of the Ordinance on the temporary partial restriction of movement of people and on the prohibition of gathering of people to prevent the spread of COVID-19¹, the Government of the Republic of Slovenia violated his constitutional right to religious freedom as defined in Article 41 of the URS (he also referred to the letter by the Metropolitan Archbishop monsignor Stanislav Zore who on 4 December addressed a letter with an appeal to the Prime Minister to lift the ban on religious rites). We found that the ordinance stated by the initiator and which in the second paragraph temporarily prohibited religious rites was no longer valid in the part that pertained to the prohibition of religious rites. On 19 December 2020, the Ordinance on the temporary restriction of the collective exercise of religious freedom in the Republic of Slovenia came into force which infringed religious freedom significantly less – it temporarily (only) restricted the collective exercise of religious freedom in the Republic of Slovenia². Subject to certain conditions from this ordinance, worship services, religious rites, prayers or other (collective) religious practices were now allowed.

1 Uradni list RS, no. 162/2020.

2 Uradni list RS, no. 190/20.

3.3.1 The operation of religious communities in the Republic of Slovenia during the epidemic

On 12 March 2020, the Republic of Slovenia declared an epidemic and a series of measures were adopted to curb the spread of COVID-19 disease, which also restricted the exercise of religious freedom and operation of religious communities. At the beginning of April, on its own initiative, the Ombudsman thus invited all religious communities entered in the Register of churches and other religious communities in the Republic of Slovenia to present the influence of epidemic-related measures on their operation. **Of 56 registered religious communities, 18 responded.** The majority of these thanked the Ombudsman for caring. As could be discerned from the responses received, communities **opted for various self-restricting measures (some of them even prior to the governmental measures) with the purpose of supporting the healthcare system and measures of the Government of the Republic of Slovenia to curb the spread of the epidemic. Individual rare religious communities informed us that they did not have any problems or that they perceived measures as an authoritative ban on their operation.**

Religious communities mostly expressed support, understanding, and solidarity and communicated to their members through various messages and instructions to consistently adhere to and realise the measures set down by the Government. The self-restricting measures implemented by religious communities were primarily the closing of facilities for the exercise of religious rites, meetings, and other activities, the ceasing of the collective religious rites, group prayers, meditation sessions, educational and other meetings, and other religious public events and activities with the participation of their members. The religious activity in individual communities was mostly limited to the individual level. We were able to discern that the majority of religious communities moved their religious rites to the internet (e-mail, websites, Facebook, YouTube, other social networks, or electronic communication), television, and radio, while they were also available for their members over the telephone or by mail; individual meetings were possible only exceptionally and in accordance with the protective measures. Certain religious communities kept their facilities open for personal prayer subject to preventive measures, such as a limited number of healthy persons present in larger rooms, appropriate safety distance, disinfection, etc. Some of the communities were also active locally, e.g. by sewing masks, shopping for the elderly, and teaching about preventive measures.

The responses received drew attention to the access available to the elderly in these current circumstances since they are mostly not skilled in the use of contemporary technologies and the telephone was used to communicate with them. Some of the religious communities added that they **missed more specific information adapted to religious communities from the authorities**, while others emphasised the decrease in voluntary contributions they gener-

ally receive through the donations of their members; it supposedly significantly influenced their financial situation and had consequences in, for example, the loss of space they hire for the needs of their operation or even the cessation of operation.

Specifically on religious care in the police during the COVID-19 epidemic

On its own initiative, the Ombudsman turned to the Ministry of the Interior (MNZ) in April and asked for clarifications regarding how the police officers who wish to have it can access religious care during these difficult circumstances connected to the measures for curbing the spread of the COVID-19 epidemic, and in which manner the execution of this right according to Article 23 of the ZVS is ensured. The Ministry replied by explaining that in these difficult circumstances the employee of the General Administration in charge of organising or performing spiritual care in the police department in accordance with the Rules on the organisation and performance of religious and spiritual care in the Police³, responds to the wishes, requests, and suggestions communicated by police officers of different religions, and that, hence, any kind of special activities are not needed. Since we did not receive any actual initiative from any affected police officers which would indicate the contrary, we deemed appropriate the activities connected to the organisation and manner of religious care for police officers during the epidemic.

Specifically on religious care in the army during the COVID-19 epidemic

In April, we turned to the Ministry of Defence (MORS) on our own initiative for clarification of how members of the Slovenian army can access religious care during these difficult circumstances connected to the measures for curbing the spread of the COVID-19 epidemic, and in which manner the execution of this right according to Article 22 of the ZVS and the third paragraph of Article 52 of the ZObr is ensured. The MORS replied by explaining that the Military Vicariate abided by all given instructions and guidelines regarding movement and self-protecting measures in accordance with government measures and acts of command and control in the Slovenian Army. The work was organised so that it did not include unnecessary physical contact, and movement was restricted to working at one location per day at the most, if necessary, or work from home. Members of the Slovenian Army were informed about this manner of work over the Intranet network, where contact information of the members of the Military Vicariate is available, whom they can contact at any time. The latter were assigned to maintain regular contact over the phone with units and barracks for which they are in charge, while they also operate via Facebook pages where encouraging thoughts and other material is available for

³ Uradni list RS, no. 72/07.

the members of the Slovenian Army. Members of the Military Vicariate were also to use personal pages for direct contact with members of the Slovenian Army at home and on international missions. Similarly to the Police, the Ombudsman received no initiatives from soldiers who in any way problematised circumstances connected to religious care.

Specifically on religious care in prisons during the COVID-19 epidemic

In April 2020, the Ombudsman on his own initiative turned to the URSIKS for clarification of how prisoners can reach religious care during these difficult circumstances connected to the measures for curbing the spread of the COVID-19 epidemic, and in which manner the execution of this right according to Article 24 of the ZVS and Article 78a of the ZIKS-1 is ensured. In its reply the URSIKS explained the temporary measures of prohibition of visits even for representatives of religious communities, which were implemented to curb the possibilities of bringing infection among prisoners in prisons and the correctional home. Measures included the temporary non-performance of all forms of religious care, such as group prayers, liturgy, and masses, connected to measures adopted by individual religious communities themselves. According to the assurances of the URSIKS, religious representatives were informed about the stated measures and accepted them understandingly and reported that prisoners accessed them over the telephone in that period.

The URSIKS also assured us that such a diet was provided in prisons for all prisoners who expressed a wish for a special diet due to religious reasons. They also stated that they did not have any requests for individual spiritual care because prisoners accepted the measures with understanding; nevertheless, every such request would have been discussed individually and possibilities for its realisation would have been sought.

Specifically on religious care in social security institutions during the COVID-19 epidemic

On its own initiative, the Ombudsman turned to the MDDSZ and the SSZS with questions about the organisation of regular individual and collective religious care for occupants of social security institutions which provide institutional care in accordance to Article 25 of the ZVS, related to government measures for curbing the spread of the COVID-19 epidemic. The MDDSZ replied that according to the data acquired from individual public institutions, individual religious care for occupants was carried out without interruption in chapels or spaces designated for this purpose within institutions. The occupants abided by all necessary measures intended to curb the spread of COVID-19. Collective religious care was provided via the media (radio, television, newspapers), while some of the social security institutions organised masses in front of institutions once or twice a month, during which the priest spoke over a microphone to the occupants who listened in their rooms with the windows open.

The SSZS clarified that, in accordance with the instruction of the MZ, which proposed the measure of prohibiting visits with exceptions, and in accordance with the instruction of the MDDSZ, which proposed the implementation of exceptions as rarely as possible and stated a strict implementation of other measures, retirement homes closed their doors to outside visitors. Thus, consistently with the measures to curb and manage the coronavirus infection, priests did not enter retirement homes and did not perform religious rites. Nevertheless, the occupants still had individual freedom of expressing their religious belief ensured despite the currently infringed collective aspect of religious freedom. They also have the sacral space or the retirement home chapel available, visits to which were on condition of abiding by the measures to curb and manage the COVID-19 epidemic. Occupants who have difficulty moving around should be aided by the staff in visiting the chapel. The SSZS furthermore explained that occupants were able to receive instructions and books with religious content which they got in accordance with the measures 72 hours after they were delivered to the retirement home. Occupants were supposedly also able to watch religious rites on TV and over the radio in their rooms.

According to the statements given by the SSZS, some retirement homes were successful in arranging to have masses in the open air, where the priest gave mass on the grounds of the institution while the occupants could be present in front of the buildings or on the balcony. Some retirement homes also introduced activities for Easter with the intention to achieve the highest possible degree of normalisation of life in a retirement home.

On the releasing of anti-corona measures during the holidays from the aspect of different religious communities

According to the second paragraph of Article 7 of the URS, religious communities in the Republic of Slovenia are equal. We received two initiatives that appeared especially interesting from this aspect. The first one was by an initiator who believed that from the aspect of equality and freedom of religion all holidays should be treated equally, and thus mitigation of certain measures for the curbing of the epidemic, which were adopted by the Government at Christmas time, should also be enforced during the (upcoming) Orthodox Christmas (namely, the first paragraph of Article 9 of the Ordinance on the temporary partial restriction of movement of people and on the prohibition of gathering of people to prevent the spread of COVID-19⁴ stipulated: "From 24 December 2020 from 12.00 to 25 December 2020 from 20.00 and from 31 December 2020 from 12.00 to 1 January 2021 to 20.00, persons may, notwithstanding the second paragraph of Article 1 and Article 6 of this Ordinance, cross between municipalities and regions without restrictions, if they pass for a visit to private property with a maximum of six persons from a maximum of two households, where this number does not include persons under 15 years of age."). The second initiative involved an initiator who stated that "the Slovenian Government did everything possible so that those who celebrate Christmas according to

the Gregorian calendar feel better”, and that it “accepted a decision that after Christmas it will enforce stricter measures on the border and PCR tests from countries outside the European area, therefore the Schengen Area will count as invalid.” He brought attention to the fact that those who celebrate Christmas according to the Julian calendar also have the right to celebrate it the same way, visit their loved ones, and celebrate with them.

Regarding the first matter mentioned, it seems sensible to recall that the Constitutional Court of the Republic of Slovenia (US RS) previously took the position⁵ that constitutional protection of positive religious freedom does not protect every single action, “which religious beliefs would merely encourage or influence with any intensity. Constitutional protection covers only those acts which are reasonably connected with the essence of religious belief and without which religious freedom for an individual becomes significantly impaired.” Also, the US RS has already rejected (even as obviously unfounded) an initiative to start proceedings to assess the constitutionality of Article 2 of the Public Holidays and Work-off Days in the Republic of Slovenia Act, which according to the initiator is discriminatory because it takes into account only Christian religious holidays – finding that the contested regulation of the functioning of religious communities or the practice of religion does not affect an individual; that all religious communities and their members, regardless of the challenged regulation, are autonomous and free in individual and collective practice of their religion, and that the challenged regulation does not extend to the field of protection of the right from Article 41 of the URS. At the time, the US RS further stated that the choice of dates of work-off days is a matter of free judgement of the legislator; that the legislator can arrange work-off days as an expression of the identity of people who historically live in the area of the present-day state and are connected to the tradition of the European space, and that the contested regulation regulates a position incomparable to any other position. The US RS also believed that the contested regulation does not touch upon the field of human rights protection from the first paragraph of Article 14 of the URS and also not the general principle of equality before the law from the second paragraph of Article 14 of the URS, due to which the reproaches of the initiator about discrimination and unequal treatment of religious communities and their members are unfounded.

Considering the above-stated, the Ombudsman assumed a principled stand that the release of restrictions pertaining to the crossing of municipal and regional borders and association on private property is not protected within the religious freedom from Article 41 of the URS; the US RS believes that the sole appointment of the holidays is a matter of free judgement of the legislator, which is even more true for adopting the easing of measures of movement restrictions within the holidays and work-off days stipulated by law. Furthermore, it was not possible to conclude (at least within the framework of the

4 Uradni list RS, no. 193/20.

5 In decision no. U-I-92/07-23 from 15.4.2010.

initiator's statements) that crossing municipal and regional borders and association on private property connected to it would be reasonably connected to the essence of religious belief and so closely that without these actions, the religious freedom of a religious community member would become significantly impaired. Nevertheless, we understood the initiator's wish that at the time of the Orthodox Christmas it would also be possible to cross municipal and regional borders and associate within the family circle despite the restrictions adopted to curb the epidemic. We believed that it was the right thing to do that she turned with her wishes to the Government, which is also competent to adopt and ease measures. We could also agree that a possible decision by the Government that it also adopts the easing of measures at the time of the Orthodox Christmas, if epidemiological circumstances at the time allow, is to be welcomed.

In the second of the two mentioned initiatives, we had to clarify that the role of the Ombudsman in the system of protecting rights is generally subsidiary, i.e. that initiators first have to strive to solve the problems themselves with competent authorities or use the legal means available to them. The initiator's letter to the Ombudsman was only the first in the series of steps towards a possible solution of the matter; thus, we suggested turning to the Government with their concerns and questions, since it is the Government that adopts measures for curbing the spread of the COVID-19 epidemic. We also found that the regulation pertaining to the conditions for entering the Republic of Slovenia was enforced on 25 December 2020 (Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the COVID-19 infectious disease) – therefore on Christmas Day according to the Gregorian calendar; therefore, it was unclear from the initiator's statement in which sense the relevant arrangement supposedly treated those who celebrate Christmas according to the Julian calendar differently – namely, the restrictions and conditions for entering the Republic of Slovenia were enforced for all legal addresses, regardless of their customs of celebrating Christmas.

3.4 NATIONAL AND ETHNIC COMMUNITIES DURING THE COVID-19 EPIDEMIC

3.4.1 Informing the autochthonous Italian and Hungarian national communities about COVID-19

In order to curb and control the spread of coronavirus epidemic, informing residents comprehensively is of great importance, particularly with regard to preventive measures intended to prevent the spread of infections (hand, premises, cough, and shopping hygiene, self-isolation, conduct upon suspicion of infection, etc.) and measures taken by competent institutions for curbing the spread of disease (restrictions of movement, prescribed use of protective masks and gloves, restriction of association, specific time period for shopping, etc.). From the perspective of protecting and pursuing rights of autochthonous Italian and Hungarian national communities, it was very important to present this information in Italian and Hungarian language. Therefore, the Ombudsman asked the Hungarian Self-Governing National Community of Pomurje, self-governing coastal Community of Italian Nationality, and Government Office for National Minorities for their assessment of the course of providing information about epidemics in Hungarian and Italian and whether they encountered any problems with providing comprehensive information to Hungarian and Italian national communities about the coronavirus epidemic.

No problems were observed in the Pomurje-Hungarian self-governing national community, but the coastal self-governing community of Italian nationality pointed out that problems occur in some (unspecified) pharmacies and health centres and with regard to availability of information and forms in Italian related to measures for entrepreneurs and sole proprietors. This issue also appears in the response of the Office for National Minorities, who were informed by the members of Italian national community society that some problems occurred with regard to the provision of coronavirus-related informative materials, instructions and regulations in Italian language. In their public appeal, the Office for National Minorities called upon the ministry, Administration of the RS for civil protection and disaster relief and National Institute of Public Health to respect the provision found in Article 11 of the URS and urged them to comply with the legislation and provide the necessary information and instructions in Italian and Hungarian languages too.

3.4.2 Informing (especially older) Roma about COVID-19

According to the Ombudsman's opinion, the Roma community proved to be one of the most vulnerable social groups with regard to the epidemic, especially its part that lives in illegal settlements and where there is no access to drinkable water and/or electricity (and related access to public communication tools) and/or access to letter boxes for receiving mail or informative brochures. An important **obstacle to providing Roma community members with vital information are frequently illiteracy and lack of knowledge of Slovenian language, and within the Roma community there is a particularly vulnerable group of elderly Roma.** The Ombudsman addressed an inquiry to 23 municipalities with Roma settlements (municipalities referred to in the sixth paragraph of Article 39 of Local Self-Government Act (ZLS) and municipalities of Ribnica, Škocjan, and Brežice) on his own initiative, asking in what way they are informing members of Roma community about measures, how specific problems of the Roma are taken into account (access to public communication tools, mailboxes, literacy, knowledge of Slovenian) and in what way and how often information is provided to elderly Roma – in case the municipality had not begun informing the members of Roma community on corona epidemic yet, we suggested it does it promptly.

From the responses we received from municipalities we concluded that they had not forgotten about informing Roma community, but the approaches to it were very different, adapted to specific social situation of the Roma community within municipality. The municipalities which assess that the Roma community is well integrated into society (including literacy and knowledge of Slovenian) and provided with all infrastructure (including telecommunications), informed them in the same manner as the rest of the population, i.e. via internet, social media and municipal newsletter. Municipalities which are aware of their deficits in the field of inclusion of members of the Roma community into society have adjusted their activities accordingly – e.g. the Municipality of Krško and City Municipality of Novo mesto provided Roma with leaflets in Romani language. Examples of good practice include personal visits of mayors or municipality representatives in Roma settlements, during which key information was given and explained to Roma (e.g. Municipality of Škocjan, City Municipality of Novo mesto, Municipalities of Šentjernej, Trebnje, Kočevje, and Cankova). Municipalities with Roma councillors included them in the activity of informing, while the municipalities of Brežice, Škocjan and Ribnica, who do not have Roma representatives in their municipal council, included commission for monitoring the situation of the Roma community (in Ribnica and Brežice) or representatives of Roma settlements (Škocjan). In some municipalities social work centres (e.g. the municipalities of Metlika, Semič, Trebnje), police officers (e.g. municipalities of Kuzma, Novo mesto, Krško, and Trebnje), civil protection representatives (e.g. municipalities of Trebnje and Šentjernej), public institutions (schools, health centres), the health inspectorate, and in

Črnomelj also a multi-purpose Roma centre, had an important role in passing epidemic-related information.

As far as informing the elderly is concerned, and in addition to general means of informing presented above, some municipalities pointed out that older Roma usually live with younger under the same roof or in the immediate vicinity (e.g. municipalities of Beltinci and Rogaševci), and the Municipality of Kuzma prepared a special poster with illustrations of measures related to the coronavirus epidemic, which is, in our opinion, a good approach to addressing the elderly population. It is also worth to mention and praise the municipalities that provided assistance to the elderly, including Roma, in the purchase of groceries and medicine (e.g. municipalities of Rogaševci, Šentjernej, Dobrovnik, and Cankova).

Several municipalities distributed protective equipment to their inhabitants, including Roma (e.g. municipalities of Beltinci, Metlika, Murska Sobota, Dobrovnik, Tišina, Črenšovci, Šentjernej, Cankova, Kuzma, and Ribnica), and some municipalities (e.g. Ribnica and Črnomelj) mentioned that they offered a cistern to the affected residents without the access to drinking water as the situation was difficult. In this regard, the Municipality of Ribnica reports that the Roma have rejected help in this form.

3.5 THE EMPLOYED AND UNEMPLOYED DURING THE COVID-19 EPIDEMIC

3.5.1 The employed

Undoubtedly, the outbreak of the COVID-19 epidemic greatly influenced the area of employment relationships. The circumstances in which, due to uncertainty and a poorer financial situation, many companies found themselves additionally worsened relationships between employees and employers and that was also reflected in the standard of labour rights. With the aim of adjusting to the new reality, many institutes that have been known to our employment legislation for many years but were rarely used in practice became relevant. Thus, many a person only very recently became faced with temporary lay-off, working from home, inability to work due to force majeure, or an order to perform other work for the first time. Through adopting the “anti-COVID legislation”, the government also strived to ease the consequences of the epidemic in the field of labour law. On 29.3.2020, **the Act Determining the Intervention Measures on Salaries and Contributions (Ur. l. RS no. 36/2020, ZIU PPP)** came into force which regulated the partial reimbursement of the compensation of salary for employees who were unable to work due to COVID-related measures. However, not all employers were eligible for this partial compensation but only those that met legal requirements and acted in accordance with the procedure governed by the law. Namely, the law provided for the compensation of salaries to employers for those workers who did not work for business reasons or due to ordered quarantine, if they were not enabled to work from home. To be eligible for partial compensation, the employer had to commit to maintaining jobs for workers at least six months after the beginning of the temporary lay-off; additionally, no insolvency and winding-up proceedings may have been instituted against it; it must not have had any unpaid obligatory tax duties and other non-tax liabilities collected by the tax authority in the amount of EUR 50 on the day of the application; in the last three months prior to the month of the temporary lay-off, the employer must have paid salaries and social security contributions on a regular basis. If the legal conditions were met, the employer was entitled to 40% of the gross salary compensation, while the amount of the compensation was limited to the amount of the highest amount of monetary compensation of the unemployment benefit provided for in the law governing the labour market, i.e. EUR 892.50 gross.

According to the intervention law, the self-employed were only entitled to a deferral of the payment of contributions.

Subsequently, seven packages of mitigation measures were adopted in 2020 (hereon: PKP).

Due to rapidly changing legislation and measures, employees as well as employers turned to the Ombudsman with numerous questions concerning labour law and connected to the epidemic, especially on the topic of the protection of workers against infection in the workplace and measures of the employer related to this, temporary lay-off, instruction by the employer to take annual leave, and allowance for work in risky situations. The majority were solved with explanations to the proposers at the entry point, whereby proposers were acquainted with the currently valid regulations and advised as to where they should turn for help and which legal channels are at their disposal to rectify violations and irregularities. Continuously, the Ombudsman stressed that regardless of the emergency situation employers are obliged to completely and consistently comply with the valid labour legislation and advised workers that should the employer try to use the outbreak of the epidemic as the reason or as a cover for violation of workers' rights, they should seek appropriate professional help.

Several initiators turned to the Ombudsman concerning the wearing of masks at work and options of the employer for sanctioning an employee who refuses to wear a mask. Related to this, the Ombudsman adopted a position that measures which contribute to curbing the spread of the SARS-CoV-2 virus are primarily an expert epidemiological question and that experts should be trusted. Initiators were advised that, based on the valid labour law, an employer is obliged to ensure all workers enjoy health and safety in the workplace (Article 45, Employment Relationships Act (ZDR-1) and paragraph one of Article 5, Health and Safety at Work Act (ZVZD-1)).

A few initiatives were also addressed to the Ombudsman connected to testing for the presence of SARS-CoV-2 virus, organised by employers within work organisations. On the one hand, similarly to mandatory wearing of masks at work, this is again the duty of the employer to ensure health and safety for all workers in the workplace (Article 45, ZDR-1 and paragraph one of Article 5, ZVZD-1), within which the employer must implement measures necessary for ensuring the health and safety of workers and other persons present in the work process; on the other hand, this is the duty of workers to abide by the demands and instructions of employers as well as regulations in the field of health and safety in the workplace (Articles 34 and 35, ZDR-1).

One of the initiators stumbled upon a problem when she wanted to take advantage of her employment right to absence from work due to force majeure, arising from the closure of schools and consequently the duty to look after her child. Namely, the employer demanded she present additional evidence, more precisely the statement from her husband's employer, that on the days she wanted to be absent from work for child care, her husband cannot use any kind of absence from work. In connection with the latter, the Ombudsman adopted a position that for the employer **a statement from the worker**, in which the worker states the circumstances that represent force majeure due to the duty of child care, should suffice; otherwise, a disproportionate intervention

into the worker's right to privacy could occur, the protection of which belongs among the employer's basic obligations arising from employment (Article 46, ZDR-1) and is also a constitutionally protected category. It is also worth adding that upon the occurrence of such situations, the one-sided instruction to take leave on the side of the employer is not permissible, since in accordance with the ZDR-1 annual leave is used considering the needs of the work process and the possibility for rest and recreation of the worker and also considering their family obligations (paragraph one of Article 163, ZDR-1). This is another reason why the demand for the submission of a statement that the other parent cannot use **any kind of leave**, thus including annual leave, is disputable.

3.5.2 The unemployed

In the area of the unemployed, the Ombudsman addressed a total of eight cases. All were substantiated and resolved.

A significant rise in the number of unemployed in Slovenia in 2020, which was shaped by the COVID-19 epidemic, is worrying. At the end of December, the Employment Service of Slovenia (hereon: ZRSZ) had 15.9% more registered job seekers than in December 2019, while according to the data from the ZRSZ, in 2020 there were on average 14.6% more unemployed people than in 2019. Even bigger growth in the number of unemployed was prevented by numerous government measures for the mitigation of the consequences of the epidemic, such as subsidisation of temporary lay-off and the reduction of working time, which is welcomed by the Ombudsman.

Within the framework of the anti-COVID legislation adopted in 2020, the situation of the unemployed was directly eased primarily by the **temporary monetary compensation, implemented by the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy** (Ur. l. RS no. 61/2020, **ZIUZEOP-A**), which came into force on 1.5.2020 and changed the ZIUZEOP valid at that time.

3.6 WOMEN AND GENDER EQUALITY DURING THE COVID-19 EPIDEMIC

The activities of the Ombudsman in 2020 regarding women and gender equality in connection with the COVID-19 epidemic have been addressed through various other substantive fields of work which are:

Analyses and wider questions

- COVID-19 and violence against women – increase in violence, the operation of safe houses and counselling services
- The necessity of respecting the principle of equality and non-discrimination, including based on gender – the distribution of the burden of care and protection of children due to force majeure between both parents

International reports

Healthcare

- Accompanying the partner during childbirth and termination of the implementation of planned home births during the COVID-19 epidemic

3.7 CHILDREN DURING THE COVID-19 EPIDEMIC

Upon the declaration of the epidemic, Slovenia closed all educational institutions. After eight weeks of solely distance educational work, gradual opening of kindergartens and school started in May, subject to a number of security measures and restrictions. In addition to not going to school or kindergarten and extracurricular and leisure activities, children and adolescents were restricted in movement and socialising, both with their peers and members of the extended family as well as family friends. The reactions of children and adolescents depend on their age and the way they understand a situation, the quantity, content and quality of the information about happenings that is available to them, on their past experience, response strategies in stressful situations, home environment support, and other factors. In the time of the epidemic, it can be expected that they are worried and frightened, that they feel anger due to restrictive measures, that their behaviour changes, and that they have trouble independently executing activities they could have previously mastered. These real problems also marked the Ombudsman's work.

We received numerous questions and petitions connected to contacts between children and parents who do not live together.

Many cases involved children with special needs. We also dealt with the question of vulnerable groups of children during schooling from home (distance learning). **We encouraged the application of an individualised approach to children (pupils), especially for those from families with social needs and other vulnerable groups.** At its own initiative, the Human Rights Ombudsman made an inquiry about the schooling of Roma children during the epidemic at relevant primary schools. The reason for this inquiry was the fact that the situation of home schooling brings new challenges to the educational system and requires additional efforts and new solutions and adjustments.

Considering the different circumstances in which children live, their efficient access to education and, last but not least, the differences in their educational success, differences between children are increasing.

We were faced with the question of treatment of children and adolescents in educational institutions. Together with the Ministry of Education, Science and Sport (hereon Ministry of Education) we made an inquiry and emphasised the need for specific instructions for the implementation of the Ordinance on temporary prohibition of gatherings of people in educational institutions and universities and independent higher educational institutions and for the help in acquiring protective equipment. This ordinance presented numerous difficulties and a breach of fundamental human rights for divorced parents who had joint custody of their children and lived in different communities, as

well as the violation of children's rights. **We suggested that contacts between parents and children who live in different municipalities are not in conflict with the purpose of the restriction of movement to the municipality of residence, since the goal of the measure was to be preventing movement and gathering of people in public places and areas for the prevention of spreading of a dangerous disease. In principle we stressed that the measure of restricting movement to the municipality of residence should not limit the family life of a parent and a child who live in different municipalities.** If it were to happen in this case that a parent would still be fined for an offence according to the ZNB, the parent would be able to use legal means envisaged for this purpose. Any potential individuals affected in this way are thus invited by the Ombudsman to inform the institution about the specific procedures initiated. Namely, according to Article 25 of the Human Rights Ombudsman Act (ZVarCP), the Ombudsman can convey its opinion to every authority from the perspective of human rights and fundamental freedoms protection in a matter it deals with, regardless of the type and stage of the procedure pending before those authorities; according to Article 52 of the Constitutional Court Act (ZUstS), the Ombudsman can file a constitutional complaint to the Constitutional Court of the Republic of Slovenia with the consent of the person whose human rights or fundamental freedoms in an individual matter it protects. The Government of the Republic of Slovenia complied with the opinion of the Ombudsman.

The Ombudsman also raises its voice against domestic violence since such circumstances and the lack of social contact outside a family could put children in serious danger.

In our belief, the COVID-19 pandemic brought about a new perspective on numerous children's rights, the right to education, the right of contact between the child and both parents, and the special right of children with special needs being only some of them. **Schooling from home brought about the question of social inclusion of children, especially those who live in poor living conditions and within vulnerable groups.** In our opinion, the level of inequality increased during the COVID-19 epidemic.

Related to the actual situation of the COVID-19 infection spreading, the Ombudsman emphasised a few warnings of intergovernmental and non-governmental organisations connected to remote schooling. The Council of Europe in its report *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: A toolkit for member states* indicates that special attention should be placed on the fact that members of more vulnerable groups (to which children with special needs are also assigned) continue to enjoy the rights to education and have the same access to educational means and materials during remote schooling. The Nations Sustainable Development Group (UNSDG) in its report *A Disability-Inclusive Response to COVID-19* warned that pupils with special needs are the least likely to benefit from remote schooling and added that the current crisis will most probably accelerate the exclusion of children with special needs in educational pro-

cesses and will also bear long-term consequences for their further acquisition of knowledge and skills. To reduce such consequences of the closure of schools due to the spread of COVID-19, the UNSDG proposes to the states the following measures: remote learning should also be accessible and inclusive for children with special needs, which was also stressed by UNICEF in All Means All – Equity and Inclusion in COVID-19 Response; consequences of remote schooling that exceed the solely narrow meaning of “education” should be addressed, such as the lack of social interaction among peers and educational therapy, and an inclusive return of children with special needs should be ensured which would consider the increased gaps in knowledge and achievements of these children. The Global Action on Disability (GLAD), a network of individuals and organisations working in the field of protecting the rights of people with special needs, of which is UNESCO is also a member, called for the urgent support and study of immediate, medium-term, and long-term measures for children with special needs on all levels of education. They suggest complying with five principles of the realisation of the right to education, which are: authority responses due to COVID-19 spread in the field of education have to be inclusive for children with special needs; the absenteeism of children with special needs in remote schooling has to be addressed; collaboration between leaders on both the vertical and horizontal levels (i.e. between ministries and the ministry and principals) should be supported, **teachers and curriculum developers should be supported in the use of inclusive forms of education and provide help to parents and children with special needs, including the help of the community and volunteers.**

Upon the increasing number of infected people with the coronavirus disease in Slovenia, the Ombudsman emphasises that we have to be more attentive to children’s rights. Interferences with human rights and fundamental freedoms which are estimated to be necessary considering the epidemiological situation have to be well thought out and considered and appropriately duly supported by law. **When adopting new measures, both on the legislative and executive levels, human rights and fundamental freedoms, proportionality, non-discrimination, and especially the need for transparent adoption of regulations need to be considered.** The Ombudsman also assessed that on the basis of best practices and errors from the first wave of the epidemic “we can learn a lot, since they offer the opportunity to grow and improve”. As the Ombudsman said, it is essential that the government in the dialogue with all stakeholders prepare action plans and appropriate protocols in advance. In his opinion, clear criteria for the operation of various institutions and bodies should also be adopted.

When reviewing the content of the Ordinance on the temporary partial restriction of movement of people and on the prohibition of gathering of people to prevent the spread of COVID-19 (Uradni list RS, no. 155/20; hereon the Ordinance), we noticed content on which we provided a comment and in accordance with Article 7 of the Human Rights Ombudsman Act a proposal for amendment, which does not in any way interfere with the content of

the decree itself but only pertains to a simplification that would contribute to better understanding. In the second paragraph of Article 4, the decree stipulates: "... legitimate or illegitimate child, a foster child..." We suggest that this is substituted solely with the word "child", so that the text of the stated paragraph would be: "Exercising the exceptions from the previous paragraph also applies to the immediate family members of the person (spouse, common-law partner, partner from a concluded and unmarried partnership, and divorced spouse and partner who has been awarded maintenance by a court decision, and their parents, child, and child by the decision of the competent authority placed in the family for the purpose of adoption) and members of the joint household when travelling together." **The content of the terms legitimate and illegitimate child could cause problems since it is not clear what they mean. All children in the Republic of Slovenia have the same status, regardless of the domestic community status of their parents.** To avoid ambiguity as to its meaning, since the concept of legitimate and illegitimate child generally do not appear in the Slovenian legal order, **we believe the expression "child" to precisely and clearly define the desired content.** The term "foster child" also contributes nothing to the meaning since according to the law, after adoption the child is considered the child of adoptive parents and they as his or her parents. We received initiatives in the past that warned about the distress experienced by children and parents after adoption if they are required to point out the fact that an adoption took place in the past. They want to be regarded as parents and a child, which is also the legally presumed arrangement. As stated, the use of the term "foster child" contributes nothing to the content of the Ordinance, but can cause unnecessary stress in certain individuals, therefore we proposed that this word be removed from the decree. The Government of the Republic of Slovenia followed our proposal.

During the time measures adopted to curb the spread of COVID-19 were in place, the question arose of which matters belong among "enforcement matters relating to procedures for the protection of the interests of children" and thus are considered urgent by the courts, meaning that they are ongoing regardless of the epidemic. We acquired the opinion of the Ministry of Justice of the Republic of Slovenia (MP), which read that all enforcement matters in which **the execution or any of the decisions issued in non-litigation procedures from Article 93 of the ZNP-1 as well as (all) procedures for the decision about the measures for the protection of children, are being executed as urgent matters.** We informed all presidents of district courts in the country of the opinion of the MP.

3.8 PEOPLE WITH DISABILITIES DURING THE COVID-19 EPIDEMIC

The activities of the Ombudsman in 2020 concerning people with disabilities in connection with the COVID-19 epidemic have been addressed through various other substantive fields of work which are:

International reports

Religious care in social care institutions during the COVID-19 epidemic

General findings and assessment of the situation

Recommendations relating to the COVID-19 epidemic

Legitimate exceptions to the measures for the prevention of the epidemic

Children with special needs in crisis circumstances

Solidarity allowance for recipients of invalidity benefits and home care assistants

The importance of informing individuals about the COVID-19 epidemic in a manner understandable and accessible to all

Persons with reduced mobility in psychiatric hospitals and social welfare institutions

Untried prisoners and convicts

- Ensuring appropriate premises for a convict with reduced mobility during the epidemic

Persons with reduced mobility in psychiatric hospitals and social welfare institutions

- Legal basis for restricting the rights of residents of social welfare institutions during the epidemic
- Court proceedings according to the Mental Health Act during the epidemic
- Non-compliance with court decisions on the admission of persons to secure wards during the epidemic

Healthcare

- Border crossing and special needs children

Social benefits, allowances and scholarships

The Ombudsman's activities

- Judicial proceedings

General findings and assessment of the situation

Appropriateness of measures upon the return of children to schools since 18.5.2020

Passing the matura and final exams during the epidemic

3.9 THE ELDERLY DURING THE COVID-19 EPIDEMIC

The activities of the Ombudsman in 2020 concerning the elderly in connection to the COVID-19 epidemic have been addressed through various other substantive fields of work which are:

In particular on religious care in social care institutions during the COVID-19 epidemic

Informing (primarily elderly) Roma about COVID-19

Was the measure to prevent the spread of the infectious disease COVID-19 which prohibited the elderly from purchasing provisions outside the time designated for the shopping of vulnerable groups discriminatory?

Activities of the Ombudsman and recommendations

Recommendations relating to the COVID-19 epidemic

Healthcare

- Exercising force majeure for the care of older disabled relatives

General findings and the assessment of the situation

Social benefits, allowances, and scholarships

- Decrease in the protection allowance due to the date of the submission of the application

Institutional care

- Irresponsible visitors and problems related thereto in the implementation of measures for the prevention of infection with COVID-19
- Bringing treats to residents of nursing homes during the first wave of the epidemic
- Nursing home forgot to inform relatives about the hospitalisation of a resident

3.10 THE HOMELESS DURING THE COVID-19 EPIDEMIC

The Ombudsman addressed the situation of the homeless in connection with the COVID-19 epidemic and supported the “Korona na ulici”¹ (Corona on the Street) project. In 2020, the Ombudsman’s activities with respect to the homeless in connection with the COVID-19 epidemic have been addressed through various other substantive fields of work which are:

Informing and promotion

Poverty

3.11 FOREIGNERS DURING THE COVID-19 EPIDEMIC

The Ombudsman recognized the issue of informing applicants for international protection about the outbreak of the COVID-19 epidemic as a broader issue that is important for the protection of human rights or rather, for legal security. The Office of the United Nations High Commissioner for Human Rights (OHCHR) issued guidelines in connection with COVID-19, stating that appropriate information on the pandemic and the response to it should reach all people without exception; to this end, it should be possible to access information in comprehensible forms and languages and to adapt information to people with special needs, including visual and hearing impairments, and to reach those with limited reading ability or persons who cannot read; internet access should be essential to ensure that information reaches those affected by the virus; governments should end any restrictions on the internet and ensure the widest possible access to internet services and take steps to bridge the digital divide, including gender gaps. Furthermore, in the field of migrants and refugees, it was stated, inter alia, that countries should take specific measures to include migrants and refugees in national COVID-19 prevention and response. This should include ensuring equal access to information, testing and health care for all migrants and refugees, regardless of their status.

From the point of view of protection and guaranteeing the rights of applicants for international protection with special emphasis on unaccompanied minors, foreigners who have submitted an intention to apply for international protection and persons with recognized international protection status, providing comprehensive information on the COVID-19 epidemic was proven crucial in the given situation, in a way that is understandable to these individuals. The Ombudsman thus corresponded with the Government Office for the Care and Integration of Migrants (UOIM) and has emphasized, first and foremost, the provision of relevant information in languages that these persons understand, and in the case of unaccompanied minors, that the information is presented to them in a way that is adapted to their age and level of mental development. The UOIM responded by stating that, together with the National Institute of Public Health (NIJZ), they had prepared procedures in the case of dealing with the suspicion of this disease. Notices of what COVID-19 means, what this disease brings and what the preventive measures are - hand hygiene, wearing protective equipment, keeping distance... have been posted on notice boards in various locations and in several languages. They also convened meetings by language groups, at which they explained to the applicants orally the signs of illness, preventive measures and how to act in case they feel unwell. By the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), they also received information in

different languages regarding preventive measures. This written information was also distributed among the residents. Unaccompanied minors were informed about COVID-19 by social workers with the help of an interpreter. Information should be provided in a child-friendly way, individually or in groups. The written information, which were accompanied by many pictures, were, however, not adapted for children, so the social workers interviewed each of them individually or in a group and explained to them orally, with the help of a translator, the symptoms and possible consequences of COVID-19, talked to them about the state in Slovenia and informed them about preventive and protective measures and Government measures.

The residents were supposed to be informed about the measures both in the asylum home and in its branches, and they were also informed about the measures in the integration houses, by refugee counsellors. The UOIM explained that written information in English, Pashto, Urdu, Farsi, and Arabic, which was hung on notice boards, was also available to the residents. The leaflets received from international organizations were translated into 21 different languages, and in addition to the text, they also had illustrations.

B. Subject areas discussed

3.12 EQUALITY BEFORE THE LAW AND PROHIBITION OF DISCRIMINATION AND THE COVID-19 EPIDEMIC

In the area of equality before the law and prohibition of discrimination, the Ombudsman received a number of initiatives in 2020 regarding COVID-19. It was mainly due to the fact that people often perceived measures from government decrees, as well as the so-called anti-covid laws, as unjust compared to those who, for one reason or another, were influenced by them in a different way, or not at all. Many sectoral initiatives were of the same kind, but we received them from different addresses.

Although the vast majority of cases, regardless of our final assessment of their (un-)substantiation, were already purely conceptually interesting, the length limitations of the present report simply do not allow us to describe everything in this field. Some cases were also topical only for a short time, and with the change of measures they do not even appear as such. In the following sections, we highlight only a few selected aspects, and even those in a very abbreviated form. As a rule, our argument in correspondence with the authorities and the initiators was much more varied and detailed than can be deduced from the text below.

Regarding the measures related to the obligatory wearing of masks, the initiators mostly stated the following reasons: wearing a mask is unhealthy or harmful, humiliating, illegal, or unequal in relation to individual groups of the population; (in general) that there is an encroachment on human rights or a restriction of human rights; that communication is difficult or impossible due to wearing masks; that buying masks is too costly; that the instructions regarding the wearing of masks are unclear; (in general) about the (incorrect) use of masks. The issue of compliance with the measure in shops and public enclosed areas stood out, where the initiators addressed the Ombudsman mainly with questions as to whether masks were really obligatory in the mentioned places, whether they could be physically removed from there due to non-use of the mask, if they can ban them from entering, penalize them - as well as for interpreting the legal bases in this regard. Quite a few of them complained specifically against the security guards, and asked us questions about what their jurisdiction is, whether they can remove them from the store if they do not wear masks; they also complained about their behaviour, for example, detention until the arrival of the police and what they perceived as inadmissi-

ble threats. In fact, some of the initiators were also fined for not wearing protective masks. In one case, it turned out that inspectors obtained the violator's personal data through license plates.

Several initiators were concerned about the measures of mandatory protective masks in schools and kindergartens. The Ombudsman was approached with the opinion that children and teachers in schools and kindergartens cannot work normally with masks, that they are harmful, and that children who do not wear masks are harassed by teachers and classmates. Some also expressed disagreement with the enumeration of children for not using masks in schools; some wanted to educate their children at home because of this. The Ombudsman (in the field of Advocacy), for example, also dealt with a case in which one of the parents committed psychological violence when he brought the child into contact, by teaching about masks, disinfection, distance. Some employees were concerned about the demands of employers, as they allegedly received threats of dismissal and disciplinary sanctions for non-compliance with the measures. As a rule, the employees mainly emphasized the problems they face when using the mask during working hours, and one of the employers, who wrote to us, also took care of the health of the employees. Prisoners turned to the Ombudsman for concerns about their health due to the lack of protective masks and equipment and, consequently, their desire for early release, and their relatives also for restricting physical contact during visits. The Ombudsman also addressed the lack of protective masks and equipment in prisons in the context of the performance of his duties as a national preventive mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In this capacity, the Ombudsman also monitored the forced removal of foreigners from the country who had to wear masks during the flight.

During visits to social welfare institutions, the Ombudsman's state preventive mechanism detected that masks were worn by employees and relatives of residents, while some residents had difficulty understanding the use of protective masks and refused to wear them. It should also be noted that one of the directors of a retirement home (DSO) informed the Ombudsman about the difficulties in implementing measures to prevent the introduction and control of COVID-19 infections – she turned to us because of a relative who refused to take precautionary measures despite warnings and requests from the DSO's staff and management. The Ombudsman is critical of the unresponsiveness of these ministries to the plight of the social welfare institution in question and the lack of more precise guidelines regarding the implementation of measures to prevent the introduction and control of COVID-19 infections in terms of residential visits and possible non-compliance by individual relatives.

The Ombudsman also addressed the issue of masks in connection with the refusal of medical services or health care and the wearing of masks at polling stations.

It should also be noted that several people addressed their consent to the Ombudsman to introduce a measure of mandatory wearing of protective masks and were critical of the Ombudsman's position on the mandatory wearing of masks indoors (see also the Ombudsman's additional explanation – the measure of mandatory wearing of masks in enclosed public spaces and its (possible) sanctioning), claiming that he is not the expert for such issues. Such allegations against the Ombudsman are completely unfounded, as the **Ombudsman has never called on anyone not to wear masks; on the contrary, he has always emphasized (see also the above-mentioned position) that justifying the need for a measure of wearing protective masks is primarily a professional epidemiological issue and that the judgment of the experts must be entrusted.** However, this cannot mean that the Ombudsman should therefore not expect the authorities to implement the measures on an appropriate legal basis, taking into account human rights and fundamental freedoms. In a democratic society, measures must be clearly explained and presented in a transparent manner – both in terms of the epidemiological and other expert assessments on the basis of which they are adopted, and in terms of the legal consequences that individuals may face in the event of non-compliance.

The Ombudsman is of the opinion that the obligation to wear a mask is an interference with the general freedom of action, which is one of the personal rights guaranteed by Article 35 of the URS. This important constitutional right also includes the principle that in a state governed by the rule of law, a person is allowed everything that is not forbidden – and not the other way around. If something is forbidden, it is an interference with the mentioned constitutional right or freedom. Any such interference is not constitutionally inadmissible if it is lawful (Article 15 of the URS) and in accordance with the principle of proportionality, necessary for the protection of the rights of others (for example, for the protection of the health and life of others).

An Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19¹, which prescribed the use of a protective mask or other form of protection of the oral and nasal areas of the face in a closed public space and mandatory hand disinfection, was adopted on the basis of the first paragraph of Article 4 of Communicable Diseases Act (ZNB). The Ombudsman assessed that it was an incomplete legal norm that stipulated the obligation to wear a mask in enclosed public spaces, but not also a sanction for violators under the ZNB. Later, the Government adopted a new (eponymous) Ordinance², which was adopted on the basis of point 2 of the first paragraph of Article 39 and for the implementation of the first paragraph of Article 4 of the ZNB. The Government seemed to have opted for a more coercive way to enforce the obligation to wear masks indoors and to disinfect hands because, presumably on the basis of analyses and assessments by the medical experts, it had considered that the approach so far was insufficient to manage epidemiological risks. As a fine

1 Uradni list RS, no. 90/20.

2 Uradni list RS, no. 117/20.

is envisaged for violating the first paragraph of Article 39 of the ZNB (Article 57 of the ZNB), the obligation to wear a mask is no longer an incomplete legal norm under the new Ordinance.

The Ombudsman assessed that Article 39 of the ZNB does not provide a clear and unambiguous basis for interference with general freedom of action, and therefore not specifically for the obligation to wear masks and disinfect hands in closed public places, even if these measures could be considered appropriate, necessary and proportionate in the given circumstances, calling for effective ways to limit the spread of COVID-19. The Ordinance is a general regulation of the executive branch, and the constitutional review states that it follows from the principles of the rule of law (Article 2 of the URS) that it must be clear or at least predictable from the law what restrictions the individual must reckon. According to the principle of legality, the law must be the basis for the issuance of implementing regulations and individual acts of the executive authority (second paragraph of Article 120 of the URS). In order to meet this requirement, the law must determine all the essential components for the functioning of administrative bodies in organizational, procedural, and substantive terms, so that the victim can determine their legal position on the basis of law and the legality of an administrative act in an administrative dispute before a court, where the victim may seek judicial protection of their rights and interests. The third paragraph of Article 153 of the URS stipulates that executive regulations must be in accordance with the URS and the laws. The principle of binding the operation of state bodies to the constitution and the law, as well as the principle of legality, are, as fundamental constitutional principles, in close connection with the principle of a democratic and legal state³. In the light of the above, the Ombudsman doubts that the legislator in the second point of the first paragraph of Article 39 of the ZNB actually gave the executive authority power to interfere with the general freedom of action in enclosed public spaces by imposing the obligation to wear masks.

In criminal law, the principle of legality is particularly emphasized, so that the addressee of a legal norm must know in advance what conduct is prohibited. Article 57 of the ZNB does stipulate that a fine is imposed on an individual who acts in contradiction with the first paragraph of Article 39 of this Act, on the basis of which a government decree was adopted. However, this means that the content of prohibited conduct (signs of a minor offence) was generally defined only by an Ordinance (not a law, a Government Ordinance or a decree of self-governing local community, which in accordance with Article 3 of ZP-1 are regulations that may determine minor offences), which entered into force the day after its publication in Uradni list. Therefore, the Ombudsman doubts that such punishment may be in accordance with the requirements of legal certainty arising from the rule of law (Article 2 of the URS).

3 See decision of the US RS number U-I-313/98 of 16 March 2000, p. 42.

Even if the new Ordinance is no longer an incomplete legal norm, its punitive nature should be different in relation to children. That wearing a mask in enclosed public spaces even under the new Ordinance could only be recommended for younger children (and not ordered under the threat of punitive sanction) is based on the general regulation of legal liability for minor offences. The then valid Ordinance in general did stipulate that the wearing masks in enclosed public spaces applies to everyone, but Article 30 of ZP-1 stipulates that a minor who was not yet 14 years old (a child) at the time when they committed the offence, to they may not conduct minor offence proceedings and impose sanctions for a minor offence. Since the responsibility of children for a minor offence is explicitly excluded, it would not be possible to conduct minor offence proceedings against a child for not wearing a mask and present him for a minor offence under the ZNB. Neither the ZNB nor any other law stipulated that in such a case it would be permissible to punish a parent or guardian for failing to provide proper custody or supervision of a child.

Special mention should also be made of the case when the Ombudsman was approached by an initiator who pointed out the difficulties in exercising the right to communication for people with hearing loss due to the obligation to wear masks during the coronavirus epidemic. The initiator described the problems he had as a person with hearing loss due to the use of masks in communication with employees in the hospitality and trade. He pointed out that wearing masks makes it impossible for the deaf and hard of hearing to communicate because they cannot read from the other person's lips. When we addressed the Government, we were particularly reminded that the Convention on the Rights of Persons with Disabilities (MKPI), which was also ratified by the Republic of Slovenia in 2010, protects the use of spoken and sign languages and other forms of non-spoken languages (Article 2), which can also include lip reading for people with hearing loss. In accordance with Article 9 of the MKPI, States Parties must enable persons with disabilities to live independently and participate fully in all areas of life, and therefore take appropriate measures to ensure, inter alia, that persons with disabilities have equal access to information and communication. Under Article 21 of the same Convention, States Parties shall take all appropriate measures to ensure the right of persons with disabilities to exercise their right to freedom of expression and opinion, including the right to receive, accept and impart information and content by any means of communication of their choice. Pursuant to Article 5 of the MKPI, States Parties must prohibit any discrimination on grounds of disability, and in accordance with Article 2 of the MKPI, discrimination constitutes a refusal to make an appropriate adjustment. In the same article, the MKPI stipulates that appropriate adaptation means necessary and appropriate changes and adaptations that do not impose a disproportionate or unnecessary burden, where they are necessary in a particular case to ensure that persons with disabilities enjoy or exercise all human rights and fundamental freedoms.

Strict adherence to the provisions on the mandatory use of masks in communication with persons with hearing loss could constitute discrimination in

terms of MKPI and Equalisation of Opportunities for Persons with Disabilities Act (ZIMI). The prohibited use of masks must therefore also be assessed in the light of the obligation to make appropriate adjustments to prevent discrimination. **The Ombudsman considered that, in a given case, the exceptional non-use of a mask in cases where it is otherwise mandatory for communication with hearing-impaired persons communicating by lip reading could constitute an appropriate adjustment** within the meaning of the above-mentioned MKPI (and also third paragraph of Article 3 of the ZIMI). Only the removal of the mask enables the persons with hearing loss to exercise their rights related to equal access to communication, information and freedom of expression, and ensures their full and effective participation in society.

The Government responded to the Ombudsman by explaining that the Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19⁴, in force from 25 June 2020 to 4 September 2020, provided for the mandatory use of protection masks or other forms of protection of the oral and nasal areas of the face (scarf, shawl or a similar form of protection covering the nose and mouth) when moving and staying in enclosed public spaces, which also include public passenger transport, **without exception**. On 3 September 2020, the Government adopted a new Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19⁵, which was in force from 4 September 2020 to 19 September 2020. The decree stipulated that the use of a protective mask or other form of protection of the oral and nasal areas of the face (scarf, shawl or a similar form of protection covering the nose and mouth) when moving or staying in a closed public space, including public transport, is mandatory, if it is not possible to provide an interpersonal distance of more than 2 meters in the room. However, this decree introduced an additional exception for direct communication with deaf, deafblind and hard of hearing people, where, taking into account the protection of all involved, the use of protective masks or other forms of protection of the oral and nasal areas of the face could be temporarily abandoned if an interpersonal distance of more than 2 meters can be provided, a visor can be used or if communication with these persons takes place behind a glass barrier. On 18 September 2020, the Government adopted an Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19⁶, which extended the obligation to use a protective mask or other form of protection of the oral and nasal areas of the face. This decree also provided for a few exceptions, including those relating to direct communication with deaf, deafblind and hard of hearing persons. In view of the above, the Ombudsman concluded **that the Government had taken into account the Ombudsman's proposals on the need to adjust the obligation to wear masks for people with hearing loss when adopting (two) ordinances on temporary measures to reduce the risk of infection and spread**

4 Uradni list RS, no. 90/20.

5 Uradni list RS, no. 117/20.

6 Uradni list RS, no. 124/20.

of the SARS-CoV-2 virus; from this aspect, the third⁷ and fourth⁸ paragraphs of Article 3 are relevant in the valid Ordinance. The Ombudsman's intervention in the present case was therefore successful, and the initiator's warnings and the Ombudsman's proposals in this case contributed to positive changes for a wider circle of people.

In April 2020, the Ombudsman was also approached by a petitioner, who claimed that she had been living and working in Slovenia for 30 years, that she was supposed to have a permanent residence here, as she had not yet acquired Slovenian citizenship. Due to the COVID-19 epidemic, her employer is said to have put her on furlough. As she allegedly had problems repaying the loan due to lower monthly income, she applied to the bank for a deferral of payment of the borrower's liabilities but was rejected because she is not a Slovenian citizen. The petitioner claimed that she was discriminated against in this way.

Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities (ZIUOPOK) included only those natural persons who are Slovenian citizens with permanent residence in Slovenia among the beneficiaries of the deferral of the payment of the borrower's liability. In this way, it treated citizens of other EU Member States residing in Slovenia in accordance with the principle of freedom of movement in a lesser manner, which may be controversial from the point of view of EU law. This includes other non-citizens who have a permanent residence here or otherwise have a close connection with the state. In the described manner, the legislator secured the property position of Slovenian citizens (and their families) significantly better than the position of residents (and their families) who are not Slovenian citizens, even if they concluded credit agreements with banks in Slovenia under the same conditions, while their liquidity is expected to be affected in the same way by the epidemic and measures to control it. Therefore, there is no real justifiable reason for the described distinction according to citizenship (based on the public interest or the protection of the rights of others). This is especially evident when a non-citizen has such a strong connection with the state (permanent residence permit) that he or she is on an equal footing with citizens in terms of entitlement to social security benefits. The inability to pay a credit obligation may affect the financial situation of such a foreign citizen (and their family) in Slovenia that they may become entitled to social security benefits (monetary social assistance, rent subsidies, etc.), due to which it would actually be in the public interest that the beneficiaries of the deferral of the payment of the borrower's obligation also include (at least) those foreign citizens who have a permanent residence permit and permanent residence in Slovenia.

7 The use of a protective mask or other form of protection of the oral and nasal part of the face in communication with the persons referred to in the previous paragraph is not obligatory for interpreters for Slovenian sign language".

The Ombudsman addressed a proposal to the Ministry of Finance to consider the preparation of an amendment to the ZIUOPOK, according to which borrowers who are not Slovenian citizens but have permanent residence in Slovenia would be included among the beneficiaries of deferred payment of borrower's liabilities. The Ministry initially responded negatively to the Ombudsman's proposal. However, it appears that the legislator, when taking measures to mitigate the effects of the second wave of the COVID-19 epidemic (PKP6), nevertheless decided to extend access to deferred payment of borrower's liabilities for natural persons. The fourth paragraph of Article 57 of the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic (ZIUOPDVE), which entered into force on 28 November 2020 (Uradni list RS, no. 175/2020), provides: Notwithstanding the fourth indent of the second paragraph of Article 2 of ZIUOPOK, an application for deferment of payment of obligations from a credit agreement may also be addressed to the bank by a natural person who has permanent residence in the Republic of Slovenia and is not a citizen of the Republic of Slovenia. Unequal treatment of natural persons in access to deferred payment of a borrower's liability based on citizenship has thereby been eliminated.

The Ombudsman was also approached by the petitioner, who stated that he was a family assistant to his daughter, who is entitled to disability benefits under the Social Inclusion of Disabled Persons Act (ZSVI). He was interested in whether the crisis allowance announced by the Government for pensioners with the lowest pensions would also benefit people with disabilities who receive the said benefit and family assistants. We were able to establish that the Government allocated a one-time solidarity allowance to pensioners and the most vulnerable social groups for the duration of the epidemic in the draft Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP). However, the text of Article 58 of the said Act did not include disabled persons receiving disability benefits under the ZSVI and family assistants.

The Ombudsman addressed the Government, welcoming the measures aimed at mitigating the effects of the epidemic, but also noting that the measures taken should not unduly treat or even exclude individuals or groups unequivocally due to their personal circumstances, such as disability or social status (see the first and second paragraphs of Article 4 of the Protection Against Discrimination Act (ZVarD) in connection with Article 1 of the same Act). We were of the opinion that recipients of disability benefits under the ZSVI and family assistants should also be included among the most vulnerable groups of the population, to whom a one-off solidarity allowance is granted.

The government withdrew the Ombudsman's letter to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MDDSZ), which informed us that the ZIUZEOP already included a number of measures to mitigate the consequences of the epidemic in various areas, including social protection, and that new substantive proposals with additional measures were being prepared, within which the MDDSZ seeks to cover the remaining vulnerable groups that

are not included in the already adopted law, including family assistants under the law governing social protection and beneficiaries of benefits under Articles 5 and 8 of the ZSVI. **At the proposal of the Government, the National Assembly then adopted the amendment to the ZIUZEOP-A, which in the new Article 58a in the group of other vulnerable groups of persons under point 1 also includes family assistants under the law governing social protection, and under point 6 also beneficiaries of compensation under Articles 5 and 8 of the ZSVI. The initiative was substantiated and the Ombudsman's intervention in the case was successful.**

One of the initiators had, from the Health Insurance Institute (ZZZS) received a decision on referral to spa treatment, with an accommodation in a double room, which she will have to share, as she stated, "with a complete stranger with whom she had not been in contact until then". She was concerned that "tourists who visit the hotel of their own free will be subject to stricter preventive measures than for the at-risk group of patients referred for spa treatments". Due to the epidemiological situation in the country (spread of coronavirus), the initiator considered that the referral from the ZZZS decision was not in line with hygienic conditions and endangered her health and the health of insured persons at risk, and that the referral was not in accordance with point 3.3 of Hygiene recommendations for the implementation of tourism and hospitality activities to prevent the spread of SARS-CoV-2 infection (Hygiene recommendations)⁹. She considered that point 3.8 of the mentioned Hygiene Recommendations¹⁰, which excludes their validity for a health resort activity or a spa treatment or the performance of a medical activity, is discriminatory, as it treats the same situation clearly differently. The initiator also stated that she had already addressed complaints to the National Institute of Public Health (NIJZ) and the ZZZS, but they referred to each other in their answers and gave conflicting answers.

After we turned to the Ministry of Health to define the alleged discrimination based on personal circumstances of health in providing measures to prevent SARS-CoV-2 infection in multi-bed accommodation units of spas and to define the suspected violation of the right to safe medical treatment from 4 paragraph 11 of Article 11 of the Patients' Rights Act (ZPacP)¹¹, we received an explanation that different treatment of guests/patients regarding measures to pre-

9 For accommodation units (rooms), the National Institute of Public Health in this document, published on 8 July 2020, stipulates: "The service provider provides single or double rooms with accommodation; in accommodation units with several beds there can only be guests from the same household or guests who travel together and are already in close contact".

10 Point 3. 8. The Hygiene Recommendations stipulate: "Hygienic and protective recommendations for a health resort activity or a spa treatment or the implementation of a medical activity are not the subject of these recommendations."

11 It states: "Safe medical treatment is that which prevents harm to the patient in relation to the treatment itself and in relation to the circumstances of the physical safety of the stay or spending time with the healthcare provider."

vent SARS-CoV-2 infection should not be discriminatory, because that “is not a different treatment due to personal circumstances”, and that the different treatment of guests/patients is justified in the fact that the compared users of services (guest/patient) use different types of services (spa tourism activity or spa health activity). Since ensuring the safety of living and medical treatment “is more complex in spa treatment, it is implemented through various measures and is linked to the patient; therefore, it is not part of the Hygiene Recommendations for Tourism and Hospitality Activities, which are intended for the general public and providers of tourism and hospitality activities.” In connection with the Ombudsman’s call to define the suspected violation of the right to safe medical treatment, the Ministry of Health explained, among other things, that the insured person is treated in the health resort in accordance with the norms applicable to health care activities and adopted by the ZZZS and that, in strict compliance with the instructions in the spa, it is possible to ensure appropriate treatment and safety of all guests, including patients who are referred to the spa for spa treatment.

With regard to the Ministry’s concern that the health condition did not constitute a personal circumstance within the meaning of the ZVarD, the Ombudsman reminded that the circle of personal circumstances from the first paragraph of Article 1 of the ZVarD is not closed, as the law (similar to the URS itself in the first paragraph of Article 14) explicitly lists certain personal circumstances and prohibits discrimination on the basis of (any) “other personal circumstances”. The Ombudsman is of the opinion that a person’s state of health can also be a personal circumstance in the sense of the ZVarD, as a state of health is undoubtedly a condition that is related to a certain person and cannot be easily changed. In addition to supporting this position, it may be pointed out, for example, that the first paragraph of Article 6 of the Employment Relationships Act (ZDR-1) explicitly states health status as a personal circumstance on the basis of which discrimination is prohibited. In the present case, in the Ombudsman’s view, it also appeared that the state of health (was) the decisive reason for the poorer treatment with regard to the provision of measures to prevent SARS-CoV-2 infection in accommodation in health resorts: guests who were sent to the spa for treatments, were (may have been) accommodated in multi-bed rooms with persons with whom they had not been in contact before, while guests who were in the spa as tourists were subject to different treatment. In order to prevent the risk of SARS-CoV-2 transmission, it was only permissible to place persons in multi-bed accommodation units if they were guests from the same household or guests who had travelled together and were already in close contact.

Regarding the argument of the Ministry of Health that the different treatment of guests or patients in health resorts should be justified by different types of services used by patients or (tourist) guests of the health resort, the Ombudsman considered that in this case it cannot be decisive in what legal-formal form the activity or service is performed, but the content of the performed activity/service itself, i.e., accommodation in multi-bed rooms in a health re-

sort. In this part, the guest of the spa tourism activity as well as the patient with spa medical activity are in an identical position – i.e., accommodation–sleeping and/or staying in a multi-bed room (of the same) facility/spa. In view of this, it would therefore be expected that all service users are at least in the same position in providing measures to prevent SARS-CoV-2 infection in spa accommodation, or, given the vulnerability of patients/persons eligible for spa treatments¹², more strict measures for protection against SARS-CoV-2 infections should be expected with the latter. This is also indicated by the NIJZ's response, which states, among other things, that "ensuring the safety of living and medical treatment in spa treatment is more complex, is carried out through various measures and is patient-specific, so it is not part of the Hygiene Recommendations in tourism and hospitality, which are intended for the general public and providers of tourist and hospitality activities."

However, neither the NIJZ nor the Ministry of Health explained anywhere what concrete measures were taken to ensure the complex protection of patients' accommodation and medical treatment. The only (known) concrete precaution against the spread of SARS-CoV-2 infections, relating to the grouping of patients who had not been in contact before, in multi-bed rooms of health resorts, was the patient's statement that they were healthy¹³. As a higher standard of protection against the spread of SARS-CoV-2 infections was provided to guests of the health resort in tourist capacity in accommodation in multi-bed rooms than to patients in the health care capacity, the Ombudsman considered that the Hygiene Recommendations were discriminatory to patients, referred to spa treatment, in addition to the fact that such accommodation cannot be in accordance with the right to safe medical treatment of patients (paragraph 4 of Article 11 of the ZPacP), referred to spa treatment. The Ombudsman therefore recommended to the Ministry to require the competent authorities (NIJZ, ZZS) to determine protective measures against the spread of SARS-CoV-2 infections that will be the same or at least comparable (e.g. mandatory submission of a negative test for COVID-19 or similar) with measures set out in the Hygiene Recommendations.

We then welcomed the Ministry's response that, after re-examining the Ombudsman's findings on the violation of the right to safe medical treatment of patients referred to spa treatment and checking the situation with spa treatment providers, it concluded that "existing instructions and recommendations are in certain parts deficient". Even more important was the announcement of the Ministry that it would propose the preparation of professional instructions for the placement of patients upon admission to spa

12 According to the data from the article "Kako varni pred covidom so ljudje na rehabilitacijah v zdravilišču", published in the daily newspaper Delo on 11 July 2020, half of those who claim spa treatment at the expense of the ZZS "are over 64 years old. Many of them have associated diseases, which means that a possible COVID-19 infection involves high-risk groups."

13 E.g. in the article "Kako varni pred covidom so ljudje na rehabilitacijah v zdravilišču", published in the daily newspaper Delo on 11 July 2020.

treatment and the re-examination of already adopted recommendations in the implementation of spa treatment services. However, it was somewhat surprising that, despite the above, the Ministry did not recognize the established discrimination in the presented case, as the Ombudsman's finding of a violation of the prohibition of discrimination was based on deficient and insufficient measures to protect patients referred to SARS-CoV-2, when compared to the same measures for accommodation of guests of the health resort in the tourist capacity. The Ombudsman was not convinced by the ministry's argument that measures to protect patients, based on the knowledge of the spa's medical staff, to assess or check whether a person can be admitted for treatment and stay are sufficient or comparable to those intended for guests in a tourist capacity. After all – if this were true, then the above-mentioned announced proposal of the Ministry for the preparation of professional instructions for the placement of patients upon admission to spa treatment would not make sense also. Regardless of this, we expressed the expectation that the mentioned professional instructions, which are planned by the ministry, will also eliminate the established discrimination.

3.13 PROTECTION OF DIGNITY, PERSONAL RIGHTS, AND SECURITY AND PRIVACY

Shortly after the enactment of the Ordinance on the temporary prohibition of the gathering of people at public meetings at public events and other events in public places in the Republic of Slovenia and prohibition of movement outside the municipalities of 29 March 2020, issued by the Government of the Republic of Slovenia, a real avalanche of individual initiatives, who in one way or another problematized that the said legal act excessively interferes with their fundamental human rights and freedoms. We have been alerted to problems in various real-life cases, e.g. on the problems of establishing contact between partners living at separate addresses and in different municipalities, the problem of carrying out recreational activities in municipalities with (too) small green areas, the problem of maintaining mental and physical stability with a holiday in nature, etc. Some also pointed out that the prohibitions in the Ordinance could at most be determined by an Act rather than by a by-law; that the Ordinance is not an appropriate basis for granting a mayor the authority to further restrict or even prohibit access to certain public places and areas in a municipality; and that the bans have an indefinite period of validity (until the grounds for the ban cease to exist).

The real-life cases with which the initiators addressed the Ombudsman thus referred to the issue of exercising or restricting various human rights or freedoms, and the common denominator of these is human dignity. Within the framework of Article 35 (protection of privacy and personal rights) of the Constitution of the Republic of Slovenia (URS), **the general freedom of conduct is also protected**¹. This includes leisure activities such as recreation, maintaining psychological and physical stability in nature, visiting a holiday home, deciding on how a person will dress (and the related order to use gloves and masks, etc.), as well as establishing personal contacts with friends². The ex-

1 See Decision US RS, no. UI-218/07 of 26 March 2009, where in point 10, it is written: "The general right to act freely gives individuals the right "to do what one will with one-self" and with all aspects of one's person, without external interferences. It is namely important that individuals are able to choose their own lifestyle, develop their personality, and live their personal life as they choose."

2 Related to this see point 7 of the decision of the US RS no. Up-50/99 of 14 December 2000: "Modern legal theory defines privacy as a sphere of an individual in which no one may interfere without special statutory authorisation." and "In such context, we could divide the sphere of an individual's private life into the sphere of the individual's intimate life and family life, the sphere of the individual's private life that does not take place in public, and the sphere of the individual's [private] life that does take place in public." According to the European Court of Human Rights, **contact with others** falls within the scope of Article 8 of the ECtHR - e.g. see paragraph 50 of the judgment in *Von Hannover v. Germany*) of 24 June 2004 ("the guarantee afforded by Article 8 of Convention primarily intended to ensure development, without outside interference, of personality of each individual **in his relations with other human beings**"), an similarly also the US RS, point 9 of decision Up-444/09-17 of 12 April 2012.

ercise of **the right to family life under Article 8 of the European Convention for the Protection of Human Rights (ECtHR)** has also been repeatedly called into question, which protects contact with family members and nurtures close personal ties between members (for example, also meeting and visiting marital and common-law partners living in different municipalities), as well as the **right to private property from Article 33 of the URS** (e.g. when an individual owns a (movable) property in which they do not have a registered residence).

The COVID-19 epidemic was undoubtedly a situation to which the independent Republic of Slovenia had not yet been exposed. According to the Ombudsman, it would be unreasonable to take the position that such a situation does not allow (or even does not demand!) a restriction of human rights or fundamental freedoms. The Constituent Assembly has already given decision-makers legal bases for interventions in the fundamental building blocks of the constitutional order for such positions. Articles 15 and 16 of the URS determine the procedures and manner by which certain human rights and fundamental freedoms may be restricted and even revoked, whereby the rights listed in the second paragraph of Article 16 are absolute and therefore cannot be restricted or revoked. As no state of war or state of emergency has been declared in the Republic of Slovenia, Article 15 of the URS proved to be a relevant basis for restricting human rights, stating in the third paragraph that human rights and fundamental freedoms are limited only by rights of others and in cases provided for in the Constitution.

In regard to freedom of movement, the second paragraph of Article 32 of the URS stipulates that this right may be restricted by law, but only if this is necessary in order to ensure the course of criminal proceedings, in order to prevent the spread of infectious diseases, to protect public order, or if the defence of the state so demands. Article 35 does not explicitly mention the legal basis for restricting the rights of privacy and personal rights of the URS, but such a requirement arises from the second paragraph of Article 15 of the URS, according to which the manner of exercising human rights may prescribed only by law; thereby to limit human rights, which represent a qualitatively greater interference than the very method of realization, a legal act of equal force is required, i.e., a law³. The legal basis (second paragraph of Article 8 of the ECtHR) is also explicitly required for the interference with the right to family life from Article 8 of the ECtHR. Regarding the restriction of the right of ownership, Article 37 of the Law of Property Code (SPZ) can also be pointed out, which stipulates: "The right of ownership is the right to own something, to use it and enjoy it in the most extensive way and have it at your disposal. Restrictions on use, consumption and disposal may only be determined by law."

3 Similarly in point 15 of the decision of the US RS no. U-I-158/95: "According to the established position of the Constitutional Court, fundamental constitutional rights may be limited only by law, after the legislator has weighed the constitutional goods and established the necessity of a restrictive measure."

It followed from the introduction to the Ordinance mentioned in the introduction that the basis for it were points 2 and 3 of Article 39 of the Communicable Diseases Act (ZNB). In Article 39, it stipulates that in the event that milder measures cannot prevent certain infectious diseases from entering the Republic of Slovenia and spreading it, the minister responsible for health may also order the following measures: 1. determine the conditions for travel to and from a country where there is a possibility of contracting a dangerous communicable disease; 2. prohibit or restrict the movement of the population in infected or directly endangered areas; 3. prohibit the gathering of people in schools, cinemas, public premises and other public places until the risk of the spread of a communicable disease has ceased; 4. restrict or prohibit the movement of certain types of goods and products. It follows from the above (1.) that freedom of movement may be restricted by law, (inter alia) if this is necessary in order to prevent the spread of an infectious disease (second paragraph of Article 32 of the URS); (2.) that the legislator has granted the executive authority the basis and authority by law to order, inter alia, a ban or restriction on the movement of the population in infected or directly endangered areas and a ban on gatherings (Article 39 ZNB). In accordance with the practice of the US RS, it is not disputed that the legislator can authorize the executive branch to issue a by-law regulation that ensures the enforcement of laws.⁴ According to the above, the freedom of movement can be encroached upon by a by-law act, but only to the extent determined by law.

The question of the scope of the power that the legislator transferred to the executive branch in Article 39 of the ZNB seemed to be crucial. In this regard, the Ombudsman addressed an inquiry to the Government, in which we drew attention, among other things, to the interpretation of the legality principle and the principles of the rule of law in the hitherto constitutional court practice⁵. The significance of the mentioned principles is that the **statutory authorization must contain all the essential components (also) in terms of content, so that the individual can determine his legal position already on the basis of the law, and that it is clear from the law, or at least predictable, what restrictions an individual must reckon with.**

When the executive power, by not defining infected or directly endangered areas in the Ordinance but defining the entire territory of the Republic of Slovenia as such an area, banned movement outside municipalities (and granted mayors the authority for additional restrictions⁶), there was concern that this exceeded the authority given by the legislator, and consequently interfered

4 E.g. see point 33 of the decision of the US RS number U-I-313/98 of 16 March 2000.

5 See especially points 33 and 42 of the decision of the US RS number UI-313/98 of 16 March 2000 ("The principle of binding the operation of state bodies to the Constitution and the law, as well as the principle of legality, are, as fundamental constitutional principles, in close connection with the principle of a democratic and legal state.").

6 The third paragraph of Article 4: "For the area of an individual local community, the mayor may, by a publicly published decision, determine the manner, conditions of access or prohibit access to certain public places and areas in the municipality."

with many other human rights and fundamental freedoms without an appropriate legal basis. In addition, the (substantive) proportionality of the measures proved to be a problem, and in some cases the adequacy of the measure proved to be questionable.⁷ From the point of view of the already mentioned predictability regarding the restrictions that an individual has to reckon with during an epidemic, the precise timing of the measures taken is also important. In the opinion of the Council of Europe⁸, of which the Republic of Slovenia is a member, special attention should be paid to the clear timing of the duration of the measures (thereby, it also seemed questionable whether the temporal validity of the Ordinance (prohibition⁹) meets these conditions).

The Ombudsman also addressed the criticism outlined above to the Government. After receiving its response, we emphasized in our concluding opinion that the restriction of human rights and fundamental freedoms according to the principle of separation of powers is usually reserved to the legislator, but when the legislator authorizes the executive authority to limit human rights in certain (statutory) cases (as is the case with Article 39 of the ZNB), in our opinion such (exceptional) authority should be interpreted restrictively, i.e., within the strict limits of the text of the law¹⁰. It follows from the wording of points 2 and 3 of Article 39 of the ZNB that the executive authority may, under certain conditions, prohibit or restrict **movement** and prohibit **assembly**, i.e., it can only interfere with freedom of movement under Article 32 of the URS and the right to assembly under Article 42 of the URS. According to the Ombudsman, the above-mentioned provisions of the ZNB **cannot be interpreted and understood so broadly** and in such a way that by restricting freedom of movement and the right of assembly, the executive authority can, by nature of things, indirectly interfere with other rights, even though, as the Government stated, “only as much as was strictly necessary to achieve the protection of public health and life of the inhabitants of the Republic of Slovenia”.

7 E.g. when a person drives their own car to another municipality, to their property or for a walk in (uninhabited) nature, it does not appear that such conduct would endanger their own health or the health of others; on the contrary – this way endangers them less than if they had taken a walk in a crowded city park or stayed in a multi-apartment tower with 300 residents. In these cases, the pursued goal cannot be achieved at all by an ordinance. In the case of visiting close relatives in another municipality (marital or common-law partners), it seems that given the importance of the right to family life (and also for the mental health of the individual) the measure does not comply with the principle of proportionality in the narrow sense.

8 See “Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis” of 7 April 2020, especially on p. 3.

9 “is valid until the cessation of the reasons for it, which is established by the Government of the Republic of Slovenia by a resolution”.

10 Similar also in point 14 of the decision of the US RS no. U-I-158/95: “Given that the restrictions are exceptions to the protection of rights against interference otherwise guaranteed by the Constitution, they must be interpreted narrowly.”

In addition to the above-mentioned restrictive interpretation of statutory authority, this position is, in the Ombudsman's opinion, also justified by the fifth paragraph of Article 15 of the URS, which states that no human rights or fundamental freedoms may be restricted on the pretext that this Constitution does not recognize them or recognizes it to a lesser extent. The Ombudsman was therefore not persuaded by the Government's argument that the consequences of a restriction on the right to freedom of movement "may by their nature be reflected in other areas of human life" and it was therefore "indirectly within the framework of restriction and prohibition of movement and assembly, for which there is a clear explicit basis in the Constitution and in the Infectious Diseases Act, other rights may be infringed, but only as was absolutely necessary to achieve the protection of public health and life of the inhabitants of the Republic of Slovenia".

The Ombudsman also considers that the intention of the legislator could not have been to authorize, by the nature of things and indirectly, the executive power to restrict other rights by points 2 and 3 of Article 39 of the ZNB. If the legislator were to rely on a substantiated and indirect restriction of other rights in nature, Article 42 of the ZNB would not need to specify point 3 at all, because the power from point 2 would suffice, since, as the Government explains, by prohibiting movement in public premises and places by the nature of things and indirectly restricting assembly - the legislator in Article 39 specified which rights the executive authority can interfere with and stated exactly two: freedom of movement and the right to assembly.

The Ombudsman therefore considers that it is not sufficiently convincing to consider that a restriction on freedom of movement is, by its nature, a justification for interference with personal rights, the right to property and the right to respect for privacy and family life. All of these are equally recognized and independent human rights, the restriction of which is permissible within the URS, i.e., as a rule by law, but it may also be on the basis of a by-law act, when it refers to the explicit and unambiguous authorization of the legislator. It does not appear that the executive authority would have such a legal authority to interfere with personal rights, property rights and the right to respect for private and family life, especially not in points 2 and 3 of Article 39 of the ZNB. Due to the above, we believe that the individual referred to in points 2 and 3 of the first paragraph of Article 39 of the ZNB could not have foreseen that the Government could adopt such strict and broad restrictions, prohibitions, and orders on this legal basis.

Regarding the Government's statement that the purpose of the measures from the decree was to prohibit and restrict social contacts, which in the opinion of the health profession is the only effective means of preventing the spread of the disease, such an intention can be achieved only to a limited extent: by banning or restricting movement and assembly, and the mentioned article of the ZNB, according to the Ombudsman, does not provide a basis for restricting contacts in the home environment with, for example, family members, marital

(and common-law) partners or close friends. To limit these practices, the executive authority would, in our view, need special authority.

If, on the one hand, we could agree that the **legitimacy of the measure is demonstrated in terms of protecting public health** (taking into account the Government's argument that, in addition to banning and restricting social contacts, the health profession does not yet know a milder and more effective measure to contain and control the spread of COVID-19), however, we found the arguments justifying the necessity and appropriateness of the measure prohibiting movement outside one's municipality to be less convincing. It seemed that the same goal, i.e., the prohibition and restriction of social contacts, could be achieved through milder measures - if the reason for taking such a drastic measure were "calls from the mayors of tourist municipalities due to the large number of visits to tourist places", this could be addressed also by, e.g. banning or restricting movement in certain tourist municipalities, but not in general for all Slovenian municipalities. Also with regard to the fact that "that on the way to areas for movement in nature (especially if they are more distant), due to various circumstances, direct contact may occur, such as a car accident", it did not seem that such concerns were taken into account in the exceptions set out in Article 3 of the Ordinance; and were also not supported by any concrete statistical data, as well as various other (maybe even more) risky behaviours that can (even more likely) lead to injuries (e.g. falls, poisonings)¹¹ were not at all addressed with the Ordinance (e.g. use of bicycles, rollerblades, cutting machines, work at height in the home environment, etc.). And even if such an argument of the Government would be given a certain weight, it should not be overlooked that the same goal, i.e., minimizing the risk of traffic accidents, could be achieved through milder measures, e.g. additional speed limits on the road, a ban on riding motorcycles, a total ban on driving under the influence of alcohol, or even setting a maximum distance from the residence of an individual. The latter would not only avoid a more invasive measure prohibiting movement outside the home municipality but would also be neutral in terms of the personal circumstances of the individual's residence - Slovenian municipalities are very different in size, population, and natural conditions, so a measure that restricts movement outside municipalities can also have discriminatory effects.

11 See at National Institute of Public Health (NIJZ): Poškodbe v Sloveniji, Zakaj so problem javnega zdravja in kaj lahko storimo? Editor: mag. Mateja Rok Simon, p. 20: "In the period of 2008-2010, an average of 1,405 people died annually due to injuries and poisonings, of which more than half (64%) due to accidents, mainly falls (36%) and traffic accidents (15%)" and also on p. 27: "In recent years, an average of 9,560 traffic accidents with injuries have occurred on Slovenian roads each year, in which 226 people died" and "In addition, 1,120 people were seriously injured each year and 12,400 could be injured (MNZ 2009-2011); of these, 4,670 were admitted to hospital treatment..." and compared with the results of falls from the same publication on p. 44: "In Slovenia, 98,900 people injured in falls are treated annually in the emergency medical services." And: "In the years 2006-2010, 477 people died each year due to falls." Also compare with the findings on poisonings from the same publication on p. 68: "66 people die each year from accidental poisonings, and 285 are admitted to hospital."

Regarding the Government's argument that "in practice it is very difficult to ensure sufficient mutual distance in naturally limited open spaces (for example on the pointed top of a hill, in gorges, river canyons), where the natural conditions of the terrain at high concentration of walkers would prevent safe mutual distance", we believe that these terrain configurations are relatively specific geographical phenomena that cannot justify such a drastic measure of banning movement outside the home municipality and could be addressed by a special provision in the event that these issues are considered reasonable. Last but not least, the position of underpasses and crossings for pedestrians, staircases and lifts in high-rise buildings, paths in city parks, etc. are similar to the listed geographical phenomena, but no special need for (additional) prohibitions was detected there.

The Ombudsman also considers that the argument of non-compliance with the Ordinance on the temporary general ban on the movement and assembly of people in public places and areas in the Republic of Slovenia of 19 March 2020 cannot in itself justify serious interference with human rights. The Ombudsman wished to see more specific information on how it was perceived at all that the Ordinance of 19 March was not being complied with. Furthermore, in the event that the legal addressees do not comply with the measures, it first makes sense to find out why this is the case and what (milder) measures could be taken to ensure compliance with the Ordinance of 19 March 2020.

In the statistical presentation of the course of the epidemic, the Ombudsman also missed a more careful presentation of the issue of the spread of the COVID-19 virus in social welfare institutions. According to data obtained by the Ombudsman from the Ministry of Health (MZ), the residents of social welfare institutions represented as much as 22% of all detected infected persons in Slovenia. Due to the above, we believe that the dynamics of the spread of the disease (in addition to the regulations themselves) also had a very important impact on infections of care recipients and persons associated with the operation of these institutions (caregivers, medical staff) and other infections not related to crossing municipal boundaries (e.g. in-hospital infections). The (according to the Ombudsman) relevant proportion of infections that were not affected at all by the ban on crossing municipal borders should thus be excluded from the statistics.

In conclusion, **the Ombudsman proposed to the Government to submit to the National Assembly a proposal to amend the ZNB, which will clearly state which human rights, to what extent and under what conditions the Government may restrict in the event of an outbreak, on the basis of legal authority.** In the Ombudsman's view, such a change should be designed in such a way that it is clear to the average citizen from the wording of the article what restrictions they may face in the event of an epidemic. However, in cases where there would be such comprehensive restrictions (for all residents and throughout the country) of many human rights as set out in the Ordinance, in our opinion it is also necessary that the restrictions (possibly retroactively,

when that still makes sense) are confirmed by the National Assembly, as human rights are the foundation of the Slovenian Constitution, and their regulation is primarily reserved to the legislative branch of government. This (with some exceptions) applies even in the event of war and a state of emergency (Article 16 of the URS), so it is all the more true that the primary authority and responsibility for restricting human rights also goes to the National Assembly during epidemics. For the same reason, the Ombudsman is also reluctant to further delegate authority to restrict freedom of movement to mayors or municipalities.

In its response, the MZ emphasized the importance of the right to health, which is protected in international documents, and the right to health care from Article 51 of the URS, which “protects one of the most important (legal) values, which is human health”. They reiterated that certain measures in the Ordinance were aimed at banning and restricting social contacts, as these were, in the opinion of the medical experts, the only effective means of preventing the spread of the disease. They expressed the opinion that the restrictions from the Ordinance were determined in accordance with the principle of proportionality from Article 2 of the URS, so that only those restrictions were determined that are strictly necessary to achieve a constitutionally and legally permissible goal. They also pointed out that all measures were taken on the basis of the opinion of the health experts, namely the Expert Group for the Containment and Control of the COVID-19 Epidemic, appointed by the Minister of Health on 31 March. In conclusion, the MZ announced that, from the point of view of its competencies, it had approached the formulation of a proposal for amendments to the ZNB. They announced that in the process of its preparation in the field of ordering measures prohibiting or restricting the movement of the population and banning the gathering of people in public places, they will also examine the Ombudsman’s arguments from the point of view of the principle of proportionality and legality.

The Ombudsman was also approached by a large number of petitioners who considered that Article 6 of the Ordinance on the temporary partial restriction of movement of people and on the prohibition of gathering of people to prevent the spread of COVID-19 (Ordinance)¹² inadmissibly interferes with their human rights and fundamental freedoms. In their letters to the Ombudsman, the initiators stated various reasons why they felt affected in their rights, e.g. that they are unjustifiably discriminated against because they are unable to use smartphones (due to age, financial status) or do not want to use them due to lifestyle choices and/or the belief that the #OstaniZdrav app is “bad, useless

12 Published on 13 December 2020 in the Uradni list RS, no. 66/20, provided in Article 6: “Restriction of movement between municipalities within an individual statistical region: Osrednjeslovenska, Goriška, Obalno-kraška, Gorenjska, does not apply to an individual or a person from a common household who has a permanent or temporary residence in an individual statistical region and a downloaded and permanently activated mobile application for informing persons about contacts with other users positive for the SARS-CoV-2 virus (the #OstaniZdrav app).

and controversial” and also because the application tracks and monitors its users, which is an invasion of personal data of individuals and their privacy. Some felt that there was no legal basis to give supervisory bodies powers to inspect a smartphone, and the Ombudsman also received a initiative from a police union who was interested in “whether there are legal reasons for police officers to “look” at a citizen’s phone if they have the application downloaded #ostanidoma”.

The Ombudsman addressed the Government and pointed out that interference with human rights must always take into account the formal aspect, i.e., that the restriction of human rights and fundamental freedoms according to the principle of separation of powers is generally reserved for the legislator – human rights are therefore generally infringed upon by law¹³. However, when the National Assembly authorizes the executive authority by law to restrict human rights in certain (legally defined) cases, in the Ombudsman’s opinion, such (exceptional) authority must be interpreted restrictively, i.e., within the strict limits of the text of the law¹⁴.

The Ombudsman assessed that it does not follow from points 2 and 3 of the first paragraph of Article 39 of the ZNB and Article 46 of the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic (ZIUOPDVE), on which the Ordinance was based, that the Government could condition freedom of movement with “a downloaded and permanently activated mobile application”. On the contrary: the legislator, who legally regulated the mobile application in Article 46 of the ZIUOPDVE, and on which basis an Ordinance was issued, explicitly wrote that the use of the mobile application is voluntary - and it stemmed from Article 6 of the Ordinance that crossing municipal borders within certain regions and the related lawful exercise of the constitutional right to free movement, it is mandatory to download and have a permanently activated mobile application. The Ombudsman considered that in cases where the exercise of both a fundamental human right and the right to free movement is conditional on the use of a mobile application, the choice to use a mobile application cannot be considered genuinely voluntary as the refusal to use a mobile application has far from negligible legal consequences for the individual, which means that the consent of the individual cannot in fact be considered free. According to the Ombudsman, such conditioning constituted an interference with the general freedom of action referred to in Article 35 of the URS (an individual

13 E.g. see Article 87 of the URS, the second paragraph of Article 38 of the Constitution of the Republic of Slovenia (URS) and also p. 15 of the decision of the US RS no. U-I-158/95 of 2 April 1998.

14 In this direction, see point 33 of the decision of the US RS no. UI-313/98 of 16 March 2000, from which it follows, inter alia, that in accordance with the principle of legality and the rule of law, the statutory authority must contain all essential components (also) in terms of content, so that an individual can determine their legal position already on the basis of the law and that it is clear from the law, or at least predictable, with what restrictions the individual must reckon.

must download an application), with the protection of personal data referred to in Article 38 of the URS (personal data is processed using a mobile application, further processing of personal data may occur in the case of monitoring compliance with Article 6 of the Ordinance) and the right to non-discriminatory treatment referred to in the first paragraph of Article 14 of the URS (people who, due to low incomes, cannot buy the appropriate technical equipment that enables the use of a mobile application, and people who, due to reduced psychophysical abilities, cannot use a smartphone and mobile applications, such as the elderly, demented, children, the disabled, etc. are at a disadvantage).

The Ombudsman assessed that the Government pursued a constitutionally permissible goal with Article 6 of the Ordinance, i.e., the prevention of the spread of SARS-CoV-2 virus infections, but that it did not appear that the measure from Article 6 of the Ordinance was appropriate (the pursued goal can be achieved with the adopted measure), necessary (the same goal cannot be achieved with other milder measures) and proportionate in the narrower sense (proportionality of the severity of the consequences of interfering with the affected human right with the value of the pursued goal or benefit). In this regard, the Ombudsman raised a number of issues, including whether and how the use of the mobile application can prevent the spread of infections; whether there is concrete evidence that the current use of the mobile application would help prevent the spread of infection; whether the individual, informed through the mobile application of close contact under this title, has any special rights (sick leave, isolation) or obligations (isolation); how it is possible to ensure legal control over compliance with Article 6 of the Ordinance without further unlawful interference with the protection of personal data (inspection of the telephone by the supervisory authorities) and what are the legal grounds for such interventions; in what sense is the obligatory use of a mobile application for crossing municipal borders an appropriate and necessary measure, if such use is not prescribed within the same municipality and for crossing municipal and regional borders for the reasons stated in Article 4 of the Ordinance; why the mandatory use of the mobile application is prescribed for the case when an individual goes to an uninhabited forest in another municipality, where the probability of transmission is very low, but is not prescribed for the case when an individual goes to a populated work environment (inside or outside the municipality of residence), in which the probability of infection is relatively high, and how the intervention referred to in Article 6 of the Ordinance is justified from the point of view of protection against discrimination of persons on the grounds of age, disability and material position in exercising their freedom of movement.

Even within the time limit within which the Ombudsman expected the Government to respond to the criticism, on 23 December 2020, the Ordinance amending the Ordinance on the temporary partial restriction of movement of people and on the prohibition of gathering of people to prevent the spread of COVID-19¹⁵, which no longer conditioned the crossing of municipal borders with the use of the #OstaniZdrav mobile application, which led the Ombudsman to consider his intervention with the Government to be successful.

¹⁵ Uradni list RS, no. 196/2020.

3.14 FREEDOM OF EXPRESSION AND THE EPIDEMIC OF COVID-19 DISEASE

The ombudsman strongly condemned the events when anonymous individuals branded some prominent representatives of the medical profession as murderers of the Slovenian nation in the fight against the COVID-19 epidemic. He also called on law enforcement agencies to stem the epidemic of intolerance and hostility¹. It was noted with concern that intolerance has also become wide-spread during the time of restrictive measures to curb the coronavirus disease. There was an increasing number of verbal attacks, incitements, intimidation, as well as direct death threats, which were directed not only at representatives of the profession, politics, or the media, but also at individuals with different political views or worldviews.

In some cases, however, we were also unable to agree with the persons who approached us for mediation. One such example was an e-mail from a lady who stated at the outset that she considered it extremely important for us to respond, as Ombudsman, to statements, records and actions calling for intolerance, inequality, even violence, especially “if such statements are made and incited by people who have social and political power and thus consequently influence our new sexist, homophobic, xenophobic ‘normality’”. According to her, the levels of acceptability and normalcy have long since hit rock bottom with Slovenian politicians, and she especially pointed out that “the official government spokesman Jelko Kacin made quite controversial and frightening statements for COVID-19 /... / under the guise of a declared epidemic, among the latest being ‘If we have a picnic, it should be a family picnic; do not invite people from different cultural or national backgrounds’”. She was of the opinion that the epidemic must not and cannot be a disguise for xenophobia and asked us that we “in your own name and on behalf of the citizens who want to live in a tolerant country and the world at large, strongly condemn this statement and respond regularly to controversial statements by politicians in general. We explained to her that the Ombudsman believed that the statement made by the government official spokesperson, which she referred to, had not been made in a malicious spirit, but with a desire for people to have as little contact as possible with people who had recently been present in epidemiologically unsafe areas. In the said statement, the Ombudsman therefore did not recognize any conduct contrary to Article 63 of the URS.

1 12 December 2020, ‘Varuh poziva organe odkrivanja in pregona, da zajezi epidemijo nestrpnosti in sovražnosti’ <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-poziva-organe-odkrivanja-and-persecution-to-curb-the-epidemic-of-intolerance-and-hostility/>.

3.15 ASSEMBLY, ASSOCIATION, AND PARTICIPATION IN THE MANAGEMENT OF PUBLIC AFFAIRS CONNECTED TO THE COVID-19 EPIDEMIC

The situation connected to the so-called anti-government protests or the restriction of assembly proved to be very polarising. Relating to this, we received various writings – both by those who problematised such restrictions and those who expected more radical interventions by the authorities. One of the initiators, for example, expressed his dissatisfaction due to previous anti-government protests and asked when the authority bodies are going to remove “murderers on wheels” and protect the residents, and where is the Ombudsman who should speak up because the rights of people who did not participate in the protests are violated.

The issue connected to the so-called right to protest remained current and is also discussed 2021; nevertheless, we can even now report that in 2020, for example, we dealt with the case of an initiator who received a payment order for a fine of EUR 40 (and the possibility of paying the so-called half) under paragraph three of Article 70, ZPrCP, for the incorrect use of sound warning signs. This supposedly happened on 27.11.2020 during the protest with cars on Prešernova cesta in Ljubljana. With the intention of protecting health and complying with measures to prevent the spread of COVID-19, the protest was intended to be carried out in such a way that the participants were driving cars and expressing their opinion with banners and horns. The initiator was supposedly stopped by a police officer explaining that he was controlling the traffic. The initiator did not believe this but was of the opinion that the police had fined the protest participants with the intention of deterring them from protesting and expressing their opinion, since traffic safety was not actually endangered by the protest.

The Ombudsman emphasises that the freedom of (peaceful) assembly and association – together with the freedom of expression – is considered to be an essential building block of a democratic society. This fundamental freedom is guaranteed to everyone by Article 42 of the URS (and, e.g., also by Article 11 of the ECHR). The ECtHR stands on the position that the **freedom of assembly and association should not be interpreted strictly.**¹ The freedom of assembly and association does not protect protests in which organisers and

¹ See the judgement of the Great Chamber of the ECtHR in the matter of Kudrevičius and others versus Lithuania (appeal no. 37553/05) from 15.10.2015, Paragraph 91.

participants have violent intentions; The essence of the freedom is thus in the peaceful expression of opinion and the provision of a forum for public debate and open expression of views. The freedom of assembly and association is connected to the freedom of expression (Article 39, URS, or Article 10, ECHR); however, the freedom of assembly and association is about expressing opinion and views together with others.² **Considering the initiator's statements and also media releases about the protest with cars on 27.11.2020, the Ombudsman does not have any doubts that it was a peaceful exercise of the freedom described.**

The freedom of assembly and association is a relative right; meaning that it may be restricted. However, possible restrictions have to be in accordance with the second paragraph of Article 11, ECHR, according to which the freedom of assembly and association may be restricted only by law, if it is necessary in a democratic society due to national or public safety, to prevent riots or criminal offences, due to the protection of health or morale, or to protect the rights and freedoms of other people. Restrictions on the right to assemble and associate have to always be proportional to the goal pursued or tailored narrowly to achieve the intended purpose. Paragraph two of Article 11, ECHR, thus for example allows the contracting states to specify legal restrictions to the exercise of the freedom of peaceful assembly and association in public spaces due to the protection of the rights of others with the goal of preventing violations of public order and maintaining the normal course of traffic.³

In accordance with the ECtHR assessment, it is also valid that the duty of registering the assembly in advance usually does not interfere with the essence of the freedom of assembly and association. It is also not in contradiction with the spirit of this freedom if, due to public order and national safety, the state requires for certain assemblies that a prior permission certificate must be acquired.⁴ In special circumstances, the immediate reaction of people (e.g. to a particular political event) can be justifiable, in the form of a spontaneous and therefore unregistered demonstration. Thus, the ECtHR believes that the **right to spontaneous demonstrating outweighs the obligation to register the assembly when the demonstration is a direct response to a certain event or fact**, especially when an delayed response would render the right to assembly obsolete.⁵ The dissolution of an unregistered demonstration, the participants of which do not engage in anything unlawful, only because it is not

2 See the judgement of the ECtHR in the matter of Primov and others versus Russia (appeal no. 17391/06) from 12.6.2014, Paragraph 91.

3 See the judgement of the ECtHR in the matter of Éva Molnár versus Hungary (appeal no. 10346/05) from 7.10.2008, Paragraph 34.

4 See the judgement of the ECtHR in the matter of Nurettin Aldemir and others vs Turkey (appeals nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02, and 32138/02) from 18.12.2007, especially Paragraphs 42 and 46.

5 See the above-stated judgement of the ECtHR in the matter of Éva Molnár vs Hungary, Paragraph 38.

registered, would consequently present a disproportionate intervention into the right of assembly and association.⁶ This freedom in such circumstances in principle also protects unregistered gatherings, protests, public assemblies, and the like. Public authorities also have to have a certain level of tolerance towards unregistered peaceful gatherings, in order to not deprive the freedom of assembly and association of all content. In other words: **if spontaneous unregistered demonstrations do not turn violent, the authorities also have to allow for unregistered peaceful gatherings**, since otherwise the right of assembly would become devoid of substance.⁷

Taking into consideration the initiator's statements and the reports of the media⁸ prior to the protest, announced for 27.11.2020, the case at hand was not a sudden spontaneous demonstration but one of a series of anti-government protests, which prior to that date were carried out for months, generally on Fridays. In this respect, this car protest differed from cases when drivers spontaneously react with honking their horns immediately after a victory of their favourite sportsperson. Since it was a pre-prepared or non-spontaneous protest, no circumstances are given for when the freedom of assembly should – in accordance with the above-presented ECtHR assessment – outweigh the legal requirement for prior registration of a protest or even acquiring a permit for it.

The protest at hand differed from previous anti-government protests, carried out on Fridays, in that the social networks announced beforehand that this time it was to take place from cars, because this manner of protesting was supposed to be less risky for the transfer of the contagious disease, due to which the ban on public assembly as a measure to prevent the spread of COVID-19 had been put in place.⁹ While previous Friday protests were (at least partly) carried out in public areas, where as a rule there is no car traffic (at Trg republike, on the roads where there is no general car traffic, etc.), this protest was executed solely on public roads open for traffic. Those who in-

6 See the judgement of the ECtHR in the matter of Bukta and others vs Hungary (appeal no. 25691/04) from 17.7.2007, Paragraphs 35 and 36.

7 See the above-stated judgement of the Great Chamber of the ECtHR in the matter of Kudrevičius, Paragraph 150, and ECtHR assessment presented there.

8 See e.g. the following media releases published prior to the protest: <https://www.sta.si/2836554/policija-poziva-k-spostovanju-ukrepov-in-ob-morebitnih-shodih-napoveduje-ukrepanje>; <https://www.rtv slo.si/slovenija/policija-poziva-k-spostovanju-ukrepov-in-ob-morebitnih-shodih-napoveduje-ukrepanje/543625>; <https://www.zurnal24.si/slovenija/napovedani-novi-protesti-to-sporoca-policija-357436>; <https://www.delo.si/novice/slovenija/polcija-v-primeru-protestnih-shodov-napoveduje-ukrepanje/>.

9 One of the articles, published on 26.11.2020 (therefore one day before the protest), thus states: "The initiators of the Friday protests announced over the social networks that protests are moving from bicycles to cars. The protest was entitled "From two wheels to four", and was announced for Friday, 27 November at 7 pm. "We will not be intimidated, we will meet near the Parliament and circle the city streets in cars! Totally safe, health-conscious, yet loud and unstoppable! The rebellion continues." They added that the call is valid until revoked or Janša's government falls." (<https://www.mladina.si/203158/pobudniki-petkovih-protestov-nasa-namera-je-z-avtomobili-kroziti-okoli-drzavnega-zbora-in-vlade/>).

tended to answer the call for participation at the protest on 27.11.2020 could thus basically predict that the protest would be carried out on public roads, that the traffic there would thus to a certain extent be hindered, and that the participants of the protest would presumably not abide strictly by the traffic regulations that generally apply in regular traffic.¹⁰

The Public Assembly Act (ZJZ) regulates the registration of an assembly¹¹, the acquisition of a permit for certain assemblies and events, duties of the organisers, competences of the authorities, and other aspects of public assembly. Yet this law should not be understood as if it regulates only the right to peaceful assembly; it is a regulation in the field of law and order. The system of registering an assembly, protest, or a similar gathering is thus not for its own purpose, but is intended to ensure the uninterrupted course of such a public event since, among other purposes, it enables the authorities to minimise its impact on the course of the traffic and undertake potential security measures that could be necessary. In certain cases, public gatherings need to first acquire a permit, for example when they represent the extraordinary use of a public road (Article 13, ZJZ). According to the fifth paragraph of Article 4, ZJZ, an assembly or an event represents an extraordinary use of a public road if the traffic running on it is hindered due to an unusually high number of participants in the road traffic, or such use of a public road that participants on it occupy more space than usual, or due to their actions in road traffic which is not in accordance with traffic regulations. The Ombudsman believes that the protest on 27.11.2020 in Ljubljana is an example of a protest that represented the use of a public road.

If the planned assembly requires public transport to be prohibited, diverted, or limited, permits from the competent body first need to be acquired. Prior registration and in some cases the acquisition of prior permit serves for the synchronisation of the right to assembly with the rights and legally protected interests of others, as well as preventing breaches of public order. The ECtHR also finds that it is the general practice in the contracting states that these opposing interests are balanced in the registration administrative procedure or during the acquisition of the permit for assembly – thus, such a request in itself does not oppose the principles of Article 11 of the ECHR if it does

10 The above-stated (footnote 10) article reads: “As the initiators of the Friday protests explained for the on-line Mladina magazine, their intention is to circle the National Assembly and government buildings in cars. “If that is rendered impossible due to road blocks, the circle will slightly widen, but in any case, we will fill the centre of Ljubljana (and centres of some other towns, too) with cars as much as possible. We expect banners on cars, honking, flashing lights, music from cars and, as before, other individual creative expressions of opposition to terror-government,” they stressed.”

11 In accordance with Article 4, ZJZ, a (public) assembly is any organised gathering of people with the purpose of expressing opinions and views about questions of public or common significance in open or closed spaces where access is allowed to anyone.

not present a hidden obstacle to the freedom of peaceful association.¹² The competent body (i.e. an administrative unit) has to decide quickly about the application for the issuing of a permit, two days prior to the planned assembly at the latest (Article 21, ZJZ). Against a possible decision that the assembly is not allowed, the organiser can use legal means, including the judicial protection in an administrative dispute. According to the ZJZ, a relatively expedited permitting procedure is therefore foreseen (when necessary), as well as the legal means connected to banning an assembly, which facilitates that the legal proceedings provided for that purpose ensure that the freedom of assembly is not excessively restricted.

If an assembly is registered and permitted, the competent bodies can adapt road traffic, possibly temporarily close a road or part of it to regular traffic, make a detour, redirect public transport, and similarly synchronise the right to assembly with the need for road (and other) safety. In this event, the traffic regime during the assembly differs from the general one meaning that road traffic rules are temporarily not fully valid. However, if an assembly does not have a valid permit and police officers determine during traffic regulation that the assembly presents an extraordinary use of a road, they have, in accordance with Article 32a of the ZJZ, a legal basis for the ordering of temporary measures to regulate traffic on the spot and, in extreme cases, they may even dissolve the assembly.

Keeping in mind the assessment of the ECtHR presented above, the stated statutory provisions of the ZJZ can be interpreted as meaning that an unsponsored protest, which includes the use of a public road and which in principle requires the acquisition of a prior permit, should not be dissolved for this reason only. The response of the police should also be legal in this case, while possible restrictions of assembly and association have to be proportionate with the legitimate goals they pursue (e.g. ensuring traffic safety).

The Ombudsman believes that the fine for the improper honking was imposed on the initiator in the context of an unregistered protest, which cannot be considered spontaneous, but announced and presumably planned. From his statements and otherwise known circumstances of the protest, it does not derive that the freedom of assembly would become obsolete if it were attempted to acquire a permit for the extraordinary use of a public road prior to the protest. Namely, the execution of the protest with cars included the use of a public road and the obstruction of car traffic there, including certain violations of generally valid traffic rules, such as the use of sound signals due to the expression of political opposition. Since the protest, which included the use of a public road, had not acquired a prior permit, measures were not previously adopted on the location, which would, in accordance with the ZJZ, harmonise the freedom of assembly and safety and traffic aspects.

¹² See the judgement of the ECtHR in the matter of Balçık and others vs Turkey (appeal no. 25/02) from 29.11.2007, especially Paragraph 49.

The described circumstances thus presumably demanded certain reactions from the police due to the ensuring of traffic safety and safety of other traffic participants who could have been there with no purpose to protest. In the given circumstances, the police did not dissolve the protest and the Ombudsman did not receive any concrete initiatives in which a participant or a presumed organiser of the protest contested being fined with relatively high fines due to violations of the ZJZ or even the ZNB in connection to the violation of a government decree which temporarily prohibits assembly due to the prevention of the spread of COVID-19¹³. The protest participants thus had the opportunity to express their views, since the protest was not prevented in advance nor dissolved by the authorities. The response of the police who established traffic control, stopped honking cars, and fined the drivers for traffic offences with a legally provided fines is thus at first glance not a disproportionate intervention into the freedom of assembly. Undoubtedly, the actions of the police had a legal basis. Namely, it suffices for the imposition of a fine that a police officer as a misdemeanour authority detects the offence directly. In a violation according to Article 70 of the ZPrCP, the content speaks about a driver using sound signals even though not endangered – for an offence it thus suffices that a driver used sound signals incorrectly and it does not require further determination of whether traffic safety or the safety of a particular person was actually endangered. Therefore, a fine in the amount as determined by the law does not seem an illegal, unreasonable, or unproportionate intervention into the freedom of assembly in the given circumstances.

In addition to everything presented above, the fine imposed is relatively low and can be settled in half of the amount. Here, we should emphasise the judgement of the ECtHR in the matter of Rai and Evans versus the United Kingdom (appeals nos. 26258/07 and 26255/07) from 17.11.2009, which estimated the fines imposed on the protest participants to be proportionate, consequently not violating the complainants' freedom of assembly. In this, the ECtHR considered various concrete circumstances, some of which are comparable with the circumstances of the matter discussed here. Among them is, for example, the fact that the complainants knew that the assembly should have been previously registered, the assembly was not spontaneous but planned, due to which it could have been registered, and the fines imposed (which were generally punitive in nature) were, in the opinion of the ECtHR, modest.¹⁴

13 For an offence according to Point 14 of Paragraph 1 of Article 57 of the ZNB, a fine in an amount from EUR 400 to 4,000 is prescribed for a natural person.

14 The first appellant was fined GBP 350 and ordered to pay legal costs in the amount of GBP 150, while the second was sentenced to probation and ordered to pay legal costs in the amount of GBP 100.

3.16 RESTRICTION OF PERSONAL LIBERTY DURING THE COVID-19 EPIDEMIC

When considering the matters in this field, the Ombudsman once more agreed that in the situation of viral infection epidemic and spread of an infectious COVID-19 disease it is essential to observe the principles of protection of public health and, with the aim of controlling the spread of COVID-19 and protecting people's health and lives, take numerous measures, but at the same time **he pointed out that this should be approached in the manner of respecting human rights and fundamental freedoms.** In the Ombudsman's opinion, the responsible representatives of the state, who are preparing measures that could restrict human rights, are expected to substantiate the necessity of interventions and not only inform the public of adopting a certain measure but also provide detailed explanation why it would be essential (in any case only temporarily) to restrict certain rights and what the legal basis for the adopted interventions or restrictions is.

In the Republic of Slovenia, the epidemic of SARS-CoV-2 was declared between 12.3.2020 and 31.5.2020, and during this time the majority of social care institutions (especially retirement homes and special social welfare institutes), as well as psychiatric hospitals, decided **to ban the relatives and other persons from visits to patients** to prevent the introduction of the infection with the said virus. For the same reason, a number of the above-mentioned institutions decided to prohibit **exits to persons in care and patients**, although freedom of movement or possibly even personal liberty was not restricted (they were not confined to "closed" wards). After the first wave of the COVID-19 epidemic had ended, the measures slowly started relaxing, visits were allowed again, but only with prior notice and mainly in the outdoor area. Likewise, exits were allowed, but oftentimes only in a group, and they were escorted by the employees. As the number of infected people started growing at the beginning of September, the measures became stricter again. But it needs to be stressed that during the time of restricted visits, the above-mentioned institutions tried to maintain social contacts of their inmates with the help of modern communication channels (Zoom, Skype and similar).

Prisons limited the visits from relatives too. During the epidemic, the prison system enabled multiple distributions of telephone cards per each imprisoned person, providing the imprisoned persons with possibility to make more telephone calls and thus maintain contact with the relatives. When the epidemic ended, the prisons started loosening the restrictions regarding visits, at first letting only one healthy visitor in. After a while, all restrictions were eliminated, and then re-introduced in October.

The Ombudsman mainly came across two questions, the first being **legal basis for the above-mentioned measures in social care institutions**, which was, in the Ombudsman's opinion, insufficient or even non-existent. As the restriction of personal liberty is an interference with fundamental human rights of the persons in the institutions mentioned above, the Ombudsman requested the explanation and action from relevant ministries (more on this below). The second question related to hardships of persons who had not been in contact with their relatives for a long time and whose health condition was becoming worse also due to social restrictions, even the access to dying patients was limited. Certain measures for infection prevention that apply to the most vulnerable groups of people (which the elderly by all means are) are unavoidably necessary. **But the question whether these measures were adequate arises, particularly in relation to the negative consequences they have on both, physical and especially mental health of persons.** We repeat, the precondition for every interference with the rights of persons is the soundness of legal bases, which, in the Ombudsman's opinion, do not support all restrictions of contacts that we have witnessed during the measures taken so far. We also point out that it is urgent to look for such solutions that would interfere with the rights of users of social care services as little as possible. We are aware that the right to health is one of the most important rights and that the spread of coronavirus in social care institutions could pose a serious health risk for persons living there. Their health must be protected but we must not neglect that beside physical health, mental health and psychosocial condition are important too. Anyhow, the persons have to be treated individually. Some persons have their psychosocial needs satisfied already by using smartphones or other electronic devices. Others need personal contact or a physical touch of another person, so even greater attention should be paid to them, and, simultaneously, one should be aware that the effect of such restrictions of rights is probably much less negative when provisional measures are in force for a short period of time, but quite more damaging when these are prolonged. When the competent bodies are faced with the situation that requires prompt action and they could not have been prepared for it in advance, it is understandable that immediate direct authoritative response is somewhat more drastic. But this may only last for a short period of time. **Over time, however, the competent authorities are obliged to prepare the conditions, plans and strategies for measures that could probably interfere with the rights and interests of the affected parties in a less invasive way.**

Details of the considered cases are presented below. Our findings and recommendations of the National Preventive Mechanism (NPM) during the COVID-19 epidemic are presented in the report on the NPM.

3.16.1 Detainees and convicted persons

We determine that many initiatives of prisoners related to controlling COVID-19 disease in prisons (ZPKZ) did not oppose the measures taken, on the contrary, prisoners who care about their health were pointing out that even more consistent measures should be taken to prevent the spread of virus. **Inside prison walls the epidemiological situation was changing day to day and it was followed by measures taken by the Prison Administration of the Republic of Slovenia (URSIKS).** We received multiple assurances from the URSIKS stating that prisons cooperate with health professionals and take all necessary measures to curb the spread of coronavirus disease, which certainly must be the purpose and interest of employees who are in daily contact with prisoners. Even during the epidemic, prisons aimed at ensuring more or less normal living conditions. It is also important that prisoners be informed about the protective measures in an appropriate manner. It is certainly true that (inside and outside prison) some people find it difficult to accept the restrictions in force due to infections (e.g., some prisoners pointed out that they cannot dine in the dining hall as before, but in their living quarters, which is said to be unhygienic and disputable), while some other prisoners believed there should be stricter measures taken, protecting them even more. **It became apparent that one of the main problems that prisons face at controlling the coronavirus disease is lack of space, which makes the provision of suitable accommodation for infected people and appropriate living conditions difficult.**

In relation to the implemented measures regarding visits in prisons, their dislocated wards and the Radeče Juvenile Correctional Facility, we contacted the URSIKS already on 12.3.2020 and welcomed their prompt response to the emergence of novel coronavirus. **Understanding the necessity to limit visits to prisoners, we emphasized that, along with the restriction of contacts the prisoners have with the outside world, it is also essential to alleviate the distress that may arise from these measures.** With regard to the policy orientation which states that imprisoned persons should telephone their relatives more often, we requested the information on whether prisoners have the possibility of making longer calls and over a longer period of time and in what way these (prolonged) calls will actually be available to prisoners and whether prisoners are (due to high cost of calls) actually financially able to make use of them. At the same time, we were interested in whether the URSIKS has already started considering any other or additional possibilities (e.g. Skype or similar) for communication between prisoners and the outside world. We also requested for clarification in what way the prisoners were informed about the emergence of novel coronavirus (e.g. how to recognize it and how it spreads). We also wanted to know whether the prisoners were informed of the preventive measures and means of protection in relation to the emergence of novel coronavirus, and whether any measures had already been taken or a management plan made if any of the prisoners became infected with novel coronavirus (e.g. providing special rooms for isolation from other prisoners). Additionally, we enquired about whether any preventive measures related to new coronavirus had been taken for the staff working in prisons (what the

guidelines for carrying out their work are and whether any activities or special procedures are foreseen with regard to their work). We were especially interested in how the medical staff is prepared for preventive activities or whether prisons' doctor's offices participate in planning the activities related to novel coronavirus (e.g. in informing prisoners, etc.).

From the response we received from the URSIKS on 20.3.2020 it was evident that they undertook a wide range of activities already during the first time SARS-CoV-2 COVID-19 epidemic was declared. For instance, they limited contacts and conversations with lawyers were conducted only over a glass wall. Work was organised in a way that only civil servants who were necessary for undisturbed work were physically present. Transfers from one prison to another were halted and only the necessary ones were carried out. The prisons tried to organise the distribution of meals in a way they delivered food to their living quarters and thus prevented a larger number of prisoners from staying in a dining hall. The URSIKS paid additional attention to maintaining the health of all prisoners and employees and prompted prisons to find a solution for providing appropriate therapy in situations that required necessary presence of psychiatrists and appropriate treatment.

The URSIKS reminded prisons that in spite of the current situation, prisoners should be relieved of psychological pressure on a daily basis, so it encouraged them to try to organise open-air exercise for small groups. As restrictive measures for prisoners were in force, the URSIKS asked prisons to consider activities which would make it easier for prisoners to overcome the time of epidemic according to their abilities (e.g. various outdoor activities). **As an example of good practice, we can expose a note from a prisoner that in one of the prisons two representatives of prisoners were involved in cooperation with prison management with the intention to find solutions for implementation of measures and especially to facilitate internal crisis communication.**

The URSIKS also informed all employees that in the current situation communication with prisoners is of key importance, as well as highlighting the importance of measures which were taken to protect them. Hot drinks or tea were available to everyone in prison. In order to relieve the distress, the URSIKS provided employees with phone numbers of three psychologists whom employees could contact. In their response of 27.3.2020, the URSIKS additionally informed us that their director general had founded online work group for coordination, consisting of director general, competent employees of the Head Office, all directors of prisons, heads of dislocated wards and the director of the Radeče Juvenile Correctional Facility, with the intention to improve information flow and mutual regular daily communication. Communication, together with regular monitoring of events on all locations, took place twice a day and all members of the group were informed of all questions and answers. The directors of prisons and heads of wards were regularly informed of the measures determined by the National Institute of Public Health (NIJZ), with which they cooperated regularly, and received information from the MZ, the MJU and other government institutions.

Employees were informed about COVID-19 and preventive measures immediately upon the emergence of virus in Slovenia with the written report of 27.2.2020. All imprisoned persons were notified about it in writing on the same day in the form of Recommendations for preventing COVID-19 infections. Notifications about the emergence of novel coronavirus and recommendations were hung on all noticeboards, along with pictorial instructions on hand and cough hygiene prepared by the NIJZ. Prisoners were informed about preventive measures also by the employees, at meetings in small groups, at home community, and in prisons' doctor's offices.

The institutions provided hand washing soap and disposable paper towels, disinfectants, cleaning products and protective masks for employees. They actively approached the purchase of additional means for protection and protective equipment: protective masks, glasses, face shields, waterproof clothes and disposable gloves. Due to the problems with suppliers, they were purchasing supplies on continuous basis through suppliers, the MP and the Administration of the RS for Civil Protection and Disaster Relief. The Head Office proposed that protective masks and hand gloves should be worn while performing procedures, actions and tasks with prisoners. All prisons were also acquainted with the instruction that all rooms inside prisons should be regularly cleaned and ventilated, and the most exposed surfaces, e.g. door handles, disinfected. The URSIKS ensured that they cooperate with regional health centres and regional units of the Administration of the RS for Civil Protection and Disaster Relief on a regular basis. They were of the opinion that testing is of fundamental importance at preventing infections among population on such a limited area as prison is.

On the basis of the adopted intervention law (Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS CoV-2 (COVID-19), passed by the National Assembly on 20.3.2020 and published in the Uradni list RS, no. 36/2020, the prison directors assessed each prisoner individually in terms of meeting the conditions for suspension of imprisonment or early release. The assessment primarily based on security assessment and related danger to society. Convicted persons with even minor risk of recidivism were not released from prison nor their sentence was suspended. Prisons, the MDDSZ and the Employment Service of Slovenia agreed on the procedure for obtaining financial social assistance after the dismissal. Upon dismissal, every convicted person received detailed written instructions with forms for arranging health insurance after the release and claiming financial social assistance. Injured parties who submitted a request for notification on convicted person's release from prison sentence in accordance with the ZKP and the ZIKS-1 were timely notified of the release.

We welcomed the information that the URSIKS is aware of the fact that imprisoned persons are additionally restricted due to the ban on visits in prisons, so they distributed free telephone cards among prisoners. Everyone was allowed to call their relatives following a daily schedule and somewhere the access to calls was unlimited. The URSIKS asserted it will continue with the efforts to

provide adequate health care during the coronavirus epidemic and promotion of human rights for all prisoners. The URSIKS also provided translation and publication of the CPT's Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic issued on 20.3.2020, and translation of the subsequent statement related to situation of persons deprived of their liberty.

During the second wave of infections in autumn, the URSIKS gradually, considering epidemiological situation and in accordance with health professionals' opinion, began restricting prisoners' contacts with the outside world. First by limiting the duration of visits, number of visitors and the way of conducting a visit (behind a glass wall, outdoors when possible) and limiting free exits, which were finally restricted only to urgent exits (health care, participation at a hearing in judicial proceeding), all in strict compliance with protective measures (protective mask, disinfectant, distance between people), until visits were no longer allowed. Prisoners' relatives and interested public were regularly informed of adopted protective measures by the URSIKS on their website.

On 24.10.2020, the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (ZZUOOP), shorter "the PKP5", entered into force, and again brought changes to the field of prison sentence (Articles 24 to 28). Thus new procedures for summoning prisoners to prisons and persons sentenced to short term imprisonment to serve their sentence did not begin and the already-begun procedures were halted; the URSIKS's director general could transfer a convicted person from one prison to another or to another unit of another prison ex officio also if that was necessary to prevent the spread of virus SARS-CoV-2; for the same reason the prison director could transfer a prisoner inside the prison; the prison director could ex officio suspend the imprisonment if that was necessary to prevent the spread of virus SARS-CoV-2 for a period of one month with the possibility of extension in the absence of safety concerns; the prison director could, under legal conditions, release a prisoner from sentence early as a preventive measure due to the spread of virus SARS-Cov-2 no more than six months before expiry of the sentence. In Article 109, this act also gave power to each of the prison directors (and the one of juvenile correctional facility) to temporarily, and as long as absolutely necessary for prevention of spread of viral infection, impose, restrict or halt the exercising of rights and interests of all imprisoned persons, e.g. going to work, receiving packages, awarding benefits and exits for special reasons.

While considering the initiative of convicted persons from Dob prison, the Ombudsman received information from the URSIKS concerning Dob prison, namely that on 15.10.2020 they agreed that prisoners shall not be granted the benefit of free exit due to the risk of COVID-19 infection until further notice. In compliance with the principle of gradual promotion and proportionality, visits were still allowed in the Slovenska vas semi-open unit and Puščava open unit, as visits in these two units can be carried out outdoors. With regard to these visits they adopted time limit to maximum 60 minutes per visit, while

there could only be one healthy person and convicted person's juvenile children visiting. On this basis it was assessed that such visits shall not present a serious health risk. But as the situation worsened, on 24.10.2020, the same day the PKP5 came into force, Dob prison restricted these rights and benefits, except urgent exits, as provided in the aforementioned provision in Article 109. According to the URSIKS, all adopted measures observed principles of necessity and adequacy. The prison took care that the measures were implemented gradually in the same manner as measures on state level were taken. According to the URSIKS, all measures taken, along with the reasons for their implementation, were adequately presented to prisoners and most of the prisoners accepted them with understanding. Prisoners in Slovenska vas semi-open unit and Puščava open unit can also use mobile phones and the internet, which made contacts with their families much easier.

Despite all preventive measures, the entry of coronavirus disease in prisons was unavoidable. In each case of confirmed infection, employees provided a separate accommodation for the infected prisoner to isolate them from other prisoners in quarantine. In Dob prison, convicted persons in quarantine and isolation had contact with a nurse twice a day during the week and once a day during weekend. Their condition was regularly checked and in case of changes they reacted appropriately. Convicted persons in quarantine had the right to individual walks, after which everything was disinfected, and they complied with this well.

Regarding Dob and other prisons, the Ombudsman agrees with the URSIKS that it was necessary, considering the given epidemiological situation in the Republic of Slovenia and in compliance with their capacities, to take preventive measures for preventing the spread of viral infection, and it should not be neglected that responsible behaviour of each individual contributes to successful control of spread of the disease. We consider it is very important that the URSIKS ensured that prisons took measures for curbing the spread of coronavirus disease in cooperation with health professionals.

3.16.2 Persons with restricted movement in psychiatric hospitals and social care institutions

We have already emphasized that appropriate action in times of crisis is a responsible task and obligation of providers of social care services or providers of treatment in hospital due to acute mental disorder or acute worsening in chronic mental disorder. **However, we emphasized that deprivation of liberty or restriction of freedom of movement is possible only under the conditions set by law.** One of them is also Communicable Disease Act (ZNB), which provides for some of restrictive measures to prevent the spread of communicable diseases. We also note that when contacts with the outside world are restrict-

ed (to persons deprived of liberty or restricted in terms of movement), **it is also necessary to alleviate the distress which may arise due to these restrictions.** However, the adopted measures should be, as a rule, limited in time and directly or indirectly related to the epidemic or prevention of the epidemic.

3.16.3 Persons with restricted movement in psychiatric hospitals and social care institutions

In this field, measures taken in retirement homes and psychiatric hospitals were in the forefront, namely those which restricted contacts between the residents or patients and their relatives and exits too. **We have repeatedly emphasized that we understand that the main purposes of these measures are concern for health and prevention of spread of coronavirus disease, but we nevertheless expressed our concern and pointed out the necessity of comprehensive view of the situation of disparate social care users.** We pointed out in particular that the first precondition for any interference with the rights of an individual is adequate legal basis, and adopted restrictive measures should be sound, proportional and lawful. Surely protection against coronavirus must be provided to the most vulnerable groups of people, but care must be taken that this does not mean a complete interruption of personal contact with relatives and other close persons.

The Ombudsman was especially concerned about the news on spread of SARS-CoV-2 viral infections among elderly people, especially in retirement homes. The government of the Republic of Slovenia has taken various measures with the intention to prevent the spread of the aforementioned virus, and to protect vulnerable groups of people, primarily the elderly. The Ombudsman understands it is necessary to protect them with particular care or adopt measures necessary to prevent the infection of individual members of this group. **Nevertheless, he posed a question whether it is allowable to restrict the individuals' rights without adequate legal basis to achieve this goal, acting only on the basis of instructions from ministries or following a decision of a social care institution (SVZ).** He repeatedly emphasized that all restrictive measures must be taken with respect to human rights of an individual and in case of restriction of such rights with respect to weighing the proportionality between restriction of rights on one hand and the goal that a measure pursues on the other. The Ombudsman stressed that every restriction of individual's rights must have its legal (statutory) basis. Undoubtedly, the appropriate action in times of crisis is a responsible task and duty of social care providers. But it must be taken into account that restriction of liberty or limitation of freedom of movement is possible only under conditions set by law.

In the spring months, as well as in the autumn, during the so-called "second wave" of infections, the Ombudsman was informed that most retirement

homes in our country limited or completely suspended the possibility of visits or exits to prevent infections among their residents. The aim of this measure was to prevent (similar to annual spread of viral diseases) the possibility of infection by relatives or other persons. In the Ombudsman's opinion, this may be a necessary measure, especially since, according to the warnings of experts, there is possibility that the infection can be transmitted to an elderly person by a seemingly healthy visitor, i.e. before the latter shows the first symptoms of infection. However, we were surprised by information, from relatives and even a few supervisory authorities, that at least some retirement homes completely suspended the possibility of exits for residents who live there due to fear of infection (a form of restriction of individual's personal liberty). Furthermore, we have been informed about the situation when a resident who went to the nearby store without knowledge of employees who did not want to let her back in upon return.

After reviewing the legislation that governs measures for preventing the spread of infections (Communicable Disease Act – ZNB), we were not able to find an explicit legal basis for the presented actions of retirement homes or for preventing exits to healthy residents who were not in contact with an infectious person from regular, open (therefore not secure) ward of the institution. In respect of the measures mentioned above, the Ombudsman turned to the MDDSZ for explanation on 3.4.2020. In their reply from 21.5.2020, the ministry explained that they fully comply with instructions given by the MZ. Due to curbing and preventing the spread of SARS-CoV-2 infections, the adopted measures relate mostly to the field of health care in social care institutions, but they also had to take measures for restricting the movement of elderly people in retirement homes and suspending visits from their relatives. The MDDSZ also stated that due to the calming of the epidemic and the related risk of infection, measures restricting visits to the residents of retirement homes were already being released, and in accordance with instructions, residents who are not suspected of infection, are independent, able to move freely and understand instructions referring to prevention and curbing of infections, can move freely. The provider is obliged to acquaint them with appropriate use of protective masks and measures for prevention and control of infection (social distance, washing and disinfection of hands, respiratory and cough hygiene, no touching of eyes, nose and mouth). But in the aforementioned letter, the MDDSZ failed to answer the Ombudsman's most crucial questions. From the answer we received we were not able to determine whether retirement homes decided for restrictions of residents' personal liberty by themselves or the restrictions were made on the basis of instructions from the MDDSZ or MZ. Likewise, their response did not state legal (statutory) basis for such restrictions, although we pointed out that the ZNB is not an adequate legal basis for general restriction of the exits from retirement homes to healthy residents (i.e. the ones who are not infected with novel coronavirus) and that the regulations which were adopted with the intention to curb the epidemic and prevent its consequences also do not address this question.

The Ombudsman has also stressed that restricting healthy residents from exits from retirement homes shows that with this their liberty was probably taken away (infringement of personal liberty) or at least their movement was restricted. Namely, there is a distinction between interference with personal liberty in the context of Article 5 of European Convention on Human Rights (EKČP) and interference which brings (only) limitation of liberty of movement according to Article 2 of Protocol 4 to the EKČP. The assessment of European Court of Human Rights (ESČP) established that a distinction between restrictions of movement which are so invasive they can be considered deprivation of liberty (Article 5 of the EKČP) and mere interference with freedom of movement (Article 2 of Protocol No 4 to the EKČP) is a matter of degree and intensity, not of nature or substance. No matter how invasive the interference actually is, there should be legal basis for it. Article 5 of the EKČP (among other things) allows an individual (therefore following an individualized decision) to be detained in order to prevent the spread of infectious diseases. In the light of the ESČP's assessment, any such interference should always have a legal basis – it is essential that conditions for ordering the action are clearly and precisely defined in national legislation, and the content of relevant legislation must be sufficiently accessible and precise so an individual can reasonably anticipate its consequences. Pursuant to Article 5 of the EKČP, a person deprived of liberty must have access to legal remedies (including judicial protection) against such interference. Interference can be justified if, considering the circumstances of individual case, it is identified that the spreading of a disease is dangerous to public health or safety and if detention of the infected person is necessary in order to prevent the spreading of a disease – upon ordering such action, the use of less severe measures should always be considered; detention is reasonable if the measures are found to be insufficient to safeguard the public interest. Even in the case of interference which only restricts the freedom of movement, the measure must be legal and necessary in a democratic society, and necessary, for example, for protection of health, and there must be a legal basis for it.

Restriction of exits for healthy residents is intended to be a measure aimed at preventing the spread of an infectious disease among elderly people in retirement homes, who are considered population particularly vulnerable to a more serious course of a disease. **But, as already stated, after reviewing the legislation regulating measures to prevent the spread of infections, especially the ZNB, the Ombudsman did not find any legal basis for such measures in retirement homes. The Ombudsman could not establish that a total ban was ordered on any other basis for restriction of movement (e.g. Article 39 of the ZNB) pursuant to a corresponding legal act of the Government of the Republic of Slovenia or the MZ.**

For prevention and control of infectious diseases, the ZNB specifies (mainly) two special measures referring to restriction of personal liberty, which were stated as possible legal basis for restriction by the MZ (they pointed out that the SVZ is constantly appealing that possible restrictive measures should be

agreed upon in accordance with the rules and following the principle of weighing strengths and weaknesses a certain measure brings, considering in particular the awareness of how social isolation affects a person, the fact that the employees pose the biggest risk for bringing the infection into the SVZ, and the fact that it will be necessary to learn how to live with the SARS-CoV-2 virus). These are isolation and quarantine. Isolation is intended for persons with confirmed infection, so in the set out case of elderly people who do not show signs of infection or the infection is not confirmed, this measure cannot be an option. On the other hand, quarantine is a measure which restricts free movement and imposes obligatory health examination on healthy people who were or are suspected of being in contact with a person who contracted an infectious disease which the minister responsible for health, or the government of the Republic of Slovenia on the basis of the fourth paragraph of Article 7 of the ZNB, declared to be epidemic, after the onset of his or her infectiousness. Quarantine is ordered by the minister responsible for health at the proposal of the National Institute of Public Health of the Republic of Slovenia. Let us suppose quarantine could be the basis for restricting the personal liberty of residents in retirement homes in environments with a substantial number of infected individuals, but it had to be established that at least according to available data from most Slovenian retirement homes, in spring months there was no confirmed infected resident or employee, with similar situation in the surrounding area, while the measure restricting exits was nevertheless in force in all retirement homes.

On 11.12.2020 the Ombudsman (after several enquiries or urgencies) received a response from the MDDSZ stating that, **based on our efforts and after consulting with experts in the field of human rights protection, Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (ZZUOOP) (Uradni list RS, no. 152/20, or PKP 5) determines Article 87 (entered into force on 24.10.2020) which stipulates that in case there is a confirmed case of SARS-CoV-2 infection inside a social care institution, the director of the institution issues a decision which imposes restrictive COVID-19 measures with intention to protect public health and rights of other people, restricting residents' contacts and exits from the institution area in case other possible measures cannot achieve the purpose of this Article.**

We reminded the MDDSZ that the aforementioned provision of the ZZUOOP can be an appropriate legal basis in cases when the infection has already been introduced into a social care institution, but (unfortunately) does not cover cases of those social care institutions where there is no infection inside it, but there is a serious risk of transmission of the infection from the surrounding area. We called on the MDDSZ to clarify whether on the basis of the Order on the designation of the endangered areas due to the infectious disease COVID-19 (Uradni list RS, nos. 95/20 and 96/20) any other measures (e.g. following the second indent of Article 39 of the ZNB) that would be applicable to social care institutions were taken.

In their response, the MDDSZ agreed that Article 87 of the ZZUOOP is not a legal basis for cases where there is no infection inside the institution (yet), but

there is a serious risk of it in the future. In addition, the ministry believes that appropriate basis for measures could be found in the document titled Information for social care and residential treatment and education institutions in connection with SARS-CoV-2, or the document titled Restriction or prohibition of patient visits on the premises of health care providers, both prepared by the MZ. The MDDSZ also replied that on the basis of Order on the designation of the endangered areas due to the infectious disease COVID-19 the ministry has not adopted any measure and they directed us to the MZ, as the aforementioned order was issued by the minister of health.

The MDDSZ's response surprised us negatively. Undoubtedly, the said ministry is aware that the right to personal liberty may be limited only by law (Article 19 of the Constitution). Thus the recommendations of the ministry cannot be the basis for restraint of residents of social care institutions or limitation of their personal liberty.

Pursuant to Article 83a of the ZS, in the event of natural and other severe disasters, epidemics or other similar emergencies that significantly limit regular exercise of judicial power, courts operate similarly to summer operation, when the courts issue hearings and decide on urgent matters. The president of the Supreme Court of the RS may decide on this with an order which, depending on the circumstances of the extraordinary event, pronounces that some urgent matters are not seen as urgent or he or she determines their scope of operation.

Pursuant to Article 83a of the ZS, the President of the Supreme Court of RS issued several orders during the epidemic in spring and autumn of 2020, determining administration of the court. The first Decree on special measures due to the occurrence of grounds referred to in the first paragraph of Article 83a of the ZS (Uradni list RS, no. 21/20) was issued on 13.3.2020. In accordance with this order, hearings in urgent cases were held in courts, all taking adequate protective measures into account.

Shortly after the epidemic had been declared, the Local Court in Ljubljana turned to the MZ and the MP and with regard to hearings in judicial proceedings under the ZDZdr pointed out that "the nature of these procedures expects cooperation of several persons, in addition to person subject to proceeding, at least of the judge, typist, lawyer, court expert and often close person who also has the status of a party." They also stressed that "hearings of detained persons are mainly done in an institution where the person is detained and in presence of all listed people." According to the court, "with the spread of virus, such procedure became a threat to both, persons participating in the procedure and all other users of the institution where the hearing should take place, typically including most vulnerable population: the elderly in social welfare institutes and other persons with mental health disorders who are confined to environment where evasion of close contacts is practically impossible." The Local Court supported the decision which was supposed to be taken by the MZ, stipulating that procedures under the ZDZdr take place in a way that only the expert enters the institution and the judge decides outside the institution's

premises. At the same time, the court suggested that protocols, guidelines or instructions on operation of judicial commissions in all health care, not only social care institutions, be promptly adopted (letter from the Local Court in Ljubljana, No Su 143/2020 of 25.3.2020, addressed to the MZ and the MP).

With regard to the statement of the Local Court in Ljubljana on the decision which was supposed to be adopted by the MZ and which could restrict the rights of persons subject to proceedings under the ZDZdr, the Ombudsman appealed to the MZ to acquaint us with the adopted decision (if it had actually been adopted) and legal basis for this decision. **The Ombudsman pointed out that in judicial proceedings under the ZDZdr the courts decide on restriction of individual's right to personal liberty, and it is mainly a matter of deciding on individuals from most vulnerable groups (persons with mental health disorders).** In accordance with the second paragraph of Article 46 of the ZDZdr, in these proceedings the courts decide on the basis of direct contact with the person, where the judge sees the person before issuing the decision and talks to him or her if his or her health condition allows it. This is one of the fundamental procedural guarantees which ensure effective protection of the constitutional right to personal liberty. Before the decision, the judge must, by him- or herself and directly, form an opinion on (mental) condition of a person. If the judge fails to do so, it is an illegal operation that deprives the individual of opportunity to participate in the decision-making process itself and puts him or her in a completely lawless position of a mere object of judicial decision-making, as he or she is not given the opportunity to defend his or her rights and interests in proceeding before the court.

The MZ explained that they adopted no decisions concerning the hearings in cases under the ZDZdr. We were informed that, regarding the Ordinance on temporary measures in health care to contain and control the COVID-19 epidemic, they sent (only) a letter to all health and social care providers, in which they also provided instructions for examination by a psychiatric expert in social care institution following the ZDZdr. This referred to the disinfection of hands and use of appropriate protective equipment and recommended distance between the expert and the user, and not to the work of the judge (letter No 181-70/2020 of 25.3.2020).

The President of the Supreme Court of the RS informed us of the letter he addressed to all local, district, and higher courts and to the head of civil division of the Supreme Court of the RS regarding the conduct of hearings in judicial proceedings under the ZDZdr. In this letter, the president of the Supreme Court of the RS stated that upon the issuance of (a new) Decree on special measures due to the occurrence of grounds referred to in the first paragraph of Article 83a of the ZS and grounds referred to in the first paragraph of the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ) (Uradni list RS, no. 39/20) of 30.3.2020, he decided, despite the proposals of some courts to exclude certain cases under the ZDZdr as urgent cases for the time of the epidemic, that due to the protection of personal rights of individu-

als, cases under the ZDZdr remain urgent cases. He explained that “these are persons who, due to their mental disease, endanger their own lives, health or possession and/or lives, health or possession of others, and during this difficult period the vulnerability of these persons and consequently their relatives will increase.” Thus, all cases falling under the ZDZdr remain urgent cases, which must be decided upon also in the period when special measures are in force due to the coronavirus epidemic (letter of the President of the Supreme Court of the RS, No Su 315/2020 of 31.3.2020, addressed to the courts).

Regarding the alleged decision of the MZ, the President of the Supreme Court of the RS pointed out to all courts that they are not bound by it as judges decide on the basis of the acts and constitution. He stated that “the decision to restrict entry into social welfare institutes to a maximum degree is reasonable as the most vulnerable population is placed there,” but **“the judge who decides in an individual case under the ZDZdr must justify the deviation from the procedural rules assessing which constitutional right is more important considering the circumstances of an individual case.”** In their decision judges must, on the one hand, consider the right to personal liberty (Article 19 of the Constitution), protection of dignity in proceedings (Article 21 of the Constitution), right to equal protection of rights (Article 22 of the Constitution), and right to judicial protection (Article 23 of the Constitution), which entitle every person to a fair proceeding with maximum personal participation in it and to protection against arbitrariness. On the other hand, due to the risk of infection and high mortality in vulnerable groups of population, judges must consider other constitutional rights, such as inviolability of human life (Article 17 of the Constitution), right to privacy and personality rights (Article 35 of the Constitution) including protection of health and protection from infection, and right to safety (Article 34 of the Constitution). With a decree of 30.3.2020, the President of the Supreme Court of the RS decided that all hearings, sessions and interrogations in urgent cases, including cases under the ZDZdr, shall be conducted via videoconference if appropriate technical and spatial conditions are met. In the next Decree on special measures due to the occurrence of grounds referred to in the first paragraph of Article 83a of the ZS and grounds referred to in the first paragraph of the ZZUSUDJZ (Uradni list RS, no. 62/20) of 4.5.2020, it was again stated that hearings, sessions and interrogations shall mainly be conducted via videoconference if technical and spatial conditions are met. For hearings, sessions and interrogations which were not conducted via videoconference it was stated that the distance between judges, court personnel, parties, their representatives and other persons should be at least two metres, that everyone should wear protective equipment and that room should be disinfected. Pursuant to the decision of the Government of the RS of 21.5.2020 (Uradni list RS, no. 74/20), which on the grounds of the ZZUSUDJZ established that the reasons for temporary measures related to court cases had ceased, the President of the Supreme Court of the RS ordered revocation of the last Decree on special measures due to the occurrence of grounds referred to in the first paragraph of Article 83a of the ZS and grounds referred to in the first paragraph of the ZZUSUDJZ and other measures taken on the ground of this Decree on 31.5.2020.

Due to re-declaration of the epidemic on 19.10.2020, the President of the Supreme Court of the RS promptly regulated the operation of the courts and on the same day issued a Decree on special measures set in Article 83a of the ZS due to the declaration of epidemic of contagious disease COVID-19 in the territory of the Republic of Slovenia (Uradni list RS, no. 148/20), ordering that all courts conduct hearings and other procedural actions, decide, service court writings and carry out office hours for all matters in compliance with limitations set forth in professional recommendations of the National Institute for Public Health. With regard to hearings, sessions and interrogations, the rules were similar to the ones during the epidemic declared in spring 2020, stating that the stated actions can be conducted via videoconference if technical and spatial conditions are met, with due regard to other procedural conditions for conducting procedural acts. The distance between the judges, court personnel, parties, their representatives and other persons from another household, must be at least 1.5 metres, everybody must wear protective equipment and the room must be disinfected and ventilated according to professional recommendations. The courts had to collect and keep the lists with contacts of all persons present. The same measures were taken after the enforcement of the Decree on special measures set in Article 83a of the ZS due to the declaration of epidemic of contagious disease COVID-19 in the territory of the Republic of Slovenia (Uradni list RS, no. 165/20), which again restricted the operation of the courts on (mainly only) urgent cases, starting on 16.11.2020.

The Ombudsman was notified that during the epidemic a lot of judicial proceedings under the ZDZdr were conducted via videoconference. Even under normal conditions, when the courts, following the ZDZdr, decide on the basis of a direct contact with the person in the proceeding, and when the judge sees the person and talks to him or her before he or she issues a court decision, certain persons in these proceedings, due to their needs, often have troubles with understanding the roles of individual participants in the proceeding, especially their rights and the aim of a judicial proceeding. When hearings were conducted via videoconference, the distress of these persons was even greater.

When considering the specific case, the initiator (who was the subject of proceeding for extending the detention in the ward under special supervision of the psychiatric hospital) informed us that her hearing was conducted via videoconference, therefore she saw all persons involved in the procedure (only) on screen while she was in the hospital. She saw her lawyer for the first time then and all participants wore protective masks, making it difficult for her to distinguish and understand them. From the decision on extending the detention she had sent us it could be deduced that the expert had not examined the initiator in person, but (only) inspected her medical records, while clinical examination was conducted via videoconference.

The Ombudsman understands that during the spread of epidemic it is permissible and necessary, due to risk of infection and high mortality in vulnerable groups, to proportionally restrict certain rights of persons subject to proceedings for extending the detention in the ward under special supervision or in

a secure ward. We are also aware of the complexity of the situation in which judges deciding in proceedings under the ZDZdr have found themselves, as well as lawyers whose clients who are subject to proceedings for extending the detention in the ward under special supervision or in a secure ward are already placed in these wards.

Notwithstanding the above, the attention of the Supreme Court of the RS and the Bar Association of Slovenia was additionally drawn to special vulnerability of persons with mental health disorders and to respect of their human rights, and we appealed that in this situation they should make sure that persons subject to proceedings under the ZDZdr understand their rights.

We proposed to the Supreme Court that they should pass our recommendation to courts deciding in proceedings under the ZDZdr, and **the President of the Supreme Court promptly informed us that he forwarded it to lower instance courts and recommended special attention and respect of the dignity of detained persons in videoconference hearings.** We also contacted the Bar Association of Slovenia and proposed they forward the Ombudsman's recommendation to all their members who represent persons in judicial proceedings under the ZDZdr.

According to Article 33 of the ZDZdr, judicial proceedings for the admission of persons with mental health problems to secure wards of social welfare institutes on the basis of the ZDZdr are considered urgent cases. Therefore the courts were deciding on proposals for the admission of persons to secure wards and issuing corresponding court decisions also during the epidemic of viral infection and the spread of the COVID-19 infectious disease, in time of validity of the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (ZZUSUDJZ), and of decrees by the President of the Supreme Court of the RS on special measures due to the occurrence of grounds referred to in the first paragraph of Article 83a of the ZS and grounds referred to in the first paragraph of the ZZUSUDJZ.

According to the Ombudsman, social welfare institutes (with appropriate professional support and in an appropriate manner regarding protection of public health) should be ready to admit persons for whom the courts in accordance with the ZDZdr determined that they meet criteria for admission to the secure ward or need treatment and protection in a secure ward of a social welfare institution. Despite the fact that in accordance with Article 2 of the ZS final decisions of judicial power must be respected, the Ombudsman learned that (some) social welfare institutes did not admit new residents during the epidemic, even if the court issued a placement decision in accordance with the ZDZdr. In doing so, the social welfare institutes referred to the Proposal of measures for social welfare institutes and other institutes offering institutional care service that the MDDSZ sent to all institutes on 18.3.2020, advising them not to accept new residents until further notice.

In the light of the above, we reminded the MDDSZ, as the competent ministry for social welfare institutes, that court decisions, issued on the basis of the ZDZdr must be respected, and that social welfare institutes, in the Ombudsman's opinion, do not have an adequate legal basis to decline the admission of a person who received the placement decision under ZDZdr. According to the Ombudsman, the legislator should, in case it considered that social welfare institutes were not able to admit new residents during the epidemic or the admission of new residents under the ZDZdr was inappropriate with regard to safety and health, this question should be (at least temporarily) adequately regulated (e.g. in the ZZUSUDJZ). We called on the ministry to draw the attention of all social welfare institutes with secure wards to comply with the court decisions issued in accordance with the ZDZdr.

From the ministry's response it was not clear whether the institutes had been reminded to comply with the said court decisions. The ministry also did not comment on the conduct of social welfare institutes or clarified whether they took action against such (in the Ombudsman's opinion unlawful) conduct and in what way. They (only) commented that due to more favourable epidemiologic situation and in compliance with instructions of professionals, social welfare institutes and other institutes offering institutional care service may again accept new residents.

Therefore, we once again asked the ministry to take a more specific stand on this issue, but we did not receive a clear answer after this call either. The ministry reported that they prepared the Proposal of measures in social welfare institutes and other institutes offering institutional care service in cooperation with the professionals, which contained (general) recommendation that no new residents should be admitted to social welfare institutes until further notice. The ministry did not issue any additional instructions or recommendations which would explicitly prohibit the admission of new residents to secure wards of social welfare institutes on the basis of issued court decisions. They also explained that exceptions regarding admission of new residents were possible in agreement with regional coordinators of the MZ. The Ombudsman once again reminded the competent ministry, the MDDSZ, that social welfare institutes, inasmuch they had not respected court decisions, issued on the basis of the ZDZdr on admission of persons to secure wards during the declared epidemic, had no adequate legal (legislative) basis for such conduct. The admission of a person to a protected ward in case the placement is ordered by the court on the basis of the ZDZdr should not be the matter of judgement of individual social welfare institute, as the courts, in compliance with the ZDZdr (and also taking into account adequate expert opinions) have clearly established that the admission to a secure ward and treatment and protection on a secure ward of a social welfare institute is necessary.

3.16.4 Minors in residential treatment and other institutions

During the times of epidemic, residential treatment institutions and special education institutes for children and adolescents with emotional and behavioural disorders were the only institutions in the field of upbringing and education, which were not subject to a temporary gathering restrictions in accordance with government ordinance on the temporary restriction on the gathering of people in institutions in the field of upbringing and education, universities and independent higher education institutions in order to curb and control the COVID-19 epidemic. In the conditions of declared epidemics, residential treatment institutions remained (the only) institutions in the field of upbringing and education where residence and education were to take place inside institutions themselves, taking into account the preventive measures.

When the epidemic was declared in spring 2020, one of residential treatment institutions informed us that, although the majority of children and adolescents went home for the duration of the epidemic, some of them stayed in the institution, so they continued to work with them, but of course their activities were adapted to numerous measures due to the epidemic. They stressed that children and adolescents in the institution present higher risk group than the rest of the population regarding the viral infection as they often act in a risky way and pay less attention to hygiene standards. They also pointed out that in case of infection with the virus they will not be able to provide appropriate care and measures to prevent the spread of virus among other children and adolescents, nor appropriate isolation, which was also confirmed by the Civil Protection.

The institution informed us that in order to ensure the safety of children, adolescent, and employees, they adopted an order stating that the admission of a child or adolescent in their institution from the outside is not allowed, regardless of placement decision, unless a child or adolescent presents a certificate, no more than three days old, of a negative test result from a test for SARS-CoV-2 infection. Parents and guardians were given the instruction not to bring sick children or adolescents to stay in the institution.

Some parents also contacted the Ombudsman because they were worried that children who stayed inside institutions would get infected with coronavirus SARS-CoV-2 by those who could leave the institutions (e.g. to go home during weekends). **The MIZŠ received our opinion that residential treatment institutions and special education institutes for children and adolescents with emotional and behavioural disorders, which were the only institutions in the field of upbringing and education where work should continue while observing the strictest preventive measures, should be given precise instructions or protocols for organisation of work by the competent ministry regarding current conditions and actions in case of infection or suspected infection with coronavirus SARS-CoV-2.**

Although we expressed our understanding for care and all institution's efforts to provide safe environment for children and adolescents and employees in the institution, and welcomed pains and measures the institutions adopted for this purpose, we also warned the ministry responsible for residential treatment institutions of **contentiousness of an order stating that the admission of a child or adolescent in their institution from the outside is not allowed, regardless of an issued court judgement, and of possibility that such decision may be diametrically opposed to the protection of the best interests of a child or an adolescent if it had been established that a child or an adolescent needs such accommodation and treatment (e.g. due to family circumstances).**

In response to our intervention, the MIZŠ stated that since February 2020 residential treatment institutions had been regularly informed of all NIJZ's measures concerning procedures during the spread of virus, for which the directors of institutions were or still are responsible. Immediately after the epidemic had been declared, the ministry recommended all residential treatment institutions to contact the competent commanders of the Civil Protection regarding safety of all children, adolescents, and employees, provision of necessary protection equipment and management of emergency situations, and to closely monitor all measures and instructions. The ministry also recommended that residential treatment institutions connect with parents of children and adolescents who, due to interruption of public transport or their wish, did not return to the institution and agree on forms of cooperation and online education or other treatment at home. Institutions were to check the situation of children and adolescents who stayed at home on a daily basis, but if they assessed that staying at home is not appropriate for a child or adolescent, they should organise transport to the institution, taking into account all preventive measures. In case of suspected infection with the virus or in case of infection the institutions were referred to the NIJZ.

When the COVID-19 epidemic had again been declared in autumn and winter and residential treatment institutions and special education institutes for children and adolescents with emotional and behavioural disorder were again exempt from temporary gathering restrictions in accordance with government ordinance on the temporary restriction on the gathering of people in institutions in the field of upbringing and education, universities, and independent higher education institutions, we again addressed the enquiry to the MIZŠ, asking about the operation of the aforementioned institutions and organisation of their work during the COVID-19 epidemic, protective equipment etc.

MIZŠ replied that in November 2020, 443 children and adolescents with emotional and behavioural disorder were placed in residential treatment institutions and special education institutes and 86 stayed at home, but the main reason for their absence was not sickness due to COVID-19 or a preventive measure from COVID-19, but various other reasons (e.g. injury, operation, childbirth, prolonged hospitalization, escape, going abroad). During weekends and holidays children and adolescents kept going home also during the COV-

ID-19 epidemic in accordance with their individualized programmes (data for November 2020). Professionals working in institutions should be in a daily contact with their parents, also giving them counsel on epidemiologic measures while the child or adolescent was at home. As public transport was suspended, the institutions drove children and adolescents home and back with the institution's transport, if the parents did not have their own. Parents were allowed to make visits in the institution, namely for a certain period of time and in compliance with safety measures put forward by NIJZ (wearing protective masks, physical distance).

During the COVID-19 epidemic, every institution organised upbringing and education in a different way, depending on space available and the number of children and adolescents were in the institution during the week and during weekend. Generally, more individualized work was carried out in educational programmes, while residential treatment groups operated in the same or even smaller groups so the children and adolescents could not mingle. In this way, the "bubble" system was maintained, where in case of infection high risk contacts could be identified more easily. Children and adolescents mainly observed and complied with the rules.

With children and adolescents who were being educated online in their home environment professional workers at institutions were checking home situation through different communication channels and keeping records of it. The children were also offered counselling, learning assistance and help in distress. In many cases, professionals also offered help to parents of children and adolescents in the context of providing help in psychosocial distress. In some cases, such help was offered to the family also by a home visit.

The MIZŠ notified us that institutions generally adopted two documents which were prepared in compliance with the instructions of the NIJZ, namely *Plan for ensuring continuous work during the coronavirus SARS-CoV-2 for the school year 2020/2021* and *Rules on work in the institution during coronavirus SARS-CoV-2 epidemic*. In both documents, institutions specified the procedures and protocols of conduct in case of suspected infection and in case of infection of children, adolescents, and employees. The documents also set out the rules of staying in the institutions during the COVID-19 epidemic in detail.

Institutions were, of course, obliged to accept all children and adolescents who were referred to them on the basis of a court decision, despite possible infection. The institutions organised and provided room for children and adolescents infected with coronavirus SARS-CoV-2. They also obtained parental consent for rapid testing and tested children and adolescents in case of suspected infection or high risk contact. During the COVID-19 epidemic in autumn the institutions did not state that they lacked protective equipment.

At the beginning of February 2021, 19 children and adolescents who were staying in institutions for upbringing and education of children and adolescents with emotional and behavioural disorders had an active infection. According to the MIZŠ, children and adolescents in institutions were depressed, tired of

restrictions and forbidden socializing. Uncertainty and restlessness undoubtedly had a very negative effect on children and adolescents, which reflected in their behaviour, as conflict situations and aggression became more frequent. Due to sick leave, there were problems with available staff, and psychiatric treatments and medical examinations of children and adolescents were also partially cancelled.

The MIZŠ explained that they are in daily contact with the institutions, providing them with all support and assistance within their competence. During the COVID-19 epidemic declared during autumn and winter, work and life in the institutions were more stable and effective than during spring epidemic, as appropriate approaches were laid down. **8.5 – 3/2020** and **12.1 – 10/2020**.

3.16.5 Foreigners and applicants for international protection

After two visits (31.7. and 3.9.2020) carried out in Postojna by the Ombudsman's assistants, the Ombudsman informed the MNZ of his findings and, after receiving their response, prepared a final report, which was published on the Ombudsman's website on 10.11.2020: <https://www.varuh-rs.si/sporocila-za-javnost/novica/porocilo-varuha-o-namescanju-pridrzanij-oseb-v-centru-za-tujce-v-postojni/>.

Based on on-site visits, we found that the containers were placed in a covered concrete building, with little daylight, and the detainees did not have access to daily exits and outdoor movement. According to the MNZ and the centre's management, the described manner of accommodation of newly detained persons in containers was introduced with the intention to prevent the spread of coronavirus disease, and persons were to be housed in containers for a maximum of 10 to 14 days. Upon the visit, the Ombudsman's assistants verified that some persons had been in the containers for over one month and it also turned out that there are no records on duration of such housing and it is not checked for how long an individual person has been in the container. **The Ombudsman believes that containers are unsuitable for long term housing of detained persons. He advised the MNZ to stop this way of housing immediately and to set rules providing that only short term housing in containers be allowed and containing safeguards for prevention of arbitrary actions. Regarding the epidemiological situation, the Ombudsman suggested that competent authorities, together with professional epidemiologists, prepare adequate expert bases for the most appropriate organisation of detention in the Aliens Centre.**

The Ombudsman advised the MNZ to omit the use of service dogs in the Centre (e.g. at distributing meals) at tasks involving contacts with the detainees. From conversations with the detainees it was evident that the case

of using a service dog, which was also documented on some (publicly available) videos, is probably not isolated, as detainees expressed unease due to the presence of dogs in the building with containers and in front of it. The Ombudsman's opinion is that in institutions where persons are deprived of personal liberty it is only exceptionally and in certain cases possible to substantiate the need for using a service dog. However, it is not appropriate to be done routinely.

The Ombudsman learned that too much time passes from the moment a person in the Aliens Centre declares the intention to file an application for international protection in Slovenia to the time when a personal interview is done on the basis of the application (up to several weeks), even though EU law requires the application should be recorded in no more than six days. During this time the person who declared the intention and should be treated as an applicant for international protection is still detained as illegal foreigner, although he or she should be entitled to conditions of reception that applicants for international protection are entitled to. For this reason, the Ombudsman advised the MNZ to immediately ensure timely registration of applications for international protection.

The Ombudsman obtained a document from the Police on a one-month trial of rapid treatment of foreigners who declare the intention to file application for international protection at the police station. The document which relates only to Police Directorate Koper states that such person should be detained until the order on rejection of application for international protection is final and enforced. At the same time the person's readmission should be enabled, preventing the person's travel to the final destination or abuse of international protection procedure, and consequently reducing the appeal of illegal transit through Slovenia. **According to the Ombudsman's opinion, the content of the aforementioned document is worrying as detention of an applicant for international protection is tolerable only exceptionally and only due to individual circumstances of the applicant.** Ordering detention cannot be justified in order to achieve systemic effects and deterrence of migrants.

3.17 HEALTH CARE AND THE COVID-19 EPIDEMIC

The Ombudsman dealt with a total of 151 cases in the field of health care and health insurance in connection with COVID-19 in 2020. Out of these, eight cases were considered in the field of health insurance and 143 cases in the field of health care.

3.17.1 Health insurance

The issue of health insurance during COVID-19 was not extensive. The reason may also be that the decision making for sick leave extensions for up to six months in the first wave of the epidemic was transferred to personal GPs. Due to the COVID-19 epidemic, the Health Insurance Institute of Slovenia (ZZZS) suspended the procedures related to the establishment of the list of medical devices (MP). The work of groups was disabled, so the continuation of their work was postponed to 2021. The ZZZS promised to prepare solutions within the amendment to the Rules of Compulsory Health Insurance, which should bring the expansion of rights for insured persons regarding entitlement to hearing implants and simplification of the procedure for exercising the right to receive new hearing implants.

3.17.2 Health care

Within the legislation, the most controversy was caused by the suggested Infectious Diseases Act, which was in public discussion and was examined by the Ombudsman at his own initiative.

In order to prevent the infection of its residents, most retirement homes in the Republic of Slovenia limited or completely suspended visits to the residents during the first wave of the COVID-19 epidemic and did so again when the epidemiological situation worsened. This may be a necessary measure, especially since, according to the warnings of the experts, there is a possibility that the infection can be transmitted to an elderly person from a seemingly healthy visitor, i.e., before the latter presents the first symptoms of the disease. However, at least some retirement homes, in fear of introducing the infection, completely prevented the residents of their retirement homes from leaving the home (which is a form of restriction of an individual's personal freedom).

The retirement homes received certain instructions from the competent ministries, which were sometimes difficult to implement, with the proposed

measures in individual cases having no appropriate legal basis, which should have been provided by one of the mentioned ministries. After reviewing the legislation that governs the measures to prevent the spread of infections, we did not find an explicit legal basis for the described treatment of retirement homes or for exit prevention of healthy residents who were not in contact with infected individuals from the open (i.e. unprotected) wards of the institutions. Among other things, we recommended that the competent ministries adopt appropriate (constitutionally compliant) legal bases for the necessary restrictions on basic human rights, as soon as possible.

In our opinion, the Act, and in particular the measures envisaged in Article 48, did not follow our recommendation. Among the envisaged measures is the prohibition or restriction of population movement in the infected or endangered areas, including entry and exit from the infected area, but not the entry and exit (only) from the endangered area (which can be understood that this measure is not applicable to retirement homes where there are no infections).

Of particular concern was the inaccessibility of health services because of COVID-19-related measures. The Ombudsman took note of the patients' difficulties in accessing their personal GPs. We were also acquainted with the demand of two health care institutions, which required a negative COVID-19 test result before hospitalization or medical treatment of a patient. The Ombudsman proposed to the Ministry of Health (MZ) that the problems of patients concerning the unavailability of personal GPs be immediately eliminated for the benefit of all citizens in need of health care services. The Ombudsman found that health care providers have different approaches to treating patients. The treatment of patients (during the epidemic) was often left (mainly) to the ingenuity and commitment of the management of an individual health centre or hospital.

The Ombudsman noted the difficulties of patients in accessing personal GPs, especially in regard to personal examination and contact with a physician. Phone ordering was supposedly not functioning, and it was said that the calls were not picked up. Electronic ordering was not accessible to individuals who do not have a computer or do not know how to use digital communications.

We expected the MZ to act in a way that unifies the practice of health care institutions, in the direction of providing patients with appropriate, safe, and quality health care in accordance with Article 11 of the ZPacP and faster access to a personal GP or hospital health care. We drew particular attention to vulnerable groups of people (the elderly, the disabled, children, patients with chronic diseases, etc.), who we believe should be given special care.

The MZ informed us of its explanations, which mainly concerned activities related to the shortage of family medicine physicians. The MZ further clarified that, in order to provide sufficient facilities to ensure urgent medical treatment of patients, including patients with COVID-19 infectious disease, an Order on temporary measures in the field of health care was adopted to en-

sure urgent medical treatment of patients, which stipulates the obligation to provide urgent medical treatment or medical services, the omission of which could have negative consequences for a patient's health. Regarding the treatment of patients and the request of health care institutions for submission of negative tests for COVID-19, the MZ did not provide instructions to health care providers at the secondary and tertiary level that would condition hospitalization or medical care of emergency patients with prior testing for COVID-19 and obtained medical reports.

We drew the attention of the MZ to the problem of patients' access to personal GPs (during the epidemic) and the different actions of individual health care institutions in this regard, also because we assumed that in the coming winter, when »seasonal« diseases appear, this problem would increase.

In connection with quarantine, in April 2020, we also dealt with a placement of a minor in quarantine. The minor was accompanied in quarantine by his mother. The quarantine decision was unsigned and served to the minor. We reminded the MZ that the case of the initiator's son is a case of a minor. We expected an immediate solution to the situation from the MZ. In the future, we proposed to the MZ to adjust the treatment of minors.

Regarding quarantine, the MZ followed the proposal of the NIJZ (National Institute of Public Health), which later proposed that due to the changed circumstances, the implementation of quarantine for persons should continue at the address of permanent or temporary residence. Quarantine decisions for individuals (including minors) have been amended accordingly.

We also separately considered the aspect of (non-)issuance of quarantine decisions. The Ombudsman intervened at the MZ; due to the overburdening of epidemiologists, quarantine decisions were no longer to be issued. People who tested positive were supposed to inform those they were in contact with by themselves, so there were a lot of problems in practice. We informed the MZ that while the proposal of the MZ that the person to whom the quarantine was "ordered" comes to an agreement with their employer by themselves about their work method would be possible if the employer would enable the said person to work from home, should the nature of their work allow it. However, this does not solve the problem of these persons and their employers in terms of payment or compensation for the time when such a person had to stay at home, nor does it solve the problems related to the duration of the »ordered« quarantine. The Ombudsman assessed that it was inadmissible that tasks of epidemiologists were shouldered by individuals. We called on the Ministry of Health to solve the problems, as otherwise we believe that individuals' rights to social security could be violated (Article 50 of the Constitution of the Republic of Slovenia).

With the entry into force of the Interim Measures for Mitigation and Elimination of Consequences of COVID-19 Act (ZZUOOP, Uradni list RS, no. 152/20), the Ministry of Health abolished quarantine decisions. Persons who were in

high-risk contact with an infected person were issued a certificate of referral to quarantine at home by the NIJZ. With this, the workers, the self-employed, partners, farmers and parents claimed compensation for loss of income for the period of childcare due to referral to quarantine at home. Also, in the meantime (from the moment when the epidemiological service was no longer able to search for all high-risk contacts of infected persons and until the ZZUOOP entered into force on 24 October 2020), persons who were in high-risk contacts could obtain a document certifying that they were quarantined.

The Ombudsman was also informed that in the Republic of Slovenia, there is a child with a disability in residence whose father is a Croatian citizen living in the Republic of Croatia and who provided parental care for the child until the measures against the spread of COVID-19 came into force. The father could no longer see the child for a multi-day holiday, as the father would have to spend fourteen days after arrival in quarantine.

We reminded the Prime Minister of the Republic of Slovenia that the family and the best interests of the child should, in specially justified circumstances, be protected, in a manner comparable to the level of protection of material interests of persons or provision of health, otherwise the question could arise of possible interference with the rights from Article 14 of the Constitution of the Republic of Slovenia. Article 56 of the Constitution of the Republic of Slovenia emphasizes special care for children, which must be provided to an even greater extent to a child with a disability. Article 3 of the Convention on the Rights of the Child stipulates that the best interests of a child must be a primary consideration in activities related to children, which undoubtedly includes the preparation and adoption of legal acts that also affect children's lives and their rights. The regulation could also constitute an unjustified interference with the right to family life under Article 8 of the European Convention for the Protection of Human Rights. We proposed a reassessment of whether the best interests of the child are adequately secured by the valid Ordinance on imposing and implementing measures for the prevention of the spread of COVID-19 at border crossings at the external border and at checkpoints at the internal borders of the Republic of Slovenia.

Among the exceptions to the quarantine from the first paragraph of Article 9, Ordinance amending the Ordinance on imposing and implementing measures for the prevention of the spread of COVID-19 at border crossings at the external border and at checkpoints at the internal borders of the Republic of Slovenia in addition to Slovenian citizens also placed "their immediate family members (spouse, common-law partner, partner from a contracted and non-contracted partnership and divorced spouse and partner who has been awarded maintenance by a court decision, legitimate and illegitimate child, adopted child and child with decision of the competent authority placed in the family for the purpose of adoption) who travel with them".

At the beginning of April 2020, we received for consideration initiatives relating to the escort of a partner in childbirth in a maternity hospital and a ban on

performing planned home births during the COVID-19 epidemic. The Ombudsman is not responsible for an epidemiological assessment of whether, in a specific case, the threat of COVID-19 infection is such that it is necessary to introduce a measure to interrupt planned home births, as well as to prohibit the presence of a partner at birth. Nevertheless, and on the grounds that the right to health covers not only aspects of physical health but also mental health, the Ombudsman considers that during childbirth in a maternity hospital, it is the doctor who should assess in specific cases whether in the current situation and in relation to the psychophysical condition of the mother, the latter's partner's presence at birth is necessary. We believe that this also reduces the risk of mothers in distress deciding to give birth at home with the help of people without proper permits simply because they do not want to give birth in a maternity hospital without the accompaniment of a partner during childbirth.

In March 2020, we were also informed about the problem of care for the elderly, who are included in day care centres, which have closed their doors due to the declaration of the epidemic. The elders were left to the care of their relatives. The petitioner pointed out the problem that family members who must go to work cannot leave the relatives in their care at home alone. The Ombudsman sent a letter to the MDDSZ, in which we wrote that it would be appropriate to prepare systemic solutions for the category of workers who care for seriously ill relatives at their homes. In response, the MDDSZ explained that even in cases pointed out by the petitioner, a force majeure reasoning may arise, based on which, in accordance with the Employment Relationships Act (ZDR-1), the worker is entitled to be absent from work and is entitled to receive compensation for salary. We assessed the answer of the MDDSZ as correct in terms of content, and we agreed with their interpretation. The MDDSZ provided the petitioner with the answer to the current question only after six weeks and after the second intervention of the Ombudsman, so we found a violation of the principle of good governance in the work of the MDDSZ.

3.18 SOCIAL MATTERS AND THE COVID-19 EPIDEMIC

The COVID-19 epidemic, both with its consequences and with the measures to curb its spread, strongly marked the entire community in 2020. Of course, this left a deep imprint in the work of the Ombudsman. In the field of social security, we addressed the issue of Government measures aimed at mitigating the consequences of the epidemic, cautioning that the measures taken should not unduly treat or even exclude individuals or groups unequivocally due to their personal circumstances, such as disability or social status. We also pointed out that recipients of disability benefits under the Social Inclusion of Disabled Persons Act (ZSVI) and family assistants should also be included among the “most vulnerable groups of the population”, to whom a one-off solidarity allowance is granted. Our voice was heard and taken into account regarding the basic monthly income according to Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP), which tied the right to specific months, which put the self-employed, whose volume of operations was significantly reduced due to COVID-19, in an unequal position compared to other persons in substantially like position. In the field of social services, we noticed a problem when the Ministry of Health, the Ministry of Labour and Social Affairs (MDDSZ) did not want to conclude contracts for the implementation of personal assistance, allegedly due to the measure of the Government of the Republic of Slovenia to suspend the implementation of the budget of the Republic of Slovenia, which was adopted at the session of the Government of the Republic of Slovenia on 11 April 2020 and restricts the conclusion of new contracts, which would create new financial obligations for the state budget. With the view that the signing of the contract does not incur additional costs for the system, and with the support of the Ministry of Finance, it was achieved that the contracts were ultimately signed. An uninventive homeless pensioner, who finds it even harder to win at least those rights that he has that are recognized by law due to the epidemic-induced closing (or closed) doors, a crowd of people who tried unsuccessfully to reach their doctor over the phone, those whose rights were provided immediately after their story appeared in the media and not a second earlier... are all stories that marked this year.

In the field of institutional care, in connection with COVID-19, most initiatives were on the topic of disabling contact with relatives, and we assessed that the level of awareness of all the negative consequences of such isolation was too low, and in our opinion, they were also not properly considered in terms of proportionality of the measures. Many problems have also been identified due to inadequate staffing norms, which could have been avoided if our recommendations, which we have been repeating for many years, had been heard. Inadequate facilities to provide different zones, lack of protection at the be-

gining of the epidemic, unclear and uncoordinated instructions for action, as well as the inability (people with dementia, people with mental health problems, etc.) or unwillingness of certain people to comply with protection measures were messages we received from various social welfare institutions. The initiatives also drew attention to the unavailability of many services and the unequal treatment of individuals in different institutions.

As part of the discussion of the received initiatives concerning the OMDR's receipts, we addressed a request to the Government of the Republic of Slovenia (Government), in which we welcomed the Government's measures aimed at mitigating the effects of the epidemic. We also pointed out that the adopted measures must not unjustifiably unequally treat or even exclude individuals or groups due to their personal circumstances, such as disability or social status (see the first and second paragraphs of Article 4 of the Protection against Discrimination Act (ZVarD) in connection with Article 1 of the same Act). The Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP) also covered a number of measures to mitigate the consequences of the epidemic in various areas, including social protection. The Ombudsman was also of the opinion that recipients of disability benefits under the Social Inclusion of Disabled Persons Act (ZSVI) and family assistants should also be included among the "most vulnerable groups of the population", to whom a one-off solidarity allowance is granted.

In the first wave of the COVID-19 epidemic, the Ombudsman was approached by a petitioner regarding extraordinary assistance in the form of a monthly basic income for the self-employed. She found that she was not entitled to the basic monthly income from Article 34 of the ZIUZEOP because she did not meet the criteria from Article 35 of the same law, which bound the right to the basic monthly income to specific months. Taking into account the principle of equality from Article 14 of the Constitution of the Republic of Slovenia, the Ombudsman warned the Government that linking the right to basic monthly income to specific months from Article 35 of ZIUZEOP could be problematic if the selected criteria would put the beneficiaries from Article 34 of the same law, who are in essentially the same position – in this case the self-employed, whose scope of operations has significantly decreased due to COVID-19 – in an unequal position. With the ZIUZEOP, the Government of the Republic of Slovenia addressed the problems pointed out by the Ombudsman and eliminated the controversial criterion for obtaining the basic monthly income from Article 35 of the ZIUZEOP.

There were 49 institutional care cases related to COVID-19. Most of the initiatives were on the topic of disabled contact with relatives. We also detected many problems due to inadequate staffing norms, inadequate facilities to provide different zones, lack of protection at the beginning of the first wave of the epidemic, unclear and inconsistent instructions for action, and also due to the inability of certain persons (people with dementia, people with mental health problems, etc.) to follow the recommendations and measures to prevent the

spread of the SARS-Cov-2 virus, or the unwillingness of some residents and visitors to comply with protective measures. The initiatives also drew attention to the unavailability of many services and the unequal treatment of individuals in different institutions.

In the initiatives we discussed, the initiators also complained about the alleged inadequate care and nursing in retirement homes during the COVID-19 epidemic. They stated that immobile residents do not get seated, that prescribed physiotherapy is not performed, that there are no activities, that no one is paying attention to them, etc. The ban on visits has caused great distress to residents and their loved ones. Reduced socializing among residents, reduced performance of certain services and less guided activities also contributed to the hardship. Last but not least, there was also uncertainty and fear due to the given situation, which undoubtedly has a negative impact on both the physical and mental well-being of the residents. The Ombudsman pointed out that appropriate action in these times of crisis is a responsible task for social service providers and that, of course, taking into account the principle of proportionality, any restriction on an individual's rights (like personal liberties) should be provided with an appropriate legal basis.

Some retirement homes have tightened the recommended measures and instructions of the competent institutions regarding the delivery of packages to residents. The Ombudsman was approached by a relative of a resident of one of the retirement homes. She stated that residents were also deprived of treats, personal necessities, newspapers and other small items that relatives were allowed to bring them before the epidemic, in addition to the measure banning visits, which severely affected them. The home did not want to accept such packages for residents. After receiving the initiative, the Ombudsman reviewed the websites of several retirement homes and found that the homes had very different approaches to implementing the recommendations/measures regarding the receipt and introduction of various packages, prepared by loved ones, into social welfare institutions. The recommendations/measures were included in the instructions »Implementation of the Ordinance on Interim Measures in the Field of Health Activities for Containment and Epidemic Control COVID-19«, document no. 181-70/2020/152, submitted by the Ministry of Health, on 25 March 2020. One of the homes, for example, allowed relatives to transfer money for goodies and necessities to a bank account and the social services of the retirement home took care of the purchase of the desired necessities. In another retirement home, the residents were able to order and buy fruit at the cafe of the retirement home. One of the homes announced that relatives could bring residents utensils for personal use (and according to some protocol), while another also allowed them to bring originally packaged food. However, there were also homes that had information published on their websites that relatives were not allowed to bring anything to the residents.

The MDDSZ replied that the instructions of the Ministry of Health regarding the possibility of bringing food and other items of relatives for users to social welfare institutions were prepared in cooperation with the National Institute

of Public Health; it suggested that as long as there were no COVID-19 cases in a social welfare institution (when the first case occurs and as long as the outbreak lasts, this instruction or protocol does not apply), relatives can continue to bring food or other items to their loved ones; however, certain (specified in the instructions) conditions regarding the delivery of packages and their contents must be observed. The MDDSZ was of the opinion that this instruction of the Ministry of Health introduces a uniform practice in all social welfare institutions, until the revocation or normalization of the situation. The Association of Social Institutions of Slovenia (SSZS) informed the Ombudsman that it would once again call on the retirement homes that are members of the SSZS to follow the instructions of the Ministry of Health.

The Ombudsman also dealt with the case of a pensioner who was left without residence and with it, also without the right to health insurance. In our telephone communication with the initiator, we perceived that the person is probably having a very difficult time exercising their rights, has difficulties in creating appropriate applications and is handling the situation poorly, even more so due to measures aimed at preventing the spread of COVID-19. The Centre for Social Work (CSD) was informed of his issues and could not help him other than with explanations. The Ombudsman assisted the petitioner in preparing the application to the administrative unit, which he also informed about his issue, and the registration of legal residence was arranged for the gentleman as a homeless person. In our view, a minor intervention of the Centre for Social Work, perhaps indeed outside the scope of regular work, could have helped solve the gentleman's problems much more effectively and more quickly than explanations that the gentleman may not have even understood very well. We believe that in such cases, people in a similar situation should also be helped to prepare an appropriate application to the competent authorities, or perhaps make a telephone call to the competent authority, as very big problems can often be solved with very little energy.

3.19 OTHER ADMINISTRATIVE MATTERS RELATED TO COVID-19 EPIDEMICS

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman), in constructive cooperation with the Administrative Unit Pesnica (hereinafter: UE Pesnica), helped the complainant to arrange a birth registration after home birth. In her email, the complainant informed us that in fear of COVID-19 infection she gave birth to her child at home. She presumably did not inform anyone about this and supposedly only her partner was present at birth. The complainant later managed to obtain the gynaecologist's certificate that her pregnancy had ended, but according to her statement, this was not enough for UE Pesnica to conduct the birth registration. Regarding the examination of the child, she had already contacted several health care providers, but no one wanted to examine her child.

In accordance with Article 7 of Civil Register Act (ZMatR), the birth of a child is registered at the UE also by the child's father or a person who lives with the mother or the mother who is able to carry this out. When persons listed in the second paragraph of Article 7 of the above mentioned Act (beside the already-mentioned persons also the doctor present, a graduate nurse or a graduate midwife, who is registered at the register of private health professionals or a holder of permission to conduct health services with the ministry responsible for health) cannot register the birth, it may be registered by another person present at birth or by the person who found out about the birth. Upon birth registration, a birth certificate must be enclosed, issued by either the doctor present at birth, a graduate nurse or a graduate midwife, who is registered at the register of private health professionals or a holder of permission to conduct health services with the ministry responsible for health. Birth certificate may also be issued by the doctor who was not present at birth if he or she can confirm that the mother gave birth.

We estimated that the matter is urgent, so we telephoned UE Pesnica directly. They notified us, among other things, that at first they had not received the obligatory data required by ZMatR and Rules on the Implementation of ZMatR. Some data were presumably submitted by the complainant on 20 April 2020, where a new certificate, which would unambiguously prove her giving birth, was not enclosed. UE Pesnica suggested the complainant she should visit the gynaecologist again to obtain the relevant certificate. Regarding the problems with the examination of her child, they suggested her to refer to the competent Social Work Centre Pesnica.

Next the complainant notified us that she had received the order of birth registration of her child from UE Pesnica and that, following the instructions of Ministry of Health, she was able to arrange the examination of her child at the maternity hospital, which we indirectly regard as our success, too. Considering the specific situation in our country and the lack of information, we estimate that this particular case was an example of communication noise between several parties. From sparing data the complainant provided us with, we concluded that her and her partner's communication with health care institutions and UE Pesnica was mainly verbal (except for the communication with the ministry), and the complainant had not informed us about the Ministry's response, despite our repeated requests. The limited information we had at our disposal significantly obstructed a clear identification of the cause of the complainant's problems, which were, also due to our assistance in the birth registration part, successfully resolved.

3.20 JUDICIAL SYSTEM DURING THE COVID-19 EPIDEMIC

The day after the World Health Organization (WHO) declared a pandemic on 12 March 2020, Slovenia declared¹ an epidemic of the COVID-19 infectious disease. This established the basis for the adoption of a number of intervention regulations and (temporary) measures to contain and prevent the spread of this infectious disease. This has left an indelible mark on virtually all areas of social life. The judiciary was no exception, **as the regular closure of courts in the spring and autumn limited their regular work, which also hampered access to judicial protection to a certain extent.**

Pursuant to Article 83a of the Courts Act (ZS), the President of the Supreme Court of the Republic of Slovenia² issued several orders³ deciding how the judiciary operates at the time of declared epidemic. A number of regulations and governmental decisions have also been adopted⁴, setting out certain interim measures in relation to court proceedings. As a result, these courts – except in urgent cases – did not function normally, did not rule, did not serve court documents, and in addition, the running of substantive and procedural deadlines in certain court cases was interrupted, while summer operations were also halved (judicial vacation). In certain non-urgent cases, the courts decided and served court documents, but did not hold hearings and perform other procedural acts that inevitably required the physical presence of the parties

-
- 1 By Order on the declaration of the COVID-19 (SARS-CoV-2) epidemic in the territory of the Republic of Slovenia (Uradni list RS, nos. 19/20, 68/20).
 - 2 The first paragraph of Article 83a of the ZS stipulates that in the event of natural and other serious disasters, epidemics or similar extraordinary events that significantly limit the regular exercise of judicial power, individual or all courts operate in accordance with Article 83 of the ZS, which is decided by the order of the President of the Supreme Court of the Republic of Slovenia. In the third paragraph of Article 83, the ZS stipulates that the procedural deadlines do not run during judicial vacations, except in cases that are defined as urgent in the second paragraph of this Article of the Act. The second paragraph of the same article of the ZS in items 1 to 8 lists the matters that are considered urgent under this Act, and in item 9 it determines that other matters for which the law so provides are also urgent.
 - 3 Order on special measures due to the conditions referred to in the first paragraph of Article 83a of the Courts Act (Uradni list RS, nos. 21/20, 39/20), Order on special measures due to the occurrence of the conditions referred to in the first paragraph of Article 83a of the Courts Act and reasons referred to in Article 1 of the ZZUSUDJZ (Uradni list RS, nos. 62/20, 77/20).
 - 4 E.g. Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19) (Uradni list RS, nos. 36/20, 61/20, 74/20), Decision on temporary cessation of the running of deadlines determined by law for exercising the rights of the parties in judicial proceedings (Uradni list RS, nos. 167/20, 190/20), Decision on temporary cessation of the running of deadlines determined by law for exercising the rights of the parties in judicial proceedings (Uradni list RS, no. 190/20).

or other participants in the court proceedings. Hearings in non-urgent cases were considered cancelled; however, it was permissible for hearings to be held in these cases during this time as well, if they were convened or held by videoconference.

The accepted measures were taken in order to prevent the courts from becoming a source of coronavirus infections. **However, the consequences of the epidemic due to limited operations and reduced workload were already reflected⁵ in an increased number of unresolved cases⁶ in the first wave of the epidemic.** Upon the resumption of full work in the courts on the basis of the received initiatives, we have not (yet) perceived that there would be problems in the operation of the courts due to the observance of basic measures for the prevention of infections. It could be difficult, at least in certain courts, to provide suitable courtrooms⁷, as many do not allow for adequate distancing between those present, which could lead to additional delays in proceedings where a main hearing has to be held before a court decision. **Based on the received initiatives, it is not (yet) possible to assess the impact of the adopted measures in the field of judiciary on individual proceedings in individual court cases, especially not by how long the expected time for resolving individual court cases will be extended.** That this time will most likely be extended also follows from Act no. Su 2005/2017 of 11 December 2021 (correct 2020, AN), by which the President of the Supreme Court of the Republic of Slovenia, with the consent of the Minister of Justice, determined the expected time for performing typical procedural acts and resolving on the basis of Article 60c of ZS cases at individual types and levels of courts for 2021⁸. Data on judiciary operations in 2019 were used to set time standards for 2021, as data on judiciary operations for 2020 are not suitable for setting time standards due to the impact of the COVID-19 epidemic state of emergency on judiciary operations. **This raises the question of the extent to which the consequences of this state of emergency will actually affect the planned duration of individual proceedings and whether the prolongation of court proceedings may even (again) become a systemic problem within a reasonable time and thereby present an additional challenge for the judiciary to face.**

We find that the negative effects of the COVID-19 epidemic and the measures taken in connection with its prevention and containment are also reflected in the handling of various court cases. This was also the case when dealing with the priority non-litigious case of placing an adult under guardianship, as the judiciary basically ceased to operate during the first declared epidemic regarding client operations, and the changed way of court operations, adapted to the situation, also contributed to the duration of the proceedings.

5 This lasted for 12 weeks, from 12 March to 31 May 2020.

6 <https://www.vecer.com/slovenija/sodstvo-zadovoljno-odvetniki-pac-ne-10172637>.

7 <https://www.dnevnik.si/1042929891/slovenija/stevilne-sodne-dvorane-so-premajhne-za-socialno-distanciranje>.

8 http://www.sodisce.si/mma_bin.php?static_id=20201211145150.

As a result of the declared epidemic of the COVID-19 infectious disease, **in relation to enforcement proceedings, some measures have also been taken to curb the epidemic.** On their basis, the judiciary operations in enforcement cases were suspended for a certain period of time, and the enforcement of enforcement orders was also postponed (however, not in all cases). Such an arrangement was important mainly because many debtors found themselves in serious distress during the epidemic, but also because they could not obtain a deferral of execution before the courts during the declared epidemic, as the enforcement proceedings under Article 83 of the Courts Act (ZS) were not defined as urgent judicial proceedings; therefore, the courts did not decide on proposals for deferral of execution in these proceedings during the period of the declared epidemic. As the deadlines in cases that were not defined as urgent did not run, as a result, no enforcement was conducted during the epidemic. At the same time, creditors did not lose the opportunity to at least secure their claims in court during the epidemic. Those who already had the instrument permitting the enforcement at their disposal, which reads on a monetary claim, could secure the order of repayment from the property owned by the debtor by establishing a lien on real estate, business share or movable property, or acquire the right to divorce in the event of debtor insolvency proceedings. Creditors who did not yet have instrument permitting the enforcement at their disposal, had the option of securing a preliminary or interim injunction and the freezing of the debtor's bank account under Regulation (EU) no. 655/2014.

3.21 POLICE PROCEEDINGS, PRIVATE SECURITY, DETECTIVES AND TRAFFIC WARDENS IN CONNECTION TO THE COVID-19 EPIDEMIC

Police proceedings during the declared epidemic were closely monitored. We advised that even in such a time, police must remain **independent, impartial, and professional** when performing their duties. It is everyone's responsibility not to become part of political fights and other partial interests. It is important to maintain confidence in its work, which must follow the highest moral and ethical standards.

Some of the allegations against police proceedings, which appeared in the media, could not be verified more thoroughly, as the affected individuals did not contact us. In this regard, it should be clarified that the Ombudsman can mostly respond on his own initiative in cases that raise broader issues or point to certain systemic irregularities. This is why we would also like to emphasise that the assessment of police officers' conduct regarding the respect for human rights and freedoms cannot be based solely on the number of such complaints to the Ombudsman and/or their validity. A more accurate assessment of the conduct of police officers (e.g., in relation to the allegations of unjustified sanctioning) may be given in individual more formal (judicial) proceedings if individuals have used the legal remedies available to them as parties to these proceedings.

In March 2020, in connection with the outbreak of the new coronavirus epidemic in the Republic of Slovenia and its rapid spread, the Ombudsman contacted the Ministry of the Interior (MNZ) and the Police for information on whether any activities and what kind have been carried out in relation to this epidemic. In particular, we asked for information on how or in what way the employees - police officers (in addition to reports in the media) were informed about the new coronavirus, how it is recognized and how it is transmitted. At the same time, we asked for information on whether the employees - police officers were perhaps additionally informed about self-protective measures and whether and what kind of protective equipment is or will be provided to them to ensure successful work. **The MNZ explained that a number of organizational and other measures had been taken for the smooth implementation of activities in the MNZ and its constituent bodies.** It was announced that on 25.2.2020, a working group of the MNZ was appointed to coordinate activities related to coronavirus, on 11.3.2020 recommendations were issued

for the smooth operation of the MNZ, and on 13.3.2020 the MNZ Action Plan in case of an emergence of an epidemic or a pandemic of infectious diseases in humans was activated. Furthermore, on 10.4.2020, the MNZ's Response Plan to the occurrence of coronavirus spread was adopted.

Furthermore, the MNZ explained that it was on 31.1.2020 that the Police already issued internal guidelines regarding the assessment of risk factors for coronavirus infection and preventive and protective measures to reduce the risks of infection. On 23.2.2020, the police officers were again informed about self-protection measures and the use of protective equipment, and on 24.2.2020, the police officers were provided with the National Institute of Public Health (NIJZ) recommendations and instructions for cleaning the premises where an infected person was present. Furthermore, on 3.3.2020, the priority tasks of the police were determined (cancellation of group trainings, the possibility of working from home, etc.). Based on the recommendations of the MNZ, on 17.3.2020, contact persons were appointed in charge of coordinating the adopted measures, priorities were determined as well as the way of interacting with clients. Subsequently, on 25.3.2020, revised instructions for the assessment of factors were issued with another warning about the preventive and protective measures and a specific procedure with allegedly and actually infected or ill persons. On 17.4.2020, the Police rerevised the measures for safe work and reminded the employees about self-protective behaviour and compliance with obligatory and recommended measures of the responsible services. The MNZ also emphasized that the Police informed its employees about the activities and measures for preventing the spread of infections via their intranet site. Employees were also additionally informed and reminded about this during the practical self-defence training. Furthermore, the MNZ explained that the Police instructed employees to use protective gloves, if necessary protective masks and goggles, to use hand sanitizer and to take preventive measures (distance, hand washing, etc.) when dealing with a person with a suspected infection. However, in the case of proceedings with persons with a confirmed infection, police officers must use an FFP3 respirator, tight-fitting goggles, a protective hooded suit and disposable protective gloves. Police officers were also warned about the proper use of personal protective equipment or the strict observance of instructions on how to put it on, wear it, take it off and remove it, as well as cleaning and disinfection of devices, equipment, premises and clothing. Hand sanitizers, pictorial instructions and tips for proper hand washing, and instructions for preventing infection were installed in facilities and premises used by the MNZ and the Police. The procedure in the event when an employee contracts the virus was also determined.

The MNZ also announced that the status of available personal protective equipment and protective equipment had already been checked in January 2020. Even before the declaration of the epidemic, trainings were carried out for the employees at the police departments and the Police Academy, with a special emphasis on the correct use of personal protective equipment. Furthermore, the MNZ announced that a PowerPoint presentation of concise training

had been prepared, with an emphasis on preventive and protective measures against infectious diseases and the correct use of personal protective equipment, which is also published on the intranet. Police officers use personal protective equipment and protective equipment (medical masks, respirators, protective gloves and disposable footwear, protective hooded suits, hand sanitizers, goggles) depending on the potential exposure. The MNZ also explained that, taking into account the assessed risks, equipment and resources are distributed centrally in accordance with the demonstrated requirements of the police.



Based on the response received from the MNZ, we were able to conclude that in early 2020, when the new coronavirus epidemic appeared, both the MNZ and the Police took the necessary measures to ensure that police officers received the necessary protective equipment for safe work. They were also trained on how to use this protective equipment in a safe way.

In police proceedings when supervising compliance with measures to prevent the spread of COVID-19, the issue of the justification for the use of police power for the identification of persons was raised. **We considered that the identification procedure based on indent 4 of the first paragraph of Article 40 of the ZNPPol is justified only when there is at least a suspicion that a particular person will commit, is committing or has committed a crime or misdemeanour.** Although this is the lowest level of the standard of proof, we believe the suspicion **should still always be actualised** and must be expressed in certain connecting factors. The Ombudsman therefore considers that circumstances such as (merely) moving in the direction of a protest rally, (merely) spending time at the place of the protest rally in the time immediately before or during the protest rally, are not such as to satisfy the reason for suspicion and thus the existence of conditions for the enforcement of the identification procedure on the said legal basis. If the police officers used the police power of establishing identity in specific cases (solely) on the basis of the described circumstances, the question seriously arises as to whether these measures were actually carried out in accordance with the law and if this could not unduly interfere with the right to privacy and personal rights from Article 35 of the Constitution of the Republic of Slovenia. Although we agree with the MNZ that establishing identity for preventive purposes can also have a preventive function, these procedures should not be used as a way of establishing public order, but can only be used if the already mentioned legal conditions are met, which prevent the arbitrary conduct of police officers. In view of the above, **the Ombudsman reiterated his recommendation no. 74 (2018), which recommended that for the exercise of the power of establishing identity, police officers always carefully assess the conditions set by law and other regulations for the exercise of police powers.**

Example **Determining the identity of persons during protests**

The Ombudsman considers that circumstances such as (merely) moving in the direction of a protest rally, (merely) staying at the protest rally site immediately before or during the protest rally are not such as to satisfy the reason for suspicion and thus the existence of conditions for the identification procedure on the said legal basis.

The ombudsman found information on social networks and in the media that **police officers were supposed to identify several people during the protest on 19.6.2020, including some random passers-by.** The Ljubljana Police Directorate explained to the media that “they did not establish the identities of random passers-by, but persons for whom there are reasons in Article 40 of the Police Tasks and Powers Act (ZNPPol)”.

In the inquiry, we asked the MNZ, among other things, in how many cases the identification procedure was carried out in connection with the exposed event on 19.6.2020 and on what legal basis. We also asked for information on how many times the reason for identification was indent 4 of the first paragraph of Article 40 of the ZNPPol and which clues or data in these cases aroused suspicion among police officers that individuals had committed or intended to commit a misdemeanour or criminal offense. On the basis of the aforementioned legal provision, police officers may establish the identity of a person who by his behaviour, actions and loitering at a particular location or at a particular time gives reason to suspect that they will commit, commit or have committed a criminal offense or misdemeanour.

In its response, the MNZ explained, among other things, that during the protest rallies on 19.6.2020, police officers carried out an identification procedure in 69 cases. All procedures were carried out on the basis of indent 4 of the first paragraph of Article 40 of ZNPPol. In addition, the provision of the 2nd indent of the first paragraph of Article 40 of the ZNPPol was applied simultaneously in 28 cases. On the basis of the latter, police officers may establish the identity of a person who enters or is located in an area, place, space, facility or district in which movement is prohibited or restricted.

Regarding the Ombudsman’s question, what led the police officers to establish the existence of legal conditions for the implementation of the identification procedure, the Ministry said that the identification procedures in specific cases were carried out with a proactive (preventive) purpose of the police, as persons with their actions (on the way to the place of the protest rally) or by staying at a certain place (at the place of the protest rally) and at a specific time (immediately before or during the protest rally) arouse suspicion that they will commit a crime or misdemeanour.

Against 27 persons (individuals) out of 69 cases of establishing identity, the police initiated misdemeanour proceedings for violations of Article 22 of the Protection of Public Order and Peace Act (ZJRM-1; failure to comply with a lawful measure of an official). According to the estimated number of participants in the protest (approximately 7,000), the MNZ also estimated that the police acted in accordance with the police principle of proportionality from Article 16 of the ZNPPol.

In the Ombudsman's opinion, the MNZ's response did not eliminate all (media-mediated) doubts regarding the justification of the identification of persons in relation to the legal basis for the exercise of such a police power. In the answer of the MNZ, we especially missed the definition of external, (in advance) visible signs or a set of those circumstances that could raise or have raised suspicion that any of the 69 persons (whose identity was established on the basis of indent 4 of the first paragraph of Article 40 of the ZNPPol) has committed or will commit a misdemeanour or a criminal offense. The Ombudsman considers that circumstances such as (merely) moving in the direction of a protest rally, (merely) staying at the protest rally site immediately before or during the protest rally are not such as to satisfy the reason for suspicion and thus the existence of conditions for the execution of the identification procedure on the aforementioned legal basis in the ZNPPol. The aforementioned circumstances are also so general that they could in all likelihood be attributed to all the protesters, who number around 7,000. Therefore, it is not entirely clear on what basis the police actually established the identities of only 69 people out of all the other protesters.

In its response, the MNZ did not specifically explain which criminal offenses or misdemeanours were alleged to be those in respect of which the police officers concluded before the identification of the persons that they intended to commit them or were committed by persons who were included in the proceedings. In connection with this inquiry, the Ministry wrote: "Given the criminal acts that took place at the protest rallies before 19.6.2020 (there are well-founded reasons to suspect that on 12.6.2020, a criminal act "Participation in a group that prevents an official from taking an official act" under Article 301/I KZ-1 took place) and calls on social media for the fall of fences, the indications cited above were the reason why the identification procedures were carried out."

In our opinion, the identification procedure on the basis of indent 4 of the first paragraph of Article 40 of the ZNPPol is justified only in the event that there is at least a suspicion that a certain person will commit, is committing or has committed a criminal offense or misdemeanour. Although this is the lowest level of the standard of proof, we believe that the suspicion must nevertheless always be actualised, and it must be expressed in certain connecting factors (as stated in the decision of the High Court Ref.

No. II Kp 285/2009 of 9.6.2009). Similarly, the Constitutional Court of the Republic of Slovenia (US RS) in its decision no. UI-152/03-13 of 23.3.2006, in which, at the Ombudsman's request, it examined the legal regulation of the aforementioned police power and, among other things, pointed out in its decision "that in cases where human rights violations are carried out for the so-called preventive or proactive purposes (when, for example, the prohibited act has not yet taken place at all), the powers of the state must be more limited than in the case when the purpose of the intervention is already repressive. Otherwise, all safeguards against arbitrary application of the law are ineffective. The purpose and reason for legal regulation is precisely to prevent such application of the law and to enable effective supervision." Therefore, in the Ombudsman's opinion, it is all the more important that in these cases the specific circumstances and decisions leading police officers to "find individuals suspicious", are precisely expressed, as the legal provision requires the existence of a certain degree of probability of their illegal conduct or future such conduct. We therefore consider that general descriptions such as moving in the direction of a protest rally, staying at the protest rally site immediately before or during the protest rally do not meet this criterion. If the police officers used the police power of identification in specific cases (solely) on the basis of the exposed circumstances, the question seriously arises as to whether these 69 measures were actually carried out in accordance with the law and if the right to privacy and personal rights from Article 35 of the Constitution of the Republic of Slovenia was not excessively interfered with.

Although the MNZ in its reply did not define which prohibited acts the individuals allegedly committed or intended to commit, we could also not ignore the offenses determined by the then (on 19.6.2020) Ordinance on Temporary General Restriction on Gathering People in Public Places and Locations in the Republic of Slovenia, and for which fines are imposed in accordance with the law governing infectious diseases. In addition to the responsible inspection authorities, the implementation of this decree is also supervised by the police within the scope of their powers. Regarding the implementation of the aforementioned ordinance, out of the police powers listed in Article 33 of the ZNPPol, the police will most often warn and order, and within other tasks in the case of established violations, submit proposals to the health inspectorate to initiate misdemeanour proceedings. For the purpose of submitting the said proposal, the police will also carry out an identification procedure.

However, even in a situation where the police, by their presence, are trying to ensure the safety of protesters and at the same time directly detect possible violations, an identification procedure carried out by the police when the violation (in relation to the violation of gathering in public places) would not have occurred yet (i.e. on the basis of indent 4 of the first paragraph of Article 40 of the ZNPPol), it could, in the Ombudsman's opin-

ion, present a deviation from the principle of proportionality from Article 16 of the ZNPPol. In the first paragraph, it stipulates that in cases where different police powers can be used to successfully perform a police task, police officers shall employ only those powers whereby the police task can be carried out with the least damaging consequences. Damaging consequences are measured by the intensity of interference with human rights and fundamental freedoms. It should not be overlooked that in the process of establishing their identity, a police officer stops a person and thus interferes with their freedom of movement (Article 32 of the Constitution of the Republic of Slovenia). Although we agree with the MNZ that establishing identity for preventive purposes can also have a preventive function, because, for example, the person in question is aware that it will be easier for the police to track them down, which may deter them from committing a prohibited act, we believe that for deterrence from violations of the ordinance regarding the restriction of gathering in public places, a milder and often more appropriate police power is a warning (Article 38 of the ZNPPol) and an order (Article 39 of the ZNPPol). Such identification procedures may in general not be used as a way of establishing public order, but can only be used if the already mentioned legal conditions are met, which prevent the arbitrary conduct of police officers. The police must employ all powers lawfully, under the conditions and in the manner specified in the ZNPPol and other regulations. This also applies to the power of establishing identity.

With regard to establishing identity, we have not received a concrete initiative for consideration, within which it would be possible to examine in more detail all the circumstances of the exercise of this police power in a specific case or specific cases. Taking into account the aforementioned views on the issue under consideration, the Ombudsman again recommended that police officers always exercise a careful assessment of the conditions laid down by law and other regulations for the exercise of police powers in order to exercise their power of establishing identity.

Some of the cases under consideration also concerned the conduct of security guards, in particular the use of their measures in relation to the measures taken to prevent the spread of COVID-19 disease. In one such case, we found that an individual could be (could have been) punished for an offense whose occurrence was related to not wearing a mask, even on some other legal basis, even if the then valid government decree did not prescribe a sanction under the Communicable Diseases Act (ZNB) for violating the obligation for wearing a protective mask indoors. In principle, stores are closed public spaces, but owners of stores are subjects of private law, stores are their private property or they have the right to use the real estate (rent) in which they have their store. In accordance with the principle of free regulation of obligational relation-

ships, store owners may decide not to serve the customer or sell their goods to them if they do not wear a (correctly fitted) mask. As owners or tenants of the store, they can also deny entry to the store to a person without a mask or ask them to leave the store. If an individual (loudly) opposed or (even actively) resisted, such conduct could be a violation of public order and peace (offense under ZJRM-1).

If the store has security and is an established protected area with appropriate rules, it is also possible, in principle, to penalise an individual for a misdemeanour under the ZZasV-1 if, for example, they fail to comply with a security guard's order based on the fact that wearing a mask is determined by the rules of the protected area. However, all relevant facts must always be established in the misdemeanour proceedings, which indicate that all the legal signs of the alleged misdemeanour have been met. In this particular case, the real question is whether the protected area was established and marked in accordance with ZZasV-1 when the complainant entered the store and whether the rules for ensuring order in the protected area included the obligation to wear a protective mask for customers in the store. These circumstances of the specific offense were not recorded in the penalty notice.

Example **Fine for non-compliance with the security guard's request that the customer properly wear the protective mask in the store**

In the Ombudsman's opinion, in a misdemeanour proceeding committed by someone in breach of a security guard's order based on the rules of establishing order in a protected area, this should be established and suitably recorded, as these are the essential circumstances for committing such an offense.

The ombudsman examined the allegations of the complainant, who was punished for failing to comply with the security guard's request to properly wear a protective mask in the store. She had already paid the fine, but later demanded its refund, also referring to the Ombudsman's view that in breach of the obligation to wear a protective mask in a closed public space, as laid down in the then valid Ordinance on Interim Measures to Reduce the Risk of Infection and Spread of SARS-CoV-2 (Uradni list RS, No. 90/20; Decree), an individual could not be punished for a misdemeanour under the Infectious Diseases Act (ZNB): <http://www.varuh-rs.si/sporocila-za-javnost/novica/stalisce-varuha-do-predpisanega-obveznega-nosenja-mask-v-zaprth-javnih-prostorih/>.

The complainant received the fine in line with non-compliance with point 8 of the first paragraph of Article 89 of the Private Security Act (ZZasV-1), because she allegedly acted in contravention of the fifth paragraph of Article 45 of this Act, which stipulates that a person is obliged to act in ac-

cordance with the measures of the security guard. Pursuant to Article 45 of ZZasV-1, a security guard may apply certain measures when performing private security tasks if life, personal safety or property are endangered, if order or public order in the protected area is violated. Among these is also an oral order - a security guard may issue an oral instruction or a request to a person who violates order or public order in a protected area, endangers property, personal safety or human life, to immediately stop the violation or threat or to leave the protected area (Article 47 of the ZZasV-1). That measure may therefore be applied by the security guard in two situations: (a) the person's conduct endangers life, personal safety or property; (b) the person's conduct constitutes a breach of (public) order in the protected area.

Under the first situation (a), the application of the measure is not explicitly provided for preventive purposes (in order to prevent a possible negative consequence), but the protected legal good (such as life) must already be endangered. On this basis alone, in the Ombudsman's opinion, a security guard could not require a person to wear a mask in a store - wearing a mask was then defined as an incomplete legal norm (for which no sanction was envisaged). However, in accordance with the second position (b), the security guard may verbally order the person to wear the mask (correctly) if this is provided for in the order in force in the protected area. This applies when the client of private security establishes a protected area, which in accordance with Article 5 of the ZZasV-1 is a »space, facility or area owned, leased or managed by the client of the service, which by contract determined with the licensee, is an area where internal security, and the immediate vicinity of the protected person is carried out (ninth paragraph of Article 11 of ZZasV-1).

The Ombudsman therefore contacted the MNZ, which explained that upon entering the protected area, the security guard informed the complainant about the order in the protected area, but noted that she had not complied with it. She supposedly wore the protective mask, which is prescribed by the order in the protected area as obligatory for the clients, under her nose. The security guard allegedly warned her that she was violating the order in the protected area and ordered her to stop or leave the protected area immediately. She allegedly responded by saying that she could not breathe with the mask and she did not stop the violation. Pursuant to Article 46 of the ZZasV-1, the security guard allegedly ordered her to leave the protected area immediately and warned her that he would otherwise use physical force and remove her from the protected area. As she allegedly did not leave the store, the security guard, in accordance with Article 52 of the ZZasV-1, allegedly used a measure of physical force against the person, who passively resisted, by pushing her on the back with the palm of his right hand. At the exit of the store, he allegedly explained that in accordance with Article 51 of the ZZasV-1, she was detained until the arrival of the

police. Despite that, she allegedly wanted to leave the location, so he stood behind the vehicle and prevented this. Because of the report, police officers came to the scene and issued a penalty notice to the complainant. After checking the procedure, the MNZ determined that the police officers at the scene found that a protected area had been established in accordance with the ZZasV-1 and that it was marked on and in front of the premises that the use of protective masks was mandatory. In confirmation of the above findings, the MNZ provided the Ombudsman with photographs of the entrance to the store. The MNZ was of the opinion that the security guard also acted legally and professionally in this specific case. When asked for a refund of the fine, the MNZ replied that it was unjustified because the complainant had been punished under the ZZasV-1 and not under the ZNB.

The Ombudsman agrees that the legal basis for the fine imposed in this case was ZZasV-1 and not ZNB. Therefore, the Ombudsman's position that no sanction under the ZNB was prescribed for violating the obligation to wear a mask in enclosed public spaces under the then valid Decree is not directly applicable in this case. An individual could be (could have been) punished for an offense by not wearing a mask, also on some other legal basis. It should be noted that store owners are subjects of private law, and stores are their private property or they have the right to use the real estate (rent) in which they have a store. In accordance with the principle of free regulation of obligational relationships (Article 3 of the Obligations Code (OZ), in the Ombudsman's opinion, store owners may decide not to serve the customer or sell their goods to them if they do not wear a (correctly fitted) mask. As owners or tenants of the store, they can also deny entry to the store to a person without a mask or ask them to leave the store. If an individual (loudly) opposed or (even actively) resisted, such conduct could be a violation of public order and peace (for example, violent and daring behaviour under Article 6 of the Protection of Public Order Act (ZJRM-1) or indecent conduct under Article 7 of ZJRM-1), for which a fine is prescribed in ZJRM-1, which is imposed after the misdemeanour case procedure by the competent authority, i.e., the police. This applies regardless of whether the store has a security guard or hired private security and a protected area with appropriate rules.

In principle, it is also possible to punish an individual for a misdemeanour under ZZasV-1 if they do not follow the order of the security guard, which is based on the fact that the obligation to wear a mask is determined by the rules of the protected area. The Ombudsman notes that the MNZ essentially confirmed the position that a security guard could verbally order a person to (correctly) wear a mask only if this was provided for by the order in force in the protected area. In this case, because of non-compliance with the oral order, he was also able to escalate the measures in accordance with ZZasV-1, which could ultimately lead to punishment for non-compliance with the security guard's measure.

However, all relevant facts must always be established in the misdemeanour proceedings, which indicate that all the legal signs of the alleged misdemeanour have been met. In this particular case, the real question is whether the protected area was established and marked in accordance with the ZZasV-1 upon the complainant's arrival in the store and whether the rules for ensuring order in the protected area included the obligation to wear a protective mask for customers in the store. In the Ombudsman's opinion, in a misdemeanour proceeding committed by someone in breach of a security guard's order based on the rules of order in a protected area, this should be established and recorded accordingly, as these are essential circumstances when committing such an offense. Pursuant to the second paragraph of Article 57 of the Minor Offences Act (ZP-1), the penalty notice must also contain a brief description of the misdemeanour and a brief summary of the offender's statement on the misdemeanour. However, the penalty notice issued in this case did not contain any findings in the section "brief description of the act with evidence" as to whether the store is (was) established as a protected area and whether the rules of ensuring order in this area stipulated the obligation to wear a protective mask in store. The Ombudsman also considers that in misdemeanour proceedings, it cannot be presumed that a protected area has been established in the store and that its rules also stipulated the obligation to wear a mask, on the basis that a government decree is in force in enclosed public spaces.

The Ombudsman was therefore further concerned as to whether the above facts, which are relevant for the establishment of a specific misdemeanour, had also been duly established in the misdemeanour proceedings. However, the complainant could assert this by legal means against the penalty notice. The Ombudsman is not in a position to establish the complete and true factual situation relevant for establishing the misdemeanour responsibility of an individual, as the court can make a final decision on this in a legal remedy procedure, otherwise (if the victim does not use the legal remedy) the decision of the enforcement authority is valid. Pursuant to Article 30 of the Ombudsman Act (ZVarCP), the Ombudsman generally rejects an initiative if all regular or extraordinary legal remedies have not been exhausted.

3.22 ENVIRONMENT AND SPATIAL PLANNING CONNECTED TO THE COVID-19 EPIDEMIC

The Ombudsman warns against the discrepancy between the ZIUZEOP-A (Official Gazette of the RS, no. 80/20) with the constitution and the Aarhus Convention regarding the appropriate and efficient collaboration of the public in all administrative and judicial proceedings that have or could have any influence on the environment.

The Ombudsman discussed points b, d, e, f, and g of Article 105 of the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP-A).

Relating to the initiatives received and at its own thorough professional discretion, the Ombudsman identified a number of irregularities and constitutional contentiousness. Therefore, it addressed to the MOP an extensive opinion including a proposition for the elimination of the identified irregularities.

The MOP did not accept the Ombudsman's proposition. The Ombudsman will, taking into account the fact that the Constitutional Court of the RS with decision no. U-I-184/20-27 from 2.7.2020 accepted for consideration the initiative to launch proceedings to assess the constitutionality of the disputed intervention legislation and withheld the implementation of Article 2 of the ZIUZEOP until the final decision, continue to follow the procedure before the Constitutional Court of the RS. Following the final decision of the Constitutional Court of the RS, the Ombudsman will decide on potential further action.

Further activities of the MOP in the preparation of legislative amendments (ZON, ZVO-1) indicate an alarming trend of complete exclusion of the non-governmental sector from the proceedings, the result of which could have an impact on the environment.

3.23 SOCIAL MATTERS DURING THE COVID-19 EPIDEMIC

In the wake of the nationwide COVID-19 epidemic declaration, the Order prohibiting the gathering of people in institutions in the field of education and universities and independent higher education institutions (Uradni list, nos. 19/20 and 22/20) was consequently issued first, which came into effect on 16 March 2020. It was later substituted by the Decree on the temporary ban on the gathering of people in institutions in the field of education and universities and independent higher education institutions (Uradni list, nos. 25/20 and 29/20). The two executive authority acts effectively prohibited gathering in all educational institutions of the country. Lessons moved from the classrooms to an online environment (distance learning).

The temporary ban on the gathering of people in institutions in the field of education is a quarantine measure pursuant to Article 39 of the Infectious Diseases Act (ZBN). The stated measures represent a constitutional tort in the freedom of movement granted by Article 32 of the Constitution of the Republic of Slovenia. But since freedom of movement is a predisposition for the realisation of many other rights, freedoms, and legally protected interests, the measure impedes on those as well. In this case, it applies to education and schooling, since in accordance with Article 57 of the Constitution of the Republic of Slovenia, the state provides its citizens the opportunity to attain an appropriate education. In accordance with said constitutional requirements and their practical aspects in legislature and other regulations, the state is liable to ensure suitable organisation and operation of the education system. For example, the Law on the Organisation and Financing of Education (ZOFVI) sets the goals of education, educational programmes and their contents, the providers, organisation, type of school, requirements for running such activities, and the like. The Primary School Act (ZOsn) regulates primary education, while individual laws regulate secondary education (e.g. Gymnasiums Act (ZGim), Vocational and Professional Education Act (ZPSI-1)).

The aforementioned regulatory framework should create opportunities for obtaining the levels of education as one of the constitutionally granted freedoms and should equally apply to all. The Constitution of the Republic of Slovenia does not demand that pupils share the same background in opportunities, but that schools which are funded and organised by the state have to be organised in a way that enables anyone to successfully complete their school obligations, given a suitable level of diligence (e.g. the ruling of the Constitutional Court in the case U-I-72/96 of 5 May 2020). In accordance with the legislation mentioned in the previous paragraph, education is, as a rule, carried out in schools and the same applies to preparations for the General

Matura examination. The school legislature does not predict the situation we witnessed in spring (and later again from October onwards), namely the closing of schools, and also fails to take appropriate action in such a case where a substitute for school-based education should be found. It cannot be expected of the legislature to always accurately predict all the possible uncertainties of life. Certain exceptional and unforeseen circumstances may lead to a situation which requires unprecedented action. This is exactly what we saw with the emergence of the COVID-19 epidemic, which calls for effective action to prevent the spread of an infectious disease.

Despite this, the Ombudsman is of the opinion that national authorities should not be entirely limitless in their response to an exceptional situation, where swift action is potentially required and significantly impacts our previous way of life. The interest of public health maintenance needs to be weighed against all other exercised rights and legally guarded interests, all the while refraining from unjustifiable interference with the right of non-discriminatory treatment. **The principle of non-discrimination (as a fundamental element of the principle of equality) taken from Article 14 of the Constitution of the Republic of Slovenia demands not only the need for formally equal treatment but also for principles equivalent in substance. This makes both direct and indirect discrimination constitutionally inadmissible. The latter is treated as such when an individual or social group is formally granted equal rights or the same scope of rights, yet in so doing individuals are actually in a disadvantaged position or are deprived in the view of realisation of said rights or in the fulfilment of obligations.** As early as 27 March 2020, the Ombudsman warned that all pupils do not have equal opportunities to study and that the measures primarily intended to prevent the spreading of the coronavirus disease always impact the socially excluded, vulnerable groups the most. The Ombudsman warned that all do not share equal access to the information technologies on which distance learning is based. Given the current situation, we also warned that pupils with special needs require a well-adjusted approach (more information can be obtained from the following webpage: <https://www.varuh-rs.si/sporočila-za-javnost/novica/varuh-svetina-v-casu-solanja-na-daljavo-je-treba-poskrbeti-za-najšibkejše/>).

At the time when distance learning took place in Slovenia (because of the coronavirus), we at the Human Rights Ombudsman warned that all pupils do not have equal opportunities to study. We generally noted that measures which were primarily designed to limit the spread of the coronavirus disease impact the socially excluded, vulnerable groups the most. Schools were closed, while distance learning is, to a large extent, based on access to information technology and envisages the active involvement of the parents. The Ombudsman stressed that there are several hundred families in Slovenia with no internet connection or computer. They also have no printer or paper. **The things most families take for granted are for some (of them) unattainable.** Printouts must have been a huge problem for such families.

We stressed that solutions for an individualised approach towards children who require special attention need to be sought urgently. These are children who come from socially weaker families, large families, children of immigrants, or children with special needs. Parents of the latter, in particular, were heavily burdened and were unable to work from home. Namely, these children are also in need of therapy, alongside the care and support required for their daily tasks.

At the Human Rights Ombudsman, we hold the opinion **that excessive preparation of worksheets and demands might additionally worsen the inequality among pupils, since many of them lack equal access to extra materials, due to a lack of computers, weak internet, printing costs, the parents' inability to help, and the like.**

The state of emergency revealed the true value of education accessible to all. Children and others have, nevertheless, the right to a healthy school, but the Ombudsman still expects the authorities to think of certain adjustments as soon as possible, with the aim of raising the socially excluded populations from an underprivileged position.

The Ombudsman also received several letters concerning the appropriateness of the measures in the event of children returning to school after 18 May 2020. Judging from the letter sent by the Ministry of Education, Science and Sport, some of the dilemmas that were highlighted by the initiators remained unanswered. It was, therefore, not entirely clear to what extent they prejudged the potential effect of said measures on other human rights and fundamental freedoms of children and adolescents in educational facilities when composing the measures. They (the measures) were prepared jointly by the healthcare and education sectors in the field of education and passed with the Decree on the temporary ban on the gathering of people in institutions in the field of education on grounds of the first paragraph of point 3, Article 39 of the Infectious Diseases Act (ZBN), which states that the Government of the Republic of Slovenia can order a ban on the gathering of people in schools, cinemas, public premises, and other public places until the danger of the spreading of the disease ceases, or when the measures decreed with this law fail in their attempt to try and stop the spread of an infectious disease in the Republic of Slovenia.

That is why we addressed an extra letter to the Ministry of Education, Science and Sport, in which we stated that the Ombudsman had already taken a stance regarding points two and three of the first paragraph of Article 39 of the Infectious Diseases Act (ZBN), namely that limiting the freedom of movement cannot form the grounds on which the individual right to property and the right to respect private and family life could be intruded upon. As point three of the first paragraph of Article 39 of the Infectious Diseases Act (ZBN) implies, the limitations of the power the Government of Slovenia has in taking measures (logically) only extends as far as they do not impede on another ba-

sic human right or any of the fundamental freedoms, if the executive branch of the government has no grounds for such intrusions set in the Constitution of the Republic of Slovenia or the legislature. This also brings up the question of on what actual or legal basis it was possible to ban the gathering of individuals in situations which seem at first sight to be fundamentally the same, for instance the difference between socialising in a school and socialising in free-time gym class programmes, where (at least in collective sports) contact between participants is permissible. The absence of appropriate actual or legal grounds could potentially result in a violation of the first paragraph of Article 14 of the Constitution of the Republic of Slovenia in connection with the right of assembly in Article 42 of the Constitution of the Republic of Slovenia.

Taking all this into account, we asked the Ministry of Education, Science and Sport (MŠZŠ) for additional explanations as to whether they have assessed the potential impact the ban on the gathering of children and adolescents has on other human rights and fundamental freedoms of children and adolescents and whether they have assessed that socialising in a school or socialising in a free-time gym programme are not comparable situations and therefore demand separate treatment.

We sent several enquiries to the MŠZŠ. We deemed the additional explanations that the MŠZŠ supplied to be adequate and detected no violation of human rights that would require us to intervene in this current phase. However, since it seemed even then that several restrictions and measures are promised for the 2020–2021 academic year as well, we gave the MŠZŠ an additional warning in July 2020 that the right to health is not comprised of aspects of physical health alone, but also includes mental health. Information on the impact the measures had on the mental health of children and adolescents began to surface both in the public and in the field of education. Schools are places of socialisation, which is why it is important to consider its social aspects (surely hampered by distance learning) as well.

And so, from the middle of March to the end of the school year, the majority of high school juniors did not see their school bench. They maintained a connection with the school, the teachers, and their classmates solely via the internet. In this way, we may have kept young people safe from coronavirus infection, but the question now is what emotional impact measures of this kind may have left in the long run.

The Ombudsman agrees that, given the current epidemiological situation, certain measures are surely mandatory and that a great deal of caution is needed when relaxing the measures. However, the measures need to be of the sort that make life bearable (given each epidemiological situation), which is why we advised the MŠZŠ to thoroughly consider when planning and implementing each measure whether the measure is necessary and appropriate for the achievement of the goal and whether the necessity of the measure is proportionate with the weight of the inflicted consequences. Vulnerable groups (which in-

clude children, of which especially those with special needs or those coming from socially deprived backgrounds) require the highest level of attention.

We also publicly addressed the difficulties young people face on International Youth Day on 12 August 2020. You can find our full statement on International Youth Day at <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-ob-mednarodnem-dnevu-odgovorne-poziva-k-ukrepanju-za-vecje-moznosti-mladih/>.

In spring, we also discussed an increasing number of letters in connection with the execution of the General Matura and acquired explanations from the MŠZŠ. The MŠZŠ explained that they have diligently and carefully considered the execution of the General Matura in the 2019–2020 academic year and did so taking into account multiple criteria and possible consequences. The decision to execute the General Matura was passed after much consultation with the Education and Science Union (SVIZ), the two State Commissions for the General Matura and high school headteachers from both vocational schools and gymnasiums. The fact is that the country needs to take care of the entire system and for each and every one of this year's roughly 17,000 secondary school leaving examination candidates (for both the General and Vocational Matura). While deliberating and deciding on the final solution, all of the candidates had to be thought of, as well as their unique circumstances and backgrounds.

In the end, the opinion from the Department of Educational prevailed and gave the green light to the 2019–2020 Matura examination, under strict health and safety measures the pupils, professors, and school staff, of course, had to adhere to.

A change occurred in the General Matura schedule.

We stressed that in the case of execution of the General Matura (and school leaving examinations), the special status of pupils with special needs, who were guided into the education programmes via a decree of guidance, for substantiated cases (injuries, diseases), as well as other candidates who are given adjustments, based on the degree of their disability (while writing and grading) have to be accounted for in full measure. This right is granted to them through the currently valid Matura Act (ZMat, see Articles 4, 21, 22, and 55 of the Matura Act), from which it was not possible to deviate or curtail in any way due to the epidemic. In exercising this right, disabled persons are entitled to judicial protection.

On 8 May 2020, the minister issued the Decision on the exercise of rights and performance of duties in connection with the implementation of the general and vocational Matura in the 2019–2020 academic year no. 6036-92/2020/1, for all pupils who, despite having all vocational recommendations of the schools, could not adequately prepare for the Matura examinations in the spring exam-

ination period or could not participate due to the state of emergency. Among other things, the Decision decreed that candidates who opted to take the Matura examination in the autumn examination period for the first time due to personal health considerations or other justifiable reasons despite being eligible to approach the General Matura in the spring examination period are eligible to sit the autumn examination period General Matura on the basis of an application which they have address to the competent national committee. When exercising the right to enrol in a university institution, it would count as if they had passed the General Matura in the spring examination date, while actually completing it in the autumn. In connection to this, it was already in spring that the Ombudsman voiced his expectation that competent commissions should process the applications with the utmost care and to the benefit of the candidates.

Possible adjustments were also foreseen for the final examination, which is executed as an internal examination, meaning in local schools with teachers who are familiar with both the pupils and the content of the preparations the pupils had for the final examination. Here as well, we voiced our expectation for the school committees which oversee the final examination to be understanding and act in accordance with their competences for the benefit of the pupils.

The question also arose as to whether all pupils who are eligible to collect lunch at the delivery point are actually able to take advantage of this possibility in practice (e.g. because the distance between their home and the delivery point is too great (e.g. commuting pupils), schedules to pick up lunch in connection with the organisation of distance learning schedules, and the like) and whether or not we should seek alternative solutions in cases where due to objective circumstances it is impossible to make use of this option. We learn from the specific case of the Municipality of Kranj that there is no such thing as an unsolvable situation.

In the autumn 2020, the Ombudsman received several suggestions regarding the provision of hot meals for pupils during distance learning. One of the initiators stated that she has three sons (a ninth grader and two high schoolers) all of whom are eligible for a subsidised meal (or lunch). She noted that the solution that is in effect in the Municipality of Kranj circumvents her sons.

In another suggestion, the initiator argued in favour of the possibility that all pupils had the possibility to take the lunches away from school, including those who are ineligible for a subsidised lunch.

We directed two inquiries to the MŠZŠ, which explained to us that they took active steps in the problem of supplying hot meals in times of distance learning and, all the while, followed the goal of equal treatment of all pupils, especially those who, because of socio-economic circumstances, need a hot meal the

most. They followed the principle of social solidarity with the socially weakest groups of the population. In their chosen solution, the MŠZŠ recognised the local communities as a key ally, who had already offered their help in the spring of the first wave of the epidemic and organised meals for those in need by making use of their knowledge of local ties and educational facilities as well as their capacity to activate other local factors in providing the delivery of meals for those pupils who are (due to specific reasons) unable to collect them in person.

In so doing, the Ministry of education Science and Sport committed itself to cover the expenses of meal preparation, which include the raw materials and workforce, as well as packaging and the cost of delivery in cases when it proves to be mandatory.

In connection with the suggestion that schools are to provide a hot meal for all pupils during distance learning, the Ministry of Education, Science and Sport noted that collecting the meal in person for such a high number of people would be in complete contradiction with the current reasons for the closing of schools, otherwise known as the ban on the gathering of people in institutions in the field of education. Simultaneously, one should not ignore the fact that the school kitchen staff fall ill too, which could lead to problems, looking at it from this perspective.

In addition to the letter we sent to the Ministry of Education, Science and Sport, we also simultaneously wrote to the City Municipality of Kranj. A quick overview of the regulations passed across some of the other municipalities revealed that municipalities had different approaches when it came to organisation. There are cases in some municipalities where lunches are not prepared at the parent schools, but the lunches are still distributed later around other parent schools, where they are handed out to the claimants. Several local communities (at least in exceptional cases) deliver the lunches to their homes. That is why we asked the City Municipality of Kranj for an explanation as to whether they also enabled the takeaway of hot meals to those pupils who are unable to pick up the meals themselves from the allotted school in the allotted time-frame and whether it were possible for the initiator's older sons to pick up the meals from the parent primary school of her youngest son (perhaps, given this option, some of the other eligible pupils who go to this school might choose to do the same, because the school where there is an organised handout of lunches is too far away) or organise a delivery to their home.

The Municipality of Kranj quickly responded with the answer. They explained that in accordance with the circular from the Ministry of Education, Science and Sport they had to organise a system of hot meal distribution at incredibly short notice, which is why they decided on that specific school as it had both the staff and suitable kitchen equipment. At the Municipality of Kranj, they distribute over 200 hot meals daily. The number either varies from day to day

or increases. The food surplus they had in the first couple of days (some pupils failed to collect their meal despite subscribing for one) was sent to a homeless shelter, and was also used to feed the volunteers who distributed the meals. The subscription system is adequate, which is why, in principle, there is no food surplus anymore.

In connection with the problem of closing the student dormitories and the consequences it had for the students, we found out the following. The Government of the Republic of Slovenia's Decree on the temporary prohibition of the gathering of people in institutions in the field of education and universities and independent higher education institutions (Uradni list, no. 152/2020 from 23 October 2020) temporarily banned any gathering of people in institutions in the field of education and universities and independent higher education institutions for the sake of suppression and mitigation of the COVID-19 epidemic. This also applied to student dormitories, excluding those students whose permanent residence is located in a student dormitory, student families, foreign students, and visiting professors, who are currently unable to return to their permanent residence due to current safety regulations.

In addition, on 25 October 2020, the Minister of Education, Science and Sport issued a decree which temporarily changed the application of student dormitories. For the duration of the Order prohibiting the gathering of people in institutions in the field of education and universities and independent higher education institutions, all three institutions also acted as accommodation facilities for people working on tasks which are important for the state (e.g. tasks in call centres, help in healthcare institutions, educational institutions, and the like). The Ministry of Education, Science and Sport explained in the media that with this decree students who are already living in student dormitories and help in the listed tasks could continue their stay. The majority of these were students of medicine who worked in healthcare institutions, cooperated in taking swab samples, worked at the Institute of Microbiology and Immunology, or helped in call centres.

It was from the media and other sources that the Ombudsman acquainted himself with the difficulties that befell some groups of students due to the restrictive measures. We were informed of the appeal the Študentski svet stanovalcev sent to the Government of the Republic of Slovenia which states that accommodation in the dormitories should be made possible for students undergoing social hardship, students who lack suitable conditions for distance education at home, students who share the household with risk groups, students with actively infected family members, and those students who are bound to their accommodation because of student work. They stressed that the dormitories are mostly vacant and that the remainder of the inhabitants obey the stricter house rules. From what we can discern from the media, their request remains unanswered (as of the time of writing).

The Ombudsman did not receive any individual letters from the side of the students who were affected by the closing of the dormitories. But since these were broader issues, relevant for the safeguarding of human rights and fundamental freedoms, as well as legal security of the citizens of the Republic of Slovenia, we looked into the issue of our own accord.

We addressed a letter to the Ministry of Education, Science and Sport in which we asked for more detailed explanations. We cautioned them that measures need to be adjusted in accordance with the demands of the field and that legitimacy and proportionality tests need to be conducted beforehand (a legitimacy test reviews the constitutional admissibility of a pursued goal, while a proportionality test judges whether an encroachment upon a certain human right or fundamental freedom is necessary, suitable, and proportionate for the purpose of protecting another human right or fundamental freedom or a constitutionally acceptable goal within the public interest).

We deemed the Government's explanations as correct and found no violations that would require us to further our inquiry with the Ministry of Education, Science and Sport. We did, however, in the finished version of the letter that we sent to the MŠZŠ express our anticipation that student dormitories treat individual cases to the highest possible benefit of individual students and that all students are permitted to return in the dormitories the moment the epidemic conditions permit them to do so.

Distance learning and its legitimacy occupied a special place in our discussion. The right to education is the pivotal first step in establishing suitable opportunities for both the development of the child as well as society as a whole. A situation in society where only a select few had access to appropriate education would be undemocratic and would stifle the overall social climate. Only when all children are met on an equal platform of accessible education, under the same and equal terms, can a society hope to harvest its full potential. Otherwise, doors automatically close for certain vulnerable groups, which is socially damaging and deteriorates meritocracy, something our country is in desperate need of. **Social equality is unattainable without an equal footing in education accessibility. We highlight the provisions in Articles 2, 14, 22, 34, and 50 of the Constitution.** The principle of equality is one of the basic constitutional norms – the right of the individual to ensure equality both in the establishment and application of the law. Together with the principle of the rule of law and that of a social state, they form a manifestation of the principle of justice in the Constitution. The Constitutional Court also makes use of the order of equality in constitutional reviews of justice.

Since constitutional rights and freedoms are indivisible, an absence of quality and effective safeguarding of the right to social security and without living in social security it is impossible to properly exercise other rights and freedoms or develop democracy and liberty. A social state reflects the value system and moral understanding of modern society, with the people at its core simultaneously functioning as both individuals and members of so-

ciety. The state's primary function is to grant its citizens the possibility of a dignified life. The eradication of poverty is the basic precondition for us to be able to firmly claim that Slovenia is a social state.

It is, therefore, possible to interpret poverty as a state of an individual, which is, regarding the concept of a social state, in contradiction with the spirit of the Constitution. The principle of the social state of Article 2 dictates social solidarity. This means it enables the exercise of human rights and fundamental freedoms. These should not be merely writ in the Constitution, but should be equally attainable for everyone. There can be no democratic society without a social state. The more social a state is, the more democratic it is. The principle of the rule of law is inseparably linked with that of a social state. One cannot exist without the other nor develop further. If proper access to education cannot be secured, the child's human dignity is impaired. Human dignity is the root from which all human rights and fundamental freedoms stem. It also defines the core of how humans interpret their own existence. The safeguarding of human dignity, civil rights, human privacy, and safety feature strongly among the law-granted human rights and civil liberties (e.g. Articles 34–38 of the Constitution, Article 17 of the International Covenant on Political and Civil Rights, Article 8 of the European Convention on Human Rights).

The notion of equality is deeply rooted in the judging of the European Court of Justice (SEU) and was defined as the principle of European law (283/83 *Racke v. Hauptzollamt Mainz*, no. 11) or “the General Principle of Equal Treatment” (C-15/95 *EARL de Kerlast*, para. 35, also (as well as) for example 203/86 *Spain v. The world*, para. 25; C-149/10 *Chatzi*, para. 63; Case C-144/44, paragraph 75; Case C-303/05 *Advocaten voor de Wereld*; Case C-571/10 *Kamberaj*). The European Court of Human Rights (ECtHR) warned of the interconnectedness of classic rights, as was the case in *Airey v. Ireland* (9.10.1979, A 32), governed by a convention, together with economic and social rights; it highlighted that the purpose of the convention lies in establishing real and effective rights and that effective exercise of a certain right can, in certain cases, demand an active intervention of the state, so that the individual conventional rights retain their social effect.

Some faced difficulties in distance learning due to a slow internet connection. For example, the Ombudsman received a letter from an initiator (a mother of three children) whose kids participated in distance education. The location where the initiator's family lives lacks a suitable internet connection, which is why her children were unable to participate in distance learning. The Ombudsman conducted an inquiry at the primary school and asked for explanations and whether the situation could somehow be resolved. The school turned to professional institutions and acquired a suggestion for the solution of the initiator's problems – mobile internet. A modem providing mobile internet was loaned to the initiator's family for the duration of online work. The Ombudsman rated the appeal as reasonable. We highlight Articles 2, 14, 22, 34, and 50 of the Constitution. The right to education is the pivotal first step

in establishing suitable opportunities for both the development of the child as well as society as a whole. The principle of equality is one of the basic constitutional norms. If proper access to education cannot be secured, the child's human dignity is impaired. Human dignity is the root from which all human rights and fundamental freedoms stem. The Ombudsman is therefore of the opinion that the initiator's children lacked the same footing in distance learning, which they could not participate in because of problems with the internet. This has put them in a disadvantaged position if compared to the children who could participate in distance learning.

The Ombudsman received a letter from another initiator, a mother whose three children participated in distance learning. The location where the initiator's family lives fails to provide a suitable internet connection, which is why her children were unable to participate in distance learning. The initiator had already made contact with the primary school suggesting that she would bring her children to school, where the internet connection is sufficient, but the school only instructed her to buy an internet package for increased internet strength at her own expense. The initiator stated that they already leased a package that enables sufficient strength and that the fault lies with the Municipality infrastructure, prohibiting them from enjoying the leased internet strength. The initiator had acquainted the school with this fact, yet the school remained unresponsive to her explanations. The initiator holds the opinion that it is impossible for her children to participate in distance learning in equal measure due to the described situation.

The Ombudsman made an inquiry to the school, in which we asked for explanations and if the situation could somehow be resolved. We also inquired if there are more cases similar to that of the initiator's and how they solve them. The school turned to the MŠZŠ where they were directed to Arnes (a Slovenian internet provider), which would supply them with a modem for the initiator, as soon as they receive a new batch of modems. The modem was loaned to the initiator's family for the duration of distance learning.

It is the assessment of the Ombudsman that the children of the initiator lacked an equal footing, pertaining to distance education, since they were unable to attend classes due to a slow internet connection. They were, therefore, in a disadvantaged position when compared to the children who could participate in distance learning. Schooling is, after all, much more than the mere acquisition of knowledge: it also presents an opportunity for socialisation among children, the aspect which is the most impacted in distance learning.



4.

LIST OF USEFUL ABBREVIATIONS AND ACRONYMS

ACTS AND OTHER LEGAL ACTS

- DPR** Spatial Order of Slovenia
- DZ** Family Code
- EZ-1** Energy Act
- GDPR** General Data Protection Regulation
- GZ** Building Act
- KPND** Collective Agreement for non-commercial activities in the Republic of Slovenia
- KZ-1** Criminal Code
- MKVP** Act Ratifying the Convention for the Protection of Individuals with Automatic Processing of Personal Data
- MOPPM** Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- PIPNPP** Rules on the exercise of the duties and powers of prison officers
- PoDZ-1** Rules of Procedure of the National Assembly
- SZ-1** Housing Act
- ZAID** Architecture and Civil Engineering Act
- ZASP** Copyright and Related Rights Act
- ZBan-1** Banking Act
- ZBan-1L** Act Amending the Banking Act
- ZBPP** Legal Aid Act
- ZCes-1** Roads Act
- ZČmIS** Transnational Provision of Services Act
- ZD** Inheritance Act
- ZD-C** Act Amending the Inheritance Act
- ZDavP-2** Tax Procedure Act
- ZDD-1** Private Detective Services Act
- ZDDO** State Employees Act
- ZDIJZ** Public Information Access Act
- ZDimS** Chimney Sweeping Services Act
- ZDoh-2** Personal Income Tax Act
- ZDPN-2** Real Property Transaction Tax Act
- ZDPra** State Attorney Act
- ZDR-1** Employment Relationships Act
- ZDru-1** Societies Act
- ZDT-1** State Prosecution Service Act
- ZDU-1** State Administration Act
- ZDVDTp** Act on Social Care of Persons with Mental and Physical Impairments
- ZDZdr** Mental Health Act
- ZFPPIPP** Financial Operations, Insolvency Proceedings, and Compulsory

	Dissolution Act
ZGD-1	Companies Act
ZGJS	Services of General Economic Interest Act
ZGPro	Construction Products Act
ZID-1A	Act Amending the Labour Inspection Act
ZIKS-1	Enforcement of Penal Sentences Act ZIMI Equalisation of Opportunities for Persons with Disabilities Act ZIN Inspection Act
ZInvo	Disabled Persons Organizations Act
ZIZ	Enforcement and Security Act
ZIZ-L	Act Amending the Enforcement and Security Act
ZJN-3A	Act Amending the Public Procurement Act
ZJRM-1	Protection of Public Order Act
ZJRS	Public Use of the Slovene Language Act
ZKP	Criminal Procedure Act
ZKP-N	Act Amending the Criminal Procedure Act
ZLS	Local Self-Government Act
ZLV	Local Elections Act ZMatR Civil Register Act Zmed The Mass Media Act
ZMV	Motor Vehicles Act
ZMZ-1	International Protection Act
ZN	Notariat Act
ZN-C	Act Amending the Notariat Act
ZN-E	Act Amending the Notariat Act
ZNPPol	Police Tasks and Powers Act
ZOA	Personal Assistance Act
ZODPol	Organisation and Work of the Police Act
ZOdv	Attorneys Act
ZON	Nature Conservation Act
ZOsn	Basic School Act
ZOFVI	Organisation and Financing of Education Act
ZP-1	Minor Offences Act
ZPIZ-2	Pension and Disability Insurance Act
ZPIZ-2E	Act Amending the Pension and Disability Insurance Act
ZPCP-2	Road Transport Act
ZPKrv-1	Blood Supply Act
ZPP	Contentious Civil Procedure Act
ZPPDej	Funeral and Cemetery Services Act
ZPPDID	Stay of Proceedings against Members of Struck-Off Companies Act
ZPND	Domestic Violence Prevention Act
ZPPreb	Residence Registration Act
ZPUOOD	Act on Proceedings for the Enforcement of the Liability of Company Members for the Obligations of Struck-off Companies or their Release from Liability

ZPZ	Civil Union Act
ZRIPS	Same-Sex Civil Partnership Registration Act
ZRLI	Referendum and Popular Initiative Act
ZRomS-1	Roma Community in the Republic of Slovenia Act
ZS	Courts Act
ZSICT	Court Experts, Certified Appraisers and Court Interpreters Act
ZSKZDČEU-1	Cooperation in Criminal Matters with the Member States of the European Union Act
ZSPJS	Public Sector Salary System Act
ZSS	Judicial Service Act
ZSta-1	Standardisation Act
ZSV	Social Assistance Act
ZSVI	Social Inclusion of Disabled Persons Act
ZSVarPre	Social Assistance Payments Act
ZŠpo-1	Sports Act
ZŠtip-1	Scholarship Act
ZTuj-2	Foreigners Act
ZUJF	Fiscal Balance Act
ZUOPP	Placement of Children with Special Needs Act
ZUP	General Administrative Procedure Act
ZUPJS	Exercise of Rights from Public Funds Act
ZUrep-2	Spatial Planning Act
ZUSDDD	Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia
ZUstS	Constitutional Court Act
ZUTD-1	Labour Market Regulation Act ZVarCPHuman Rights Ombudsman Act
ZVarCP-B	Act Amending the Human Rights Ombudsman Act
ZVarCP-UPB2	Human Rights Ombudsman Act - Official Consolidated Text
ZVarD	Act ZVis Higher Education Act
ZVO-1	Environmental Protection Act
ZVOP-1	Personal Data Protection Act
ZVPot	Consumer Protection Act
ZVPSBNO	Protection of Right to Trial without Undue Delay Act
ZZDej	Health Services Act
ZZRZI	Vocational Rehabilitation and Employment of Persons with Disabilities Act
ZZSDT-B	Act Amending the Employment, Self-employment and Work of Foreigners Act
ZZVZZ	Health Care and Health Insurance Act
ZZZDR	Marriage and Family Relations Act

OTHER ABBREVIATIONS AND ACRONYMS

AAG	Alpe Adria Green
AC	Aliens Centre
AKOS	Communications Networks and Services Agency of the Republic of Slovenia AOM Association of Mediterranean Ombudsmen APT Association for the Prevention of Torture
APZ	Active employment policy
ARSO	Slovenian Environment Agency
BIH	Bosnia and Herzegovina
BPP	Brezplačna pravna pomoč
CDU	Christian Democratic Union
CINIP	Civil Initiative of illegally deleted companies
CIRIUS	Centre for Education and Rehabilitation of Physically Handicapped Children and Adolescents
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSG	Centre for Hearing and Speech
CUDV	Education, Work and Care Centre
CRO	Central Register of Last Wills and Testaments
CRONSEE	Children's Rights Ombudspersons' Network in South and Eastern Europe
DeZRS	Detective Chamber of the Republic of Slovenia
EC	European Commission
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ENNHRI	European Network of National Human Rights Institutions (European Network of National Human Rights Institutions)
ENOC	European Network of Ombudspersons for Children
EOM	European Network of Ombudsmen
ERA	The Academy of European Law
ECtHR	European Court of Human Rights
ESC	European Social Charter
EU	European Union
EUR	Euro, single currency of the European Union
FRA	Fundamental Rights Agency
FURS	Financial Administration of the Republic of Slovenia
GANHRI	Global Alliance of National Human Rights Institutions
INPEA	International Network of the Prevention of elder abuse
INSPIS	Information system for inspection bodies

IOI	International Ombudsman Institute
IC	Information Commissioner
PSP	Port service providers
IRSD	Labour Inspectorate of the Republic of Slovenia
IRSOP	Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning
IRSPEP	Transport, Energy and Spatial Planning Inspectorate of the Republic of Slovenia
IB	Inspection Board
IŠŠ	Inspectorate of the Republic of Slovenia for Education and Sport
IUS	info Online portal with legal information. It is intended for searching and reading information on Slovenian and European legislation and case law
CRC	Convention on the Rights of the Child
LO ZB	Local organisation of the Association of the National Liberation Movement
CSSP	Convention relating to the Status of Stateless Persons
CRS	Convention on the Reduction of Statelessness
LGBTI+	Lesbian, gay, bisexual, transgender, intersex and other sexuality, sex and gender diverse people
AP	Annual Report
MDDSZ	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MGRT	Ministry of Economic Development and Technology
ECECR	European Convention on the Exercise of Children's Rights
MF	Ministry of Finance
MI	Ministry of Infrastructure
MIZŠ	Ministry of Education, Science and Sport
MJU	Ministry of Public Administration
MK	Ministry of Culture
MKO	Ministry of Agriculture and the Environment
MKGP	Ministry of Agriculture, Forestry and Food
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
MO	Ministry of Defence
MO	Municipality
ILO	International Labour Organisation
MOL	Municipality of Ljubljana
MONM	Municipality of Novo mesto MNZ Ministry of the Interior MOP Ministry of the Environment and Spatial Planning
MORS	Ministry of Defence RS MP Ministry of Justice MZ Ministry of Health
MZI	Ministry of Infrastructure

MZZ	Ministry of Foreign Affairs
NA RS	National Assembly of the Republic of Slovenia
NHRI	National Human Rights Institutions
NIO SB	National Institute of Children's Heart Diseases
NIJZ	National Institute of Public Health
FC	Football club
NEC	National Electoral Commission
NC RS	National Council of the Republic of Slovenia
NC VM	National Commission for Vocational Matura NC GM National Commission for General Matura DOOR Association for Children, Fatherhood and Truth DRSV Slovenian Water Agency
NOB	National liberation
NPM Obs	Observatory of national preventive mechanisms against torture
NPM	National Preventive Mechanism
NGO	Non-governmental organisation
NZS	Chamber of Notaries of Slovenia
NZS	Football Association of Slovenia
ODIHR OSCE	Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights
DSPO	District State Prosecutor's Office
LC	Local court
OCC	Operation and Communication Centre
OPCAT	Optional Protocol to the UN Convention against Torture
SSW	Special supervision ward
PS	Primary school
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
OZS	Bar Association of Slovenia
PGD	Basic design
PIC	Legal Information Centre for NGOs
PKL	Ljubljana University Psychiatric Hospital
PS	Police station
PSVZ	Special social care institution
PD	Police directorate
SPM	Special protection measures
ProSoc	Society Society for project implementation and social entrepreneurship development
PZI	Detailed design
RH	Retirement home
RS	Republic of Slovenia

RSK	Expanded Professional Board of Psychiatry
RTV	Radio and television
SCSD	Association of Centres for Social Work
SDOS	Trade Union of State Bodies of Slovenia SDS Slovenian Democratic Party SDV State Security Service
SEE NPM	South-East Europe NPM Network
SFRY	Socialist Federal Republic of Yugoslavia
SILA IWCL	International Women's Club
SKP PU	Criminal Police Directorate of the General Police Directorate
SKUP	Community of Private Institutes SLG Slovene People's Theatre SLS Slovenian People's Party
SNOPS	Service for the Supervision of Court Administration
SOJ	Public Relations Office
SOVA	Slovene Intelligence and Security Agency
SPOT	The business entities support system
SPT	The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SSZS	Association of Social Welfare Institutions of Slovenia.
SV	Slovenian Armed Forces
SVZ	Social care institution
SWC	Social Work Centre
UE	Administrative unit
UIKS	Prison Administration of the Republic of Slovenia
UKC	University Medical Centre
OG	Official Gazette
UNHCR	United Nations High Commission for Refugees
UOIM	Government Office for the Support and Integration of Migrants
UPK	University psychiatric hospital UPRSAdministrative Court of the Republic of Slovenia
Uradni list RS	Official gazette of the Republic of Slovenia
URS	Constitution of the Republic of Slovenia
URSIKS	Prison Administration of the Republic of Slovenia
UUP	Decree on administrative operations
UVHVVR	Administration for Food Safety, Veterinary Sector and Plant Protection
OMBUDSMAN	Human Rights Ombudsman of the Republic of Slovenia
HRO	Human Rights Ombudsman
VDC	Occupational activity centre VIZ Educational institution VS Supreme Court
VS RS	Supreme Court of the Republic of Slovenia
VVZ	Guidance, care and employment

UN	United Nations
ZDUS	Slovenian Federation of Pensioners' Associations
ZIPOM	Centre for Advocacy and Information on the Rights of Children and Youth within the Slovenian Association of Friends of Youth (ZPMS)
ZIRS	Health Inspectorate of the Republic of Slovenia
ZOTKS	Association for Technical Culture of Slovenia
MC	Medical certificate
ZPIZ	Pension and Disability Insurance Institute of the Republic of Slovenia
ZPMS	Slovenian Association of Friends of Youth
ZPKZ	Prison
ZPMKZ	Juvenile prison
ZRC SAZU	Research Centre of the Slovenian Academy of Sciences and Arts
ZRSZ	Employment Service of Slovenia ZUDV Institute for Education, Work and Care
ZZS	Health Insurance Institute of the Republic of Slovenia
WHO	World Health Organization

ABBREVIATIONS AND ACRONYMS CONNECTED TO THE COVID-19 EPIDEMIC

Covid-19	coronavirus disease 2019
PKP	a package of measures to mitigate the effects of the COVID-19 epidemic
PKP1	the first package of measures to mitigate the effects of the COVID-19 epidemic
PKP2	the second package of measures to mitigate the effects of the COVID-19 epidemic
PKP3	the third package of measures to mitigate the effects of the COVID-19 epidemic
PKP4	the fourth package of measures to mitigate the effects of the COVID-19 epidemic
PKP5	the fifth package of measures to mitigate the effects of the COVID-19 epidemic
PKP6	the sixth package of measures to mitigate the effects of the COVID-19 epidemic
PKP7	the seventh package of measures to mitigate the effects of the COVID-19 epidemic
IZOOPIZG	Intervention Act to Remove Obstacles to the Implementation of Significant Investments to Start the Economy After the COVID-19 Epidemic
SARS-CoV-2	the new coronavirus 2019 (2019-nCoV), the causative agent of the coronavirus disease epidemic 2019 (COVID-19)
ZDLGPE	Act Providing Additional Liquidity to the Economy to Mitigate the Consequences of the COVID-19 Epidemic
ZDUOP	Act on Additional Measures for Mitigation of Consequences COVID-19
ZIUJP	Fiscal Intervention Measures Act
ZIUOOPE	Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic
ZIUOPDVE	Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic
ZIUPKGP	Act on Intervention Measures on Market on Agricultural Products, Food and Timber Assortments
ZIUOPOK	Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities
ZIUPDV	Act Determining Intervention Measures to Prepare for the Second Wave of COVID-19

- ZIUPPP** Act Determining the Intervention Measures on Salaries and Contributions
- ZIUZEOP** Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy
- ZIUZEOP-A** Act Amending the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy
- ZIZOOPE** Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic
- ZZUOOP** Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19
- ZZUSUDJZ** Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19)
- ZZUSUDJZ-A** Act Amending the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19)

Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2020

Publisher: Human Rights Ombudsman of the Republic of Slovenia

The Annual Report was prepared by:

Peter Svetina, Human Rights Ombudsman

Miha Horvat, Deputy Ombudsman

Ivan Šelih, Deputy Ombudsman

Marjeta Cotman, Deputy Ombudsman

Dr Jože Ruparčič, Deputy Ombudsman

Urška Nardoni, Secretary General of the Ombudsman

Martina Ocepek, Director of the Expert Service

and the following employees of the Ombudsman's office:

Gašper Adamič Metlikovič, Polona Bobič, Bojan Brank, Nataša Bratož, Živa Cotič Zidar, Zlata Debevec, Maja Domjanič, Dr Simona Drenik Bavdek, Barbara Eržen, Robert Gačnik, Borut Goli, Lidija Hvastja Rupnik, Jan Irgel, Lea Javornik, Verica Jurjavčič, Tanja Kadunc, Petra Komel, Renata Kotar, mag. Uroš Kovačič, Kaja Kramar, Barbara Kranjc, Nataša Kuzmič, Kristijan Lovrak, mag. Jure Markič, Dr Kornelija Marzel, Nataša Mazovec, Dr Polona Mozetič, Dr Simona Mlinar, Miha Nabergoj, Andreja Novak, Maša Ocepek, Nina Omerza, Branka Pintar, Ana Marija Polutnik, Dr Ingrid Russi Zagožen, Mojca Sirk, Andreja Srebotnik, Eva Stropnik, Mojca Šraj, Neva Šturm, Jerneja Turin, Eva Uranjek, Lan Vošnjak, Jasna Vunduk, Rozi Žalig and Danijela Žvab.

Editors: Dr Simona Drenik Bavdek, Assistant Head of the Center for Human Rights and Nataša Mazovec, Senior Adviser.

Translation: Jezikovne storitve Peresce, Maja Sužnik s.p.

Photos by: Tamino Petelinšek (STA), Nebojša Tejić (STA)

Design and layout: Aljaž Primožič

Printing: Prima IP d.o.o.

Number of copies: 80 copies

Ljubljana, June 2021.

Annual and special reports of the Human Rights Ombudsman of the Republic of Slovenia are also published on the website www.ombudsman.si/en

The reproduction of parts of this Annual Report is only permissible by reference to its source.

ISSN 1580-0954 (printed edition)

ISSN 2591-1023 (online edition)



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN