Ombudsman of the Republic of Latvia

Summary of Annual Report 2018

Riga, 2019

According to the range of functions and tasks prescribed by the Ombudsman Law, duties of the Ombudsman include: to foster the protection of the human rights of private individual; to promote adherence to the principle of equal treatment and prevent discrimination of any kind whatsoever; to assess and foster adherence to the principle of good governance in public administration; to identify shortcomings in legal acts and their application to the matters related to adherence to human rights and the principle of good governance, and to facilitate elimination of such shortcomings; to promote public awareness of human rights, of vehicles established for the protection of such rights, and of the Ombudsman's work. The legislator has entrusted the Ombudsman for that purpose with specific tasks, authorities and also scope of duties that increase from year to year. The said increase is also reflected in the annual report on activities of the Ombudsman Office: the volume of report is continuously increasing.

Just like in previous years, instead of providing exhaustive overview of annual report of the Ombudsman, this summary focuses on the matters and issues that describe systemic problems or present particular public importance, along with providing insight in the scope and coverage of work of the Ombudsman Office in 2018. Clarifying opinion of the Ombudsman regarding certain institutions of law or aspects thereof is also occasionally emphasized where any related issue is involved in order to foster public understanding of human rights and the principle of good governance. The Ombudsman also draws attention to the examples of good practice or just the other way round in relation to the implementation of recommendations issued by the Ombudsman of Latvia.

With the view to the foregoing, the *points of reference* in this summary should not be interpreted as the sole and foremost issues in the field of human rights and good governance in Latvia since comprehensive understanding can only be gained from the entire report as a whole.

The Field of the Rights of Children

Issues and statistics

[1] In 2018, 907 applications in total have been filed with the Ombudsman Office in the field of the rights of children (1043 in 2017) including applications concerning potential infringements of the rights of children. 233 of the total number were written applications including 9 applications by children, and 674 applications in person, followed by advice in telephonic and electronic form.

In 2018, three inspection cases were initiated for establishing of circumstances, including one at the Ombudsman's initiative and two in response to applications filed by private individuals.

[2] The highest number of applications – 111 were filed concerning the right of a child to access; 109 applications concerning the right of a child to parenting in family; 61 applications concerning the right in relation to the provision of basic education, and 59 applications concerning the matters related to the rights of orphans and children left without parenting care. Individuals have applied to the Ombudsman Office in relation to the issue of subsistence on 56 occasions.

Comparing the application statistics to that in previous years, exercising of the right to access remains the subject of a number of applications (139 applications in 2017; 111 in 2018). The right of a child to parenting in family environment also continues to present an issue (74 applications in 2017; 109 in 2018) as well as the matters related to resuming the parents' right to custody. At the same time, the number of applications concerning the provision of basic education has decreased (89 applications in 2017; 61 applications in 2018).

The number of applications concerning the rights of orphans and children left without parental care has also decreased (99 applications in 2017; 59 in 2018), as well as applications concerning subsistence (81 applications in 2017; 56 in 2018) and concerning the right to preschool education (59 applications in 2017; 40 in 2018).

Recommendations by the Ombudsman in the field of the rights of children

[3] The Ombudsman has exercised the competence to make proposals stipulated in the Law on Protection of the Rights of Children aimed at respecting the rights of children on several occasions during the reporting period. Recommendations have been issued to custodian courts, municipalities and their social services, courts and public administration authorities, etc.

For example, the Ombudsman has reviewed the application from a private individual whose application to the Latvian Association of the Custodian Court Officials for assessment of ethicalness and compliance of the actions of Chairperson of the Custodian Court of Ķekava County with the norms of law had been declined. The Association noted in their reply that applications concerning potential breaches of the Code of Ethics could be filed by county council.

The Custodian Courts Law stipulates that the general principles of ethics and behavior standards are established by the Latvian Association of the Custodian Court Officials, and the Ombudsman, having reviewed the application, concluded that the Association had established and approved on 8 December 2017 a new procedure for the handling of ethics-related breaches yet the procedure was not publicly available. This gives raise to public concerns, and municipalities are not aware of the current procedure applicable to the assessment of ethics of the officials of custodian courts.

The Association was therefore encouraged to eliminate the identified shortcomings without delay and to publish current information on their website regarding the general principles of ethics, behavior standards of the officials of custodian courts and the procedure for handling of breaches.

The Association eliminated the above-described breaches pursuant to the Ombudsman's proposal.

[4] When reviewing applications filed by private individuals, the Ombudsman familiarized with the Rules of Custodian Courts and their compliance with regulatory acts. Non-compliance of individual norms with the applicable regulatory acts has been identified in the Rules of more than one Custodian Courts.

Section 5, Part Four of the Custodian Courts Law stipulates that custodian courts shall report on their activities to the council of the respective municipality on at least annual basis. The report shall be published on website of the municipality. The Ombudsman found out that such reports are not published or difficult to find on website under section "Custodian Court" in a number of municipalities (Jēkabpils city, Koknese county, Cēsis county, Beverīna county) and urged to eliminate the shortcomings.

[5] According to regulatory acts, where a school child poses threat to the safety, health or life of himself/herself or another person in an educational establishment, the latter have to react in accordance with the regulatory norms and to take steps for improvement of the school child's behavior. If no improvements can be observed in behavior of the child in spite of supporting measures taken by the school, and the parents are unwilling to cooperate with the education establishment, the principal has the duty to forward the information to the respective municipality, and the latter is responsible for developing behavior adjustment program for the child.

The Ombudsman has identified, however, to his regret, that educational establishment trend to neglect the performance of their duty to keep municipalities informed or delay their informing if, for example, attempts to improve the child's behavior during several years fail. The Ombudsman has urged educational establishments to react to the very initial breaches by children and to timely inform municipalities; he has also focused on this issue during a seminar held for social pedagogues of the schools of Riga.

[6] The Ombudsman has identified during the reporting period that, contrary to the legislator's objective, municipality of Riga City applies restricted interpretation to the definition of a large family contained in Section 1, Paragraph 16 of the Law on Protection of the Rights of Children, and it has defined additional criteria for families to be qualified as large families. The Ombudsman asked Riga City Council to promptly eliminate the situation where additional requirements are imposed for obtaining the status of a large family. Municipality of Riga City, however, has taken no note of the Ombudsman's recommendation.

According to the information at disposal of the Ombudsman, the Ministry of Environment Protection and Regional Development has repeatedly drawn the attention of Riga City Council to the opinion that corresponds with the position of the Ministry of Welfare, namely, that municipalities should be guided in their activities, including in the adopting and implementation of decisions, by norms of the Law on Protection of the Rights of Children because legal effect of the said norms is higher than that of municipal regulatory acts.

[7] Access to specialized education by children with special needs was a focus issue for the Ombudsman in 2018.

The Ombudsman received an application concerning a breach of a child's right to pursue education appropriate to the child's health condition, development level and abilities at the nearest education establishment to the child's place of residence. The Ombudsman reiterates in this context that the right of children with special needs to pursue qualitative basic and general secondary education appropriate to the child's physical and mental abilities and choice is prescribed by a number of national legal acts. Parents of a child are entitled to ensure the exercising of such right at selected educational establishment; in particular, a child can pursue education appropriate to his or her abilities, health condition and development at a specialized education establishment or a general education establishment integrating children with special needs. Section 17, Part One of the Education Law prescribes the duty of municipalities to provide preschool and basic education of children at the nearest education establishment to their place of residence.

This means that municipalities have the duty to ensure that all children residing on their administrative territory, regardless of their health status, can pursue basic education at the nearest education establishment to their place of residence. This means the educational establishment geographically most closely located to the place where the child resides.

[8] Pursuant to an application filed in 2018 by a 12th grade student, attention of the Ombudsman was drawn to the issue of state examination schedule for graduates of secondary schools. Having reviewed the application, it was established that, according to

the Cabinet Regulations No. 232 of 3 May 2017 on examination time schedule in 2017/2018 academic year, some examinations were held on subsequent days without even a day off.

The student had filed applications concerning this situation in fall 2017 already with the National Center of Education and other governmental and municipal authorities including the Ministry of Health and asked to change the examination schedule; no changes followed, however. The solution proposed by the National Center of Education was that the student should pass the examination within additionally granted period of time.

In the Ombudsman's opinion, the proposed solution is inappropriate, and state examination schedule should be developed to ensure adequate leisure time in between examinations and so that the rights of students are duly respected. In the Ombudsman's opinion, scheduling of adequate break between examinations is important so that students are able to recreate and restore their energy. This would enable qualitative preparing to examinations and impose children to less overload and stress.

[9] The Ombudsman received applications in the reporting period from parents of children with severe functional and mental impairments concerning rehabilitation course required from a child yet parents were unable to request sick-leave certificate and allowance because the child was 15 years old. Therefore, children with disability have no wholesome access to the receipt of rehabilitation service.

The Ombudsman studied the issue and concluded that availability of health care was limited in case of children older than 14 years who have to stay at medicinal institutions for lengthy periods and are not able to take care of, and this situation contradicts with the equality of rights principle. In the Ombudsman's opinion, the current regulation in fact restricts the rights of children to development and qualitative health care.

The Ombudsman applied to the Ministry of Welfare for drafting amendments to regulatory acts to provide that parents who have to care after an inpatient child with severe health conditions are entitled to request a certificate of sick-leave and sick-leave allowance until the child reaches the age of 18 years.

The Ministry of Welfare replied to the Ombudsman that indeed support should be provided in case of children over 14 years if the presence of their parents is required for

medicinal rehabilitation in the event of disability or sudden disease, and therefore the Ministry is periodically reviewing the legal regulations; on the other hand, such support should be commensurate to financial abilities of the State and proportional to other population groups.

[10] According to Section 155, Part Three of the Labor Law, if a mother cannot take care of the child up to the 42nd day of the postnatal period due to illness, injury or other health-related reasons, the father or another person who actually takes care of the child at home shall be granted leave for those days on which the mother herself is not able to take care of the child. Further, according to Section 6, Part Two of the Law on Maternity and Disability Insurance, if a mother cannot take care of the child up to the 42nd day of the postnatal period due to illness, injury or other health-related reasons, the father or another person who actually takes care of the child shall be granted leave for those days on which the mother herself is not able to take care of the child.

In relation to an application filed in relation to the said norm by father of a child the Ombudsman has found out that no institution could exhaustively explain to a medicine professional or to a concerned person the procedure for the issuing of a certificate of sick-leave in accordance with Section 6, Part Two of the Law on Maternity and Disability Insurance, because in practice problems are involved in the given situation. In addition, the Health Inspectorate and the Social Insurance State Agency provide contradicting information regarding the interpretation of the concerned legal norms. Therefore, the persons referring to this vehicle for protection of rights are in fact prevented from doing so because insufficient and contradicting information is provided to them, and medicine professionals lack knowledge of executing certificates of sick-leave in similar situations.

So the Ombudsman applied to the competent authorities urging them to develop the required methodic guidelines and to supplement the SISA website with appropriate information so that individuals can explore and understand their rights.

[11] An inspection case reviewed by the Ombudsman in 2017 had been initiated pursuant to applications by inhabitants of Saldus county concerning the fee for catering

services at municipal preschool education establishments. The study revealed that municipality had included in the catering fee a number of cost items that in fact should be paid from the municipal budget, such as salaries for cooks, costs of electricity, etc.

This situation can be explained by the fact that no regulatory act specifies the cost components that form the catering service fee payable by parents. Since municipalities have established no unified methodology to be guided by, the catering service cost items payable by parents show notable differences from one municipality to another. The Ombudsman further established that no regulatory act prescribed direct obligation of parents to cover the catering costs for their child at a preschool education establishment.

Given that preschool education process is inseparably related also to catering of children at a preschool education establishment, the Ombudsman finds it appropriate to establish unified methodology for calculation of catering service costs, along with strict specification of the costs that should be covered from the municipal budget and those payable by parents of the children.

With the view to prevent unequal practice of municipalities, the Ombudsman applied to the Ministry of Education and Science for drafting amendments to the Education Law so that obligations of the municipality and parents of children in relation to the payment of catering fee are specified and for developing unified methodology for calculation of the catering service costs. According to the reply issued by the Ministry, they find no grounds for interference into the autonomous functions of municipalities and for imposing on them new obligations in relation to the provision of catering services at preschool education establishments because the said activities would involve additional funds from the State budget.

The Ministry is also of the opinion that no amendments proposed by the Ombudsman are required to the Education Law since they find the existing legal regulation sufficient to ensure that, when performing their autonomous functions, municipalities can meet the requirements prescribed by the law in relation to the payment of maintenance and economic costs of preschool education establishments.

Further, in the Ministry’s opinion, currently there are no grounds for developing unified methodology for calculation of catering service costs at preschool education establishments; instead it is crucial to ensure catering of children in compliance with the

regulatory acts that govern the supervision of food circulation and nutrition norms among other primary tasks of a preschool education establishment.

Since the Ombudsman disagrees with the opinion of the Ministry of Education and Science, the Ministry shall be repeatedly urged in 2019 to take steps for preventing unequal treatment and for defining clear criteria for the calculation of catering fee.

Rights of children placed in institutional care

[12] Notwithstanding that each and every child has inalienable right to grow up in family or, if not available, to be taken care of in a family environment, about 900 children were placed in institutional care in 2018.

The Ombudsman has conducted monitoring visits in 2018 to all psycho-neurological hospitals with inpatient children. During the interviews conducted with medicinal professionals they emphasized the issue of representation of the children placed in care and rehabilitation institutions and State social care centers on long-term bases. In particular medicine professionals pointed out to the difficulties in contacting managers of orphanages or their authorized representatives outside office hours (on some occasions also during office hours) to coordinate with them as legal representatives of the children certain decisions that need to be adopted without delay, for example, where a child who has reached the age of 14 waives consent to treatment and intends to leave the hospital.

The Ombudsman treats as impermissible the situation where managers of orphanages or their authorized representatives are continuously unavailable to medicine professionals. Therefore, in autumn 2018 the Ombudsman issued a recommendation letter to all child care institutions so that similar breaches are not repeated.

[13] Description of child care institutions established by the State, municipalities and non-governmental organizations is highly different notwithstanding that they provide similar scope of services. For example: orphanage; child care home; social care and social rehabilitation center; social rehabilitation center; child social services center; child and adolescent center; structural unit of boarding school. It should be noted that in case of

children accommodated there the name of institution is also the name of their residence that occasionally has to be named to different authorities and in different situations.

In the Ombudsman's opinion, child care institutions should initiate transition to a service that is close to family environment, and some institutions have already done this, therefore attention should be also paid to the description of care institutions and its conformity with the content of the provided service. At the same time, use of the word "orphanage" in the name of care institution should be well considered. Therefore, the founders and managers of child care institutions are encouraged to consider description of their institutions with due regard to the best interests of children and conformity to the provided services, and proposal is made to the Ministry of Welfare to consider deletion of the word "orphanage" from the Law on Protection of the Rights of Children.

[14] The most explicit shortcomings typical to child care institutions in relation to the right of children to their opinion includes the fact that no age-appropriate procedure for filing complaints and proposals is available to children at such institutions as prescribed by Section 70, Part Two of the Law on Protection of the Rights of Children. Effective procedure for filing complaints and proposals constitutes an important preventive tool that can help to reveal and point out to systemic shortcomings of the institution and to prevent the potential risks of violence and resolve conflict situations. Promoting involvement of children since their early age is equally important.

Therefore, the new Prevention Section established as a part of the Ombudsman Office in 2018 has focused in the first year of operation to provision of the right of children to their own opinion and involvement. The objective of the Prevention Section is assessment of the exercising of the rights of children placed in institutional care and to identify any obstacles to effective expressing by children of their opinion in the care institution.

Having studied the actual circumstances, the Ombudsman encourages the managers of institutional care establishments to involve children in the organization of events and promote their participation in the organization of work at the institution through joint development of internal regulations of the institution, for example;

to support their willingness and ability to file complaints and proposals in relation to operation of the institution, etc.

[15] Inspection visits to child care establishments also revealed significant shortcomings in relation to health care of children. For example, poor condition of children's teeth is clearly visible in the interviews, including the fact that no attention is paid to the adjustment of occlusion; insufficient care is taken of child vision problems; nobody checks whether or not children wear the prescribed glasses, etc.

The Ombudsman emphasizes that managers of the institutions should more actively cooperate with medicine professionals to ensure that individual needs for state-funded medicinal services are properly assessed.

[16] When adopting the legal norm that governs the application of compulsory measures of correctional nature to children, the legislator concluded that imposing of administrative penalty does not provide an effective tool in the combating of juvenile offences. Imposing of administrative penalty on a child is a part of penal system that is not aimed at identification of the cause of committing an offence, respecting the child's interest and right to development, and facilitating of prevention. According to the documents of international organizations, introduction and application of juvenile justice system is crucial in case of juvenile offences.

Review of inspection case concerning the application of administrative penalties to children placed in institutional care revealed that administrative penalty in the form of fine has been imposed in 2017 on 19 children placed in institutional care. In addition, review of the received information leads to conclusion that fines are also imposed in case of administrative offence committed by a child for the first time, in contradiction to the provisions of Section $12.^1$ of the Administrative Procedure Code of Latvia.

It can be observed that fine is imposed quite frequently for smoking, abuse of alcohol, including repeated offences, and for minor hooliganism. No manager of child care establishment has appealed against fine imposed on a child even on a single occasion. The most frequently expressed opinion is that imposing of the fine is substantiated or that this is the only way to teach obedience to the law.

In practice, children placed in institutional care have to pay the fine out of their pocket-money which is 6.40 euro/month. The institution, subject to the child's approval, deducts the whole or part of the child's pocket money every month until the fine is paid. If higher fines (tens or even hundred euro) remain unpaid, enforcement officers initiate compulsory enforcement. A number of child care establishments have provided information about enforcement proceedings instituted by enforcement officers. Where enforcement from children fails, the debt accrues, and enforcement continues when children reach the age of majority. On very few occasions children placed in institutional care experience understanding and efficient support in resolving their situations from the manager of establishment so that the care institution undertakes payment of the fine.

It follows from the legal regulation concerning children placed in institutional care that fines have to be paid by the manager of care institution as a guardian of the child. In practice, however, fines are most often deducted from the pocket-money payable to children; alternatively, custodian courts are applied to for authorization to apply the survival pension deposited in bank account for that purpose. In practice, fines imposed on children are paid by child care establishments on very few occasions.

According to observations, the right of children placed in institutional care to fair court are not respected because their legal representatives fail to appeal against rulings on fines imposed on children, and therefore the regulation prescribed by Section 12.[1] of the APC of Latvia is not duly implemented. Moreover, it follows from the information provided by child care establishment that no purposeful, organized preventive work takes place to prevent the commitment of administrative offences.

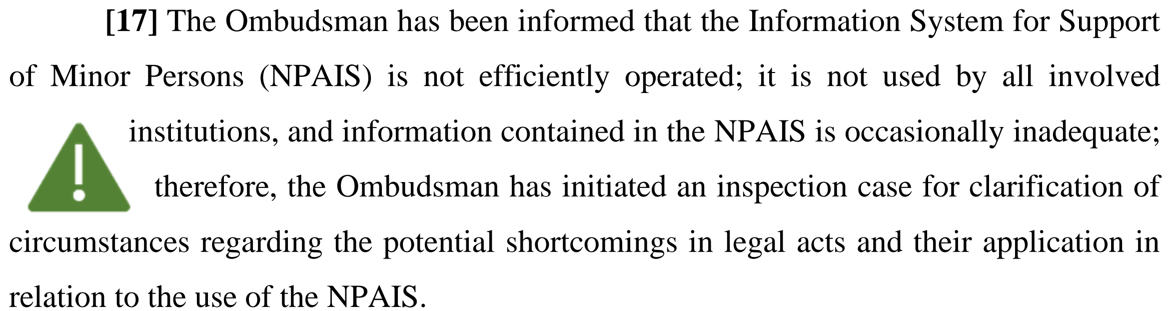
It should be noted that attention of the Ombudsman was also drawn to a similar issue when reviewing an inspection case instituted pursuant to application of a foster family concerning the fines imposed for administrative offences committed by the fostered child and the duty of the foster family to pay such fines.

Having explored the problems highlighted in the application for imposing fine on a child placed in foster family, the Ombudsman revealed in the course of his study that the currently applicable regulation that governs enforcement and payment of fine from children placed in institutional care is indeed insufficiently clear and unequivocal. It causes unequal treatment of children placed in institutional care:

guardianship, foster family or child care establishment. The opinions expressed by competent authorities regarding practical application of the legal regulation are substantially different.

Information system for support of minor persons

[17] The Ombudsman has been informed that the Information System for Support of Minor Persons (NPAIS) is not efficiently operated; it is not used by all involved institutions, and information contained in the NPAIS is occasionally inadequate; therefore, the Ombudsman has initiated an inspection case for clarification of circumstances regarding the potential shortcomings in legal acts and their application in relation to the use of the NPAIS.



Opinion as a part of the inspection case has been completed, and significant shortcomings have been identified in the NPAIS regulation and practical application. For example: the NPAIS has been developed as unique working environment for the collecting and exchange of information between subjects for protection of the rights of children with the view to foster their cooperation and to collect current information as soon as possible in order to provide the required support and assistance to children. No other vehicles are established in our country for single-stop provision of comprehensive information to ensure speedy reaction with the view to protect the rights and interests of children. Notwithstanding the above-listed benefits from the NPAIS, however, the Ombudsman has found out that the system fails to ensure the purpose and objective of its establishing, namely, to provide preventive work and assistance for minor persons and to ensure effective processing of information about risks posed to minor persons through efficient exchange of information and cooperation between the involved law enforcement, social and educational establishments and early prevention of juvenile crime and victimization.

The system was developed to facilitate identification of weaknesses in the field of protection of the rights of children so that work with a child and/or family is timely started and resources of different institutions are used with maximum efficiency; this goal is not achieved in practice. In addition, the NPAIS does not meet the requirements of up-to-date information system and the needs of users. This is also why users of the NPAIS treat it as

encumbrance rather than as a tool for cooperation between institutions and quick collecting and exchange of information, pointing out that to the need to enter the same information in a number of systems and to spend time on entering information into the NPAIS because of the poor quality of its operation. Some municipalities refer to lack of resources for work with the NPAIS, etc.

Taking into account the numerous identified shortcomings, and taking the option provided for in the Ombudsman Law, the Ombudsman has presented detailed proposals in his opinion to competent authorities for elimination of the NPAIS-related breaches.

Representation of injured child in criminal proceedings

[18] In 2018, the Ombudsman reviewed an inspection case concerning potential infringement of the rights and interests of children on the occasions when custodian court is appointed to represent the injured child in criminal proceedings.

Review of the regulatory norms that govern representation of a minor injured party in criminal proceedings reveals that such representation may be exercised in criminal proceedings by persons without knowledge of law (such as close relatives) as well as by attorney-at-law attracted by the person directing the proceedings.

Given that protection of interests and rights of a child is the prime obligation of custodian court, protection of the child's rights and interests should involve no risks in criminal proceedings where custodian court is appointed to represent a minor injured party. Enquiry conducted by the Ombudsman revealed, however, that the risks involved in appointment of custodian court to represent a minor injured party include formal representation of the child's interests and improper exercising of the granted rights.

Protection of the rights and interests of children on the occasions when a minor injured party is represented by custodian court should not be different from the cases where interests of a child are represented in criminal proceedings by a careful parent. In addition, the legislator has established a vehicle for protection of the rights and interests of a minor injured party in the supreme quality through enabling access to state-funded legal assistance as well as the right granted to representative of the injured child to

ask the person directing the proceedings to decide on attracting an attorney to represent a minor injured party.

The inspection case was finalized without establishing any infringement of right of the injured child to representation in the regulatory norms, while risks to the protection of the rights and interests of a child were identified on the occasions where interests of an injured child are formally represented without appropriate knowledge of the law and without providing timely legal assistance.

Supervision of the implementation of deinstitutionalization project

[19] The UN Committee on the rights of the child has expressed concern regarding the number of institutionally accommodated children with disabilities and encourages the Member States to implement deinstitutionalization programs in order to support the ability of such children to live in their own family, extended family or foster family.

The process of deinstitutionalization is implemented in Latvia in accordance with the "Basic concepts of social service development for 2014-2020" and Action Plan for Implementation of Deinstitutionalization for 2015-2020. At the launch of deinstitutionalization process in January 2015 there were 7 750 children with functional impairments in Latvia who lived in families. According to the data of the State Social Care Centers, 213 children with functional impairments were accommodated there including 83 children accommodated on the grounds of parental application.

Given that one of the objectives of deinstitutionalization is ensuring that children grow up in family environment and receive social care and rehabilitation from their municipalities, the Ombudsman has conducted investigation to ascertain implementation of deinstitutionalization activities by municipalities.

The study revealed that on most occasions parents select home-based care of their child with functional impairments instead of institutional placement. Therefore, the State has to provide all required support to such families so that they are able to care for the child and provide all necessary support for the child's development. At the same time, the family must be able to integrate in community so that institutional placement is minimized.

The Ombudsman found out in the course of his investigation that the deinstitutionalization process provides insufficient support to children and families. In the Ombudsman's opinion, for example, if no services are provided to enable the the child spend time out of home, the child as well as the family find themselves in social isolation. Having assessed the currently available services, the Ombudsman has concluded that supply of out-of-school care-taker and leisure time services available to children with functional impairments is inadequate. Day care centers are often intended for adults, or there are no such centers available at all. Another concern is about the fact that the psychologist, speech therapist, rehabilitator, physical therapist, reittherapist and other therapeutic services provided for children with functional impairments – 10 times each, and no more than four specialists – during the period of five years show no notable effect on the child's ability to lead wholesome life in community environment.

Social guarantees for young adults after completion of institutional care

[20] The Ombudsman has been continuously focusing on the issues related to the provision of rights of orphans and children left without parental care in our country. Regular activation of such issues has resulted in certain improvement in the field of institutional care: the number of children placed in institutional care has reduced; funding for institutional care services has been reviewed; special foster families have been established, etc. Still young adults remain especially vulnerable after completion of institutional care because they face at the very beginning of their adult life a number of challenges and they often lack financial resources, practical knowledge and psychological support in addressing them.

At present, there are 119 municipalities in Latvia with highly different availability of services and resources. Therefore, support to the young adults who start life after the completion of institutional care is very different. On the other hand, inadequate support has adverse effect of their ability to integrate in community and labor market after the completion of institutional care, as well as their future growth opportunities.

Support is vitally important to such young adults not only in terms of housing but also in the settlement of various legal matters. This includes, for

example, a competent advice regarding application to authorities for assistance or resolution of a number of issues; on executing the application, entering into tenancy agreement and the terms thereof; executing of a statement of claim to court; executing of documents; application for disability pension and social aid, etc.

The Ombudsman intends to develop recommendations for improvement of the situation of such young adults and to distribute them to the competent governmental authorities and all municipalities of Latvia.

The field of civil and political rights

Right to liberty and security

[21] In 2018, the Ombudsman has received applications from 36 persons regarding the circumstances that fall within the scope of the right to liberty and security stipulated in Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHR): application of means of security, detention of persons. 13 of the said applications refer to potential infringement of freedoms upon detention, and 10 applications – to the application of imprisonment in pre-trial proceedings. Five more applications are received concerning the application of detention pursuant to the ruling of the first instance court, and some other applications are related to other issues related to the right to liberty including one application filed by a minor person.

The Ombudsman has established no infringements of rights upon detention within the meaning of Article 5 of the ECPHR. Having contacted the competent institutions and officials, the Ombudsman did not establish detention on any occasion in excess of the period stipulated in the Law.

Problem aspects in pre-trial criminal proceedings

[22] In 2018, the Ombudsman continued to receive applications from persons referring to potentially unlawful decisions of actions on part of law enforcement authorities in the performance of their official duties. In total, 112 applications have been received regarding potential infringements in pre-trial proceedings. These include applications concerning the decisions or actions taken by officials of the State Police and also

applications expressing dissatisfaction with the replies issued by prosecutors as a part of criminal procedure supervision.

The complaints differ by content. It turns out frequently that the period for appeal against decisions referred to in the complaints has lapsed and the persons have not exercised their right to appeal. On some occasions, the accused persons complain in their applications on potential breaches in pre-trial proceedings or during the adjudication of criminal proceedings at the first instance court or even appellate or cassation instance court. Once criminal proceedings are referred to court, the court acts as the person directing the proceedings, and therefore the applicants have to address to the court any arguments regarding potential infringements of rights.

The Ombudsman emphasizes that efficient control of the actions of public officials in supervisory authorities is only possible if the complaint is timely filed and all relevant circumstances are properly referred to.

Complaints on lengthy criminal proceedings have been filed with the Ombudsman by injured persons as well as by persons entitled to defense. In addition, on some occasions prosecutors have established as a part of supervision procedure unreasonable delay of criminal proceedings and they have issued instructions regarding any further actions to be taken in the criminal proceedings, or even asked to assess responsibility of the directing person for delay. If this is the case, the Ombudsman does not repeatedly assess breaches of the right to finalization of proceedings with reasonable speed, because these have already been established by the competent authority.

Quality of legal assistance in pre-trial investigation

[23] During the reporting period applications continued to the Ombudsman from individuals and their legal counsellors (attorneys-at-law) concerning potential infringements of fundamental rights in the actions and decisions of governmental and municipal institutions and courts, with particular reference to infringements of fundamental rights during pre-trial criminal proceedings.

In the Ombudsman’s opinion, attorneys-at-law certainly play significant role in legal attendance. A person applying to an attorney-at-law has objective

grounds to expect professional, high-quality legal assistance. The number of occasions where legal counsels including attorneys fail to enclose with their applications the documents (powers of attorney, orders) that certify their authority to represent the interests of persons has decreased in 2018, however individual occasions are still identified. In addition, assessment of the matters contained in applications drafted by legal counsellors and granting of their claims frequently exceeds the competence of the Ombudsman.

This situation is impermissible where an attorney-at-law, as a part of legal assistance, files applications with any authorities where solution of the relevant matters and granting of petitions clearly exceeds the competence of such authorities. In the Ombudsman's opinion, any situation where an attorney-at-law drafts a document without thoroughly considering its content, the claim and competence of the recipient should be taken with criticism in terms of quality of the legal assistance provided to the client.

Rights of persons with mental impairments

[24] As regards the field of civil and political rights, the Ombudsman continued to focus in the reporting period on the aspects of respecting the rights of persons with mental impairments as one of the most vulnerable groups of persons.

As noted earlier in previous reports, persons with mental impairments and their relatives trend to increase active interest in various possibilities for the protection of rights. This trend continued in the reporting period, and the number of received applications and provided advice has also increased. It may be therefore concluded that people are better informed about the possibility to apply to the Ombudsman for solution of important issues of human rights.

[25] The issues related to the rights of persons with mental impairments to be present at a court meeting for deciding on the application of compulsory means of medicinal nature continued in the reporting period just like in previous years. In 2018, numerous individuals have stated to the Ombudsman that their placement in a social care center was not based on their free consent.

The Ombudsman reminds that the right to choose place of residence including care home or any other care establishment forms part of each person's right to privacy. The said right is guaranteed by Section 96 of the Satversme (Constitution) and other international documents related to human rights, such as Article 8 of the ECHRF and Article 22 of the UN Convention persons with disabilities. To note, the term "persons with disabilities" is attributable not only to persons with established disability group; this term should be much wider interpreted and include persons who are dependent on continuous support due to their health condition.

According to the information at the Ombudsman's disposal, in practice such persons often are unable to express their willingness to receive care services at a care home, or change their mind because of their health condition. Quite frequently such people are encouraged by their relatives to apply for the service even though they have municipal service available (care at home, etc.), and they own their own residence; moreover, they have not expressed their consent to move to a care home during the home study. The Ombudsman emphasizes the importance of establishing the person's true intention in similar situations to avoid infringement of their rights by the responsible persons when deciding on the provision of service.

In the Ombudsman's opinion, given the activities launched in Latvia in relation to the deinstitutionalization process with the view to ensure that each and every person with disabilities has the right to live in community, it should be seen that community support measures are provided to each person (by the municipality of such person's residence) insofar available, instead of facilitating their placement in an institution, in particular where such person owns his or her own residence, provided that the services appropriate to the person's needs are available from the municipality.

Certainly situations are highly different, and the solution options can also differ; however, finding out the person's opinion is essential on each occasion. Having analyzed some occasions, the Ombudsman has established no infringements of the right to liberty, yet on some occasions persons with disabilities have no choice but accepting their relatives' decision and select the public or municipal social care and rehabilitation services solely because no adequate support is available from the municipality or from the relatives.

Human trafficking problems

[26] The Ombudsman continued in the reporting period the previous initiatives in the field of preventing human trafficking, and representative of the Ombudsman joined the task force for coordination of the implementation of the "Basic concepts for the preventing human trafficking in 2014-2020". The Ombudsman also participated at discussions and exchange of opinions on the matters related to the strengthening of inter-institutional cooperation to ensure awareness and understanding of the role and competence of each institution and organization on part of the involved governmental authorities and non-governmental organizations with focus on the recognition and identification of the victims of human trafficking and providing support to such persons.

It should be noted regarding the eradication of sexual exploitation in Latvia that at present the procedure for restricting of prostitution is governed by the Cabinet Regulations No. 32 of 22 January 2008 "Regulations for Restricting of Prostitution". In the Ombudsman's opinion, any restrictions may be imposed on the persons' right to privacy exclusively on the grounds of law; such restrictions must serve a legitimate purpose, and they must be proportional. Therefore, the Ombudsman has drawn the attention of the Ministry of Interior in 2015 already on the need to incorporate in the law any conditions on restricting prostitution, and therefore a task force was formed for the drafting of Prostitution Prevention Law. In the course of drafting of the said Law, the Ombudsman has declared his objections to the draft law. At present, the "Prostitution Prevention Law" has been drafted by the Ministry of Interior, and the Law was declared on 7 December 2017 at the meeting of Secretaries of the State. The Law is aimed at restricting and minimizing prostitution and minimizing the risks of human trafficking; protecting the health and welfare of individuals and general public; preventing involvement of children and young adults in prostitution; minimizing the risks of violence against persons involved in prostitution; promoting withdrawal from prostitution and the use thereof. The draft Law was expected to come into effect on 1 January 2019, yet the draft law has not been presented yet for considering to the Saeima (Parliament).

It should be noted regarding the Ombudsman's opinion on the regulation of prostitution in Latvia that different models for restricting prostitution exist in the Member States of the European Union, and adopting of a specific model largely means a political

decision of the State. The extremely high human trafficking risks inherent to prostitution should be taken into consideration to decide on the most appropriate model for restricting prostitution.

The Ombudsman paid special attention in 2018 to the human trafficking matters where nationals of third countries are involved and detained by the State Frontier Guards after unlawful entry into the Republic of Latvia. Monitoring the procedure of compulsory extradition of such unlawful immigrants, the Ombudsman has identified specific features indicative to potential presence of human trafficking risks. Therefore, the Ombudsman developed in 2018 and presented to the Ministry of Interior the project "Effective implementation of monitoring procedure" where project activities include improvement of the procedure of identification of the victims of human trafficking in the extradition process. The project is aimed at improvement of monitoring by the Ombudsman, obtaining better understanding of the procedures applied by the State Frontier Guards to facilitate victims of human trafficking, and at development of materials for identifying victims of human trafficking in the extradition process. The Project shall be launched in 2019 to continue till 2020 (including).

The Ombudsman intends to launch a systemic activity in cooperation with the establishment "Centrs Dardedze" that has vast experience in relation to the monitoring of sexual abuse at orphanages and boarding schools for the identification and assessment of human trafficking risks at boarding schools in Latvia through their monitoring.

The right to fair court

[27] The total number of applications received in 2018 concerning aspects of the right to fair court was 327, slightly less than in 2017 (347 applications) yet more than in 2016 (293 applications). It may be therefore concluded that respecting of that right remains urgent and quite significant among population of Latvia, moreover the number of applications where persons express their discontent to the substantiation of a ruling, pointing out, for example, to failure by the first and the second instance court to consider different circumstances and to declining of cassation procedure, has notably increased to

32 (compared to 13 applications in 2017); moreover, the ruling is most frequently made by cassation instance court in the form of resolution.

During the reporting period, just like in previous years, the Ombudsman has received complaints regarding access to court, quality of legal attendance by defense counsels, eventually unsubstantiated or unethical actions of judges, disproportionally lengthy proceedings, enforcement issues and other aspects of fair court.

On the other hand, when analyzing the nature of the received applications, the Ombudsman not only informs persons about their rights on individual occasions and issues opinions but also identifies significant problems in the regulatory norms or application thereof and notifies the courts and the responsible ministry of such problems.

The Ombudsman is also issuing annual opinions to the Constitutional court on the pending matters related to compliance of the regulatory norms with Section 92 of the Satversme.

[28] Receipt of applications also continues concerning the provision of state-funded legal assistance in administrative proceedings conducted not only by courts but also by authorities. Section 18 of the Administrative Procedure Law provides for the opportunity to apply for legal assistance in complicated matters, even though individual opinion regarding the complicatedness of a specific matter may notably differ from that of the authority or the court.

No unified criteria for classifying matters as complicated are established by the courts and authorities checked by the Ombudsman; therefore, this issue deserves increased consideration and discussion by those responsible for the application of legal norms.

[29] A number of complaints continued in 2018 in relation to enforcement of rulings. 27 complaints concerning enforcement of rulings in general were filed with the Ombudsman in 2018, and another 29 applications were directly related to the actions taken or decisions adopted by certified enforcement officers in relation to the enforcement of rulings.

Like in previous periods, the complaints received in the reporting periods are mainly related to eventually unsubstantiated actions on part of enforcement officers, such as applying enforcement to the debtor's remuneration for work, payments equivalent to remuneration and other amounts in respect of which enforcement is prohibited by the law.

Unlike previous years, in 2018 the Ombudsman received numerous complaints also from the enforcement officers concerning the non-receipt of adjudged amounts from debtors. The Ombudsman informed the enforcement officers that, according to the case law of the ECHR, the "right to court" provided for in Article 6, Paragraph 1 of the ECPHR was observed if the applicant has had the possibility to apply to the enforcement officer for enforcement of judgment provided that subsequent inability of enforcement is not caused by negligence or omission on the part of public authorities. The ECHR distinguishes between enforcement matters where the State is the debtor from those where a private individual is the debtor. Liability of the State can arise if the public officials involved in the enforcement procedure fail to take reasonable care or even prevent the enforcement.

Therefore, the enforcement officer may be held liable for the situations where enforcement of a ruling is impossible for any reasons independent on the debtor (low monthly income; non-existence of movable and immovable property) insofar he or she has taken all reasonable steps to ensure efficient enforcement without tolerating unreasonable omissions.

Right to freedom of expression

[30] Section 100 of the Satversme stipulates that everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited. The right to freedom of expression is among the key values of democratic society in our days or preconditions to the protection of any other human rights. Having said this, priorities of the Ombudsman include supervision and ensuring of the freedom of press and protection of journalists as the "watchdogs" of community.

The Ombudsman has received 14 applications from private individuals during the reporting period concerning various aspects of freedom to expression: the right

to freely express one's views, the right to freely receive and distribute information, and the issues of protection of the freedom of press. It should be noted that the number of applications concerning the right to freely receive and distribute information has notably increased in comparison to the previous reporting period. The number of applications related to the issues of freedom to press has also increased. On the other hand, the number of complaints has decreased regarding the right to freely express one's views.

[31] In the Ombudsman's opinion, distribution of disinformation has become a challenge faced by the State because the highlighted problems not only affect critical thinking and media literacy of individuals but also make them seek the possible solutions for balancing human rights and the interests of protecting the national security. Therefore, the Ombudsman has focused in the reporting period on the urgent topic of the effect of disinformation on information space of Latvia and the need to restrict disinformation including to seek potential solutions in cooperation with experts.

The Ombudsman emphasizes that the right to freedom of expression and availability of information guaranteed in the Satversme and international human right documents envisage vast opportunities for collecting and distributing information. From the view of human rights, protection of the said rights should not be reduced merely to the protection of "true information" to prevent "calming down effect" on discussions with public importance. Distribution of intentionally incorrect information aimed at compromising the democratic values of Latvia or discrediting the country and professional journalism or impose unreasonable restrictions on the individuals' right to information certainly should be reduced in the information space of Latvia. On the other hand, we need to seek answers to a number of relevant questions regarding the most appropriate solutions for minimizing of the amount of the sais information, still respecting the fragile border to ensuring protection of the right to freedom of expression.

[32] The Ombudsman also continued focusing in the reporting period on the issue of identifying and restricting the distribution of hate speech on the Internet. Until present, activities taken by the Ombudsman for restricting the content of hate speech have been appreciated by international organizations: for example, the European Network of Equality

Bodies has appreciated the Ombudsman as an example of good practice in their summary of measures against hate speech taken by members of the organization in 2018. The report highlights activities of the Ombudsman including the study conducted in 2016 "Problem aspects in the identification and investigation of hate speech and hate crimes in the Republic of Latvia", as well as his initiative to focus on the problems of hate speech distribution in Latvia in his annual report to the Parliament.

The right of person to know about his or her rights

[33] Significant fundamental right – the right to know about one's rights is enshrined in Section 90 of the Satversme. In 2018, numerous requests were received again by the Ombudsman Office for information about the guaranteed fundamental rights of individuals, and most of such requests are received from imprisoned persons.

The Ombudsman acknowledges in the context of the right to know about one's rights that the legislator should foster legal certainty when drafting the norms. The State is responsible to publish all regulatory acts so that persons within their jurisdiction have objective knowledge of norms and expect their application to the specific legal relations. Each norm has to meet two criteria: availability and predictability. Norms must be executed in writing, they must be publicly available and clear.

In addition, some norms may be specific and eventually clear only to a certain range of professionals, still each individual to whom the given norm applies must be able to understand the obligations imposed on him or her by such norm.

[34] In 2018, the Ombudsman activated the issue of informing persons on conditional discharge, persons adjudicated to compulsory work and persons subject to probation supervision along with compulsory work or fine about their obligation to appear before structural unit of the State Probation Service (SPS).

The SPS pointed out to the required amendments to the Criminal Procedure Law in order to ensure unified and possibly early information of persons about their obligation to appear before structural unit of the SPS for the service of sentence or application of supervision within the period prescribed by the Penal Enforcement Code of Latvia, so that

information about the person's obligation to appear before the enforcement authority within the prescribed period is always included in the court ruling, prosecutor's decision or prosecutor's order.

The Ombudsman shared the proposal of the SPS regarding corresponding amendments to the Criminal Procedure Law since this would ensure that the right of each person to know about his or her rights is respected pursuant to Section 90 of the Satversme, moreover the said Section apparently overlaps Section 100 of the Satversme that stipulates the right of each person to freedom of speech including the right to freely access to information (in this context, subjective rights and obligations of a person quite frequently constitute the subject of "information").

Prior to the discussion of the draft law "Amendments to the Criminal Procedure Law" in the third reading, the Ministry of Justice, taking into consideration the Ombudsman's proposal to consider the need for amendments to the Criminal Procedure Law in relation to the procedure of informing the probation clients about their obligation to appear before structural unit of the SPS, presented proposals to the Legal Committee of the Saeima to stipulate that court rulings and prosecutor's orders regarding penalty should include information about the authority responsible for penalty enforcement and the period for appearing before the authority, thus ensuring awareness of person and good governance.

The above-described proposals were seconded, and the Law was enacted on 25 October 2018.

Exercising of the right to civil involvement

[35] The fact that each individual attitude and action affects the advancement of our country is especially important in a democratic system. Therefore, the scope of Section 101 of the Satversme (*every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service*) means not only the right but also the obligation to contribute to the national development.

Just like in previous years when Parliament elections triggered increase in number of complaints regarding restrictions on exercising the right to election, in October 2018 the Ombudsman also received several verbal complaints from individuals regarding the non-admittance of e-ID card holders to elections. On most occasions, the complainers were elderly people from regions of Latvia who only held ID cards and found out too late that election certificates were additionally required for participation at the Parliament elections.

Individuals expressed the hope in their complaints that the election procedure in our country would be so arranged that passport or e-ID card alone would be sufficient for participation at elections. In the Ombudsman's opinion, the Central Election Committee has timely launched public awareness campaign to notify electors of the requirement to receive an election certificate unless they held a valid passport. The Ombudsman also held the view that the Central Election Committee in cooperation with the regional divisions of the Office of Citizenship and Migration Affairs ensured that each eligible elector could obtain an election certificate on the election day at the nearest OCMA division.

It should be noted apart from the above-mentioned that priorities set by the Ombudsman in 2018 included the discussion of election eligibility awareness and study of the right to civil involvement at schools.

Section 1 of the Satversme stipulates that Latvia is a democratic state with free elections. These include free development and expression of free will, and the young electors should gain knowledge of that as a part of general education. Results of study show, however, that expected participation by young adults at elections in Latvia has decreased below 50%, according to comparison of opinion poll among school children in 2009 and 2016, and inclines to an opposite trend in comparison to the neighbor states, for example in the Baltic Sea region.

Consequently, the Ombudsman wondered why the forecast of future civil involvement of young people in Latvia trends to decline, and how does the young generation gains knowledge of civil competence, in particular election eligibility awareness as a part of their general education.

With election eligibility awareness as a priority kept in mind in 2018, the Ombudsman has launched a project with three defined objectives:

1. Short-term: to develop recommendations for teachers before the 13th Parliament elections on the syllabic topics "Politics and Law" and "Public Affairs".

2. Medium-term: to develop recommendations for teachers and lecturers for facilitating election eligibility awareness among young people and children.

3. Long-term: to summarize systemic considerations for decrease of age census for electors.

Right to Private Life

[36] Urgent items of the Ombudsman's agenda in 2018 certainly included the Regulation (EU) 2016/679 of the European Parliament and of the Council (27 April 2016) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, also known as the General Data Protection Regulation.

The Ombudsman conducted two opinion polls to assess the preparedness of Latvia to the implementation thereof. On one occasion only 17.4% of respondents were informed about the effect of the Regulation on their daily life, while 73% of the respondent journalists acknowledged they were not aware of requirements of the Data Regulation.

Given this and certain other considerations, the Ombudsman applied to the Prime Minister for drawing attention on the preparedness of Latvia to the implementation of the Data Regulation and expressed his concerns regarding the failure to timely adjust the national regulatory norms to the new provisions. Therefore, representatives of numerous industries were not timely prepared to ensure qualitative processing of personal data because they lacked knowledge of the new national regulation norms that govern the protection of data.

The Ombudsman also applied to the Ministry of Culture responsible for the management of media policy to provide clarification and to prepare materials on the effect of the Regulation on journalists' work to ensure balance between the right to data protection and the right to freedom of expression. Along with that, the Ombudsman Office developed clarification of the General Data Protection Regulation focusing on the new aspects in the protection of data of private individuals.

[37] In the light of the new Data Protection Regulation, the Ombudsman has issued a number of opinions in 2018 on this topic with particular focus on the need to establish and keep the balance between the right to freedom of expression and protection of privacy.

The Ombudsman explicated, for example, that protection of the right to privacy is quite reasonable in relation to photo and video recording at hospitals and care homes, yet absolute prohibition may be not always proportional even in that case. Given the vulnerability of this category of people, a clear regulatory norm would be required for the said institutions and procedure should be establish for obtaining consent to photo or video recording.

The Ombudsman was also applied to by the Data State Inspectorate for issuing opinion regarding the action of a medium that had published personal data, in particular name and surname, as well as images of and information about real estate of that person. The Ombudsman pointed out in his opinion that respecting and protection of the right to data protection and the right to freedom of expression is equally important in a democratic society. The entity that applies the law has the obligation to assess each individual case and to thoroughly assess the conflicting interests and ensure balance of the two rights.

Balancing of the two rights has to be guided by assessment criteria summarized by the Ombudsman that arise from case law of the ECHR: contribution of the publication and the enclosed images to the discussion of events with public importance; social identification of the person as well as the purpose and content of publication; earlier actions and behavior of the person before publication; methods used to collect information and reliability of the published information; content and form of the publication and the consequences of publishing the article; and finally the nature and scope of remedy imposed on the medium.

[38] The Ombudsman has focused in the reporting period to the issue of personal data processing on the website *www.sudzibas.lv*. In particular, the Ombudsman has received applications and e-mails from a number of private individuals concerning the information available on the website *www.sudzibas.lv* and processing of personal data. It should be noted that personal data and the information available on the website is displayed

in a manner that eventually can infringe the esteem and dignity of private individuals and their family member; moreover, similar posts can be injurious to professional and private life of individuals.

The given situation should be assessed with due regard to the public nature of the Internet environment in relation to the right to protection of privacy, in particular to protection of personal data in the Internet environment. Information published in relation to the applicant on the website *www.sudzibas.lv* is available to a vast range of Internet users, and a post can potentially compromise a person's reputation and impose restrictions on such person's right to privacy, moreover because the content of that post is not topical any more.

[39] Urgency of the issue of data protection at workplace including video surveillance is increasing, given the requirements of the General Data Protection Regulation.

The Ombudsman holds that placement of video surveillance cameras at workplace is likely to restrict the employees' right to privacy and protection of data. On the other hand, the employee has the right to place video surveillance cameras for achievement of specific legitimate purpose. Grounds for processing of personal data may be stipulated in the Regulation and the Labor Law, where internal regulations applicable at the workplace prescribe video surveillance of certain areas.

The Ombudsman reminds: at least one legitimate purpose must be present to ensure that processing of personal data including images is legitimate in accordance with Article 5, Paragraph 1 of the General Data Protection Regulation, namely: consent of the data subject; performance of a contract; compliance with a legal obligation; protection of vital interests of a data subject or of other natural persons; legitimate interests pursued by the controller of third parties.

Further, in the Ombudsman's opinion, the employer should always inform the employees about video surveillance policy and explain the purpose of video surveillance regardless of the existence of legitimate purpose. The employees, on their turn, have the right to access to their personal data including to request their deletion after the expiration of the storage period.

[40] In context of the data protection aspect at workplaces the Ombudsman has been informed in 2018 that certain public sector bodies and private sector legal entities had introduced the electronic working time registration program “DeskTime” in their working environment.

According to the information displayed on the *desktime.com* website, “DeskTime” is a time registration program intended for analysis of productivity. In other words, it is an automated working time registration program for registration of time spent at computer and recording of any other activities, for example: the time spent on one “Microsoft Word” document; duration of programming, developing presentation, chatting with family members, search in social networks, etc. The time off computer is also registered, for example, lunch break or meeting. The most important feature of the program, instead of time registration, is the calculation of time that can be treated as productive, and of non-productive time. Therefore, the employer can assess the “productivity” position of any employee in comparison to other employees, and review such position on weekly on monthly basis to establish a kind of “top”.

It means that in fact the program “DeskTime” provides very ample power to the employer and enables monitoring of the working hours and activities of their employers, so that employees are subject to continuous monitoring. Without contesting the significance and purpose of the program “DeskTime”, that is, to provide regular information to the employer about the time spend by employees at computer so that the employer can assess the productivity of each employee and contribution provided to the merchant or the company in general, the Ombudsman still finds that improper use of the program potentially can pose threat to inviolability of the employees’ privacy guaranteed by Section 96 of the Satversme and Article 8, Para 1 of the ECHRF.

With the view to the above-mentioned, the Ombudsman applied to the State Data Inspectorate for assessment of situation in relation to the program “DeskTime” and to answer several questions. The Inspectorate pointed out that no complaints regarding personal data processing by means of “DeskTime” had been received till autumn 2018, yet assumed assessment of data processing performed by means of the program “DeskTime”

and the compliance thereof with the requirements of the General Data Protection Regulation.

The State Data Inspectorate further pointed out that the program “DeskTime” was intended to serve as a grading tool for assessment of performance of the data subject (employee). In the opinion of the Inspectorate, use of “DeskTime” at workplace would still meet the requirements of the Data Regulations provided that the data protection principles enshrined in the Regulation are complied with and respecting of the rights of data subjects is ensured in data processing.

The Ombudsman intends to inform the public in 2019 about their rights and available remedies for ensuring of the protection of their data against the program “DeskTime”, while employers shall be informed about the requirements and conditions applicable to the use of “DeskTime”.

Ensuring of the rights of imprisoned persons; complaints on the police

[41] About 600 applications have been received in 2018 from prison facilities (including 560 with concerning initial claims). The number of such applications has decreased compared to 2017.

Most complaints are related, just like before, to various issues related to the practical provision of detention or service of sentence – about 140 complaints. These include the exercising of various rights and obligations of prisoners at prisons of Latvia, such as the practical provision of daily needs; the right to communication with relatives; removal to another prison facility or another cell within the same prison facility, etc. Complaints invariably continue from imprisoned persons regarding provision of different information about what exactly imprisoned persons are entitled to from the State budget; regarding the exercising of certain rights at prison facilities, etc. The number of such complaints amounts to 112.

[42] The number of applications remains unchanged concerning cruel treatment at prison facilities including physical and emotional abuse among prisoners or in their relations with the staff of facility, as well as other issues related to the security aspect. The

approximate number of such applications is 50. 9 complaints were filed regarding physical abuse on part of the prison administration or exerting of excessive force or special means. Complaints also continue regarding uncivil treatment by the prison staff, intimidation and ascendancy over imprisoned persons in the form of threats or offer of different benefits and privileges.

On the other hand, the number of complaints regarding inappropriate living conditions at prison facilities has decreased. In 2018, there were 16 complaints. As a result of the Ombudsman's activities and recommendations, the imprisoned persons actively use the vehicle for protection of rights established in the State and apply to administrative court in the event of their potentially unlawful treatment on part of the facility. In support of their position the imprisoned persons frequently ask for opinion of the Ombudsman regarding the applicable national and international requirements. They also seek opinion of the Ombudsman, for example, on regular provision of hot water in their cells and the number of bath days, provision of sporting activities and meaningful leisure time activities, requirements applicable to and provision of proper quality food norms.

Visits to 6 prison facilities were conducted in 2018 in relation to individual applications or specific subjects of concern.

[43] For several years already imprisoned persons address their letters to the Ombudsman pointing out to various forms of self-governance (hierarchy) among prisoners in prisons of Latvia and the related problems. The aspects referred to include, for example, distribution of food among prisoners so that those on the "bottom" level of the hierarchic system are the last ones to get their good. This issue has been also referred to the administrative court for investigation in 2018.

The prison administration finds no real actions or intentional infringement of rights on the part of facilities because, in their opinion, self-governance is established among prisoners by themselves as a form of self-expression and model of relations, rather than stimulated and established by the prison administration. The most important action here is to see that the rights of imprisoned persons guaranteed by regulatory acts are not infringed, that is, to see that person is not left without food at all.

In the Ombudsman's opinion, however, the aspect of discrimination against person and contribution to unequal conditions is also involved in this situation as well as infringement of esteem and dignity. The ECHR have established in their awards that no imprisoned person may be placed in prevailing position over the others. The Supreme Court has also acknowledged the general obligation of the State to address informal hierarchy of prisoners as a cause of violence. The State has to take all reasonable steps to prevent violence among prisoners and therefore to eradicate the informal hierarchy established by prisoners. Failure to take appropriate steps on part of the State amounts to unlawful action.

The Ombudsman has issued replies and expressed his position pointing out that no regulatory acts or international standards envisage division of imprisoned persons according to an arbitrary hierarchic system established by themselves. It is just the other way round: the establishment and maintenance of such system contradicts with the commonly accepted principles of human rights.

[44] 18 complaints were filed with the Ombudsman in 2018 regarding potential infringements of human rights at short-term detention facilities (STDF) of the police and a range of related issues. Just like in previous years, five of the applications refer to discontent with the conditions at the police premises including extreme hot and lack of ventilation in summer.

Persons also complain on insufficient amount of food or medical aid including the right to get access to and take medicines prescribed by medicine professionals.

Another aspect considered in relation to a certain application was the prohibition applied in practice to receive parcels from a person of the same gender related in partnership to the detained person unless it was a family member. The Ombudsman established discrimination in any form is prohibited on the level of regulatory norms including discrimination by gender or sexual orientation. Refusal to accept a parcel based on sexual orientation of the detained person can be treated as an action on part of the facility in breach of the fundamental rights enshrined in Section 91 of the Satversme and the principle of equality stipulated in Section 6 of the Administrative Procedure Law.

[45] Similar to the previous years, different complaints were received by the Ombudsman in the reporting year regarding police officers and their behavior. 7 complaints were filed during the year on exerting physical or especially cruel moral influence, and the complaints were forwarded to the competent body, the Internal Security Office for reviewing, initiation of criminal proceedings and calling the culprits to account. The Ombudsman, on his turn, followed up within the limits of his competence the inspections conducted by the said entity with the view to assess the effectiveness of the vehicle for protection of rights established in the State.

The Ombudsman has received 60 applications in 2018 concerning actions/omissions on part of the State or municipal police from the aspect of good governance or other matters related to detention and search of persons, and concerning aggressive communication with members of society. Most often persons complain on provision of insufficiently clear information or reply from police officers as a part of administrative procedure as well as on omissions on part of police in relation to offences of administrative nature.

[46] The Ombudsman is also keeping eye on technical requirements applicable to the escorting vehicles of the State Police during several years already. The State is responsible for taking the required actions to prevent potential infringements of human rights including threat to human lives and health. Such actions should also include the drafting and improvement of regulatory acts that govern the given area. On the other hand, no requirements to the equipment and conditions for escorting detained persons are defined in the Cabinet Regulations No. 57 of 31 January 2017 "Procedure for escorting of detained, arrested and sentenced persons".

To address the above-described situation, and having inspected in situ transport vehicles of the State Police intended for escorting of detained persons and the conditions at such vehicles, the Ombudsman arranged in 2018 a discussion of the requirements applicable to transport vehicles intended for escorting of detained persons. Participants of the said discussion included representatives of the Ministry of Justice, the Prison Administration, the State Police, the Ministry of Transport and the Road Traffic Safety Directorate. Participants of the discussion identified and discussed the most

relevant, in their opinion, requirements to such transport vehicles. The Ombudsman draw attention to the conditions at such transport vehicles because these conditions are essential from the view of human rights including safety of detained person in the context of road traffic.

Participants of the discussion agreed on uniform minimum requirements applicable to each transport vehicle intended for escorting. The State Police, on their turn, assumed the responsibility for drafting amendments to the regulatory acts that govern the operation of operational transport vehicles and defining of requirements applicable to transport vehicles intended for escorting of detained persons.

Rights of foreign nationals

[47] The number of complaints received in 2018 from persons who have applied for or obtained international protection and/or stay/intend to stay in the Republic of Latvia on the grounds of residence permits issued by the OCMA has not notably changed in comparison with 2017.

In total 15 applications were received last year from nationals of other countries including most of them filed by foreign nationals entering Latvia for the purpose of regular residence.

The trend observed in 2018 should be noted however: several citizens of Latvia applied for advice to the Ombudsman because of difficulties to obtain residence permits for their spouses.

In relation to a specific application for assistance in resolving a complicated situation experienced by a foreign national who could not be identified by the competent bodies and who had applied for the status of stateless person in Latvia, the Ombudsman concluded: the issue related to the status of foreign nationals who may be neither deported nor obtain any status because of inability to identify them should be activated on national level. The Ombudsman shared the view that this issue deserved discussion and asked a range of concerned bodies to join the discussion – representatives of the Ministry of Interior, the Ministry of Welfare, the OCMA and the State Frontier Guards.

[48] In 2018, the Ombudsman continued performance of the function stipulated in the Immigration Law – monitoring of forced deportation. The Ombudsman received 184 rulings on forced deportation of foreign nationals during the reporting period.

The number of deported persons has notably decreased in comparison to the previous years, still it is apparent that deportation of minor foreign nationals who unlawfully cross the State border of Latvia without being accompanied by their legal representatives to their domiciles continues.

Preventive mechanism or system of regular visits

[49] The national preventive mechanism is an autonomous tool with the key task to provide regular visits to facilities where liberty of persons is, or may be limited, with the view to prevent the risks of bad treatment. The Ombudsman was entrusted in 2017 with performance of the function of preventive mechanism, and therefore unique situation has developed in Latvia: even through the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is not ratified, the State has already launched the national preventive mechanism envisaged by the Optional Protocol to ensure early preparing of the Ombudsman institution to performance of the new function.

So on 1 March 2018 the Prevention Division was formed as part of the Ombudsman Office with the prime task to conduct regular visits. Even though the Ombudsman Office in general performs the function of preventive mechanism, this function is concentrated in the newly formed Prevention Division.

Key values of the Prevention Division include:

- ✓ Preventive action, rather than counteraction
- ✓ Cooperation, rather than disapproval.

An extra objective of visits conducted by the Prevention Division is minimization of potential risks of human rights infringements as soon as practicable, preferably still before the actual infringement. In other words, the key task of the Prevention Division is conducting visits to facilities with the view to prevent infringements of the rights of

vulnerable groups of persons whose liberty is, or can be limited, in cooperation with the management of the facility in question. Ideally, infringement of rights should be prevented in cooperation with the management of facility still before the infringement takes place. Therefore, on most occasions management of the facility is not previously notified of visits, and such mandate is prescribed by the Ombudsman Law.

[50] Though Prevention Division of the Ombudsman Office has been operating less than a year, it has already prepared five extended reports on observation of the rights of children at psychiatric treatment institutions. The reports published on the Ombudsman's website along with replies issued by the hospitals regarding implementation of recommendations contain assessment of 9 legal items: circumstances of referral; prescribed medicines; accommodation conditions; mechanical restriction and medical treatment against the patient's will; availability of non-medical therapy; right of the child to privacy and contact to relatives; informing of children about the course of treatment and identifying their views about the treatment process; provision of the children's right to education, and potential abuse of children by the staff of peers.

Apart from the above-mentioned, another objective of the Prevention Division is to achieve improvement of overall living conditions at long-term social care and social rehabilitation institutions, compliance of the provided social care and social rehabilitation services with the requirements set forth in regulatory acts, and respecting the clients' human rights. In total, 30 visits were conducted in 2018 with involvement of the Prevention Division, including: 11 inspections (monitoring); 3 post-inspections; 9 topical visits, and 7 inquiry visits.

Regretfully, insufficiency of personnel was established at all State social care centers visited during the reporting period because remuneration of the persons employed by such institutions is not competitive. Consequently, human resources available at the institutions are objectively disproportional to the number of clients and to provision of the required social care and social rehabilitation services on long-term basis. This shortage has significant effect on the quality of services provided by the institutions.

It should also be emphasized that letters summarizing the observations and recommendations of the Ombudsman were issued in late 2018 to the Ministry of Welfare

and to the concerned institutions to enable preventive elimination of potential breaches and to improve quality of the provided services.

The field of social, economic and cultural rights

Right to social security

[51] According to the Ombudsman's Strategies for 2017-2021, urgent topics of the reporting period continue to include minimization of poverty and social exclusion. The Ombudsman has noted earlier that the social security system and the minimum amount of social allowance is beyond the minimum required to ensure decent living. Amounts of allowances are not based on calculations, in addition most of them has not been reviewed for years: for example, social security allowance remains on the level of 2005, and the poverty threshold – on the level of 2011.

The government acknowledged inadequacy of the situation in 2013 and 2014 already when reviewing and supporting the concept "On establishing of the minimum income level". Regretfully no substantial improvements have been achieved in five years. Implementation of the concept has been postponed from year to year allegedly because of insufficient budget resources. In addition, the concept is now replaced by a new document – the draft "Plan for improvement of the minimum income support system in 2019-2020" aimed at improvement of the minimum income support system through providing support to the groups most exposed to the risks of poverty and inequality of income. The draft plan envisages, among other things, to increase support to the recipients of the state social security allowance and the minimum pensions in the first half of 2019.

Given the urgency of this topic, the Ombudsman has applied in his letter to the Prime minister for ensuring approval of the draft plan by the Cabinet and for launching of the plan in 2019 already. In the Ombudsman's opinion, no further delay in the implementation of the plan is permissible. The Cabinet pointed out, on their turn, that the draft plan would be prepared for reviewing at meeting of the Cabinet as a part of the National budget compiling procedure for the year 2019.

As we all know, approval of the budget for 2019 in 2018 failed, and therefore implementation of the measures scheduled in the first half of 2019 for minimization of poverty and inequality of income are not implemented.

Rights of persons with disabilities

[52] With regard to the centenary events of Latvia, the Ombudsman draw the attention of the Centenary Office to the duty to ensure that persons with disabilities can participate at culture events on equal basis with other people.

In the context of centenary events of Latvia, the website *Latvija100* (*https://lv100.lv/*) provided information about all events organized to celebrate the centenary of Latvia including place and time of each event. The published information did not specify, however, whether or not the events were accessible for persons with disabilities.

The Ombudsman pointed out that persons with disabilities trend to finds out whether or not the event venus is accessible before going to the event. In order to provide information about accessibility of events, the Ombudsman proposed that the website *Latvija100* should also display the corresponding information (pictograms) to serve as information for persons with disabilities. Unfortunately, implementation of that recommendation took at least six months in quite negligent manner, thus indicating to limited understanding of the needs of persons with disabilities. Consequently, more attention should be paid to accessibility of culture events in general in future.

Right to housing

[53] The Ombudsman applied to the municipalities in Latvia during the reporting period to update information about the support available from municipalities in the handling of housing matters: advancement and dynamics of housing applicant queues during the period of four years, based on inspection cases concerning the municipal housing pool and its quality.

98 of 119 municipalities replied to the inquiry. According to the study, 10 258 persons (families) were registered for housing as of 1 April 2014; the

situation has improved as of 1 April 2018, and the number of persons (families) registered as applicants for housing is 7 215. Therefore, a positive trend can be observed in general, because housing applicant queues have decreased during the period by 3 043 persons (families). On the other hand, the number of individuals who need support in the handling of their housing matter has increased at certain municipalities.

The received replies enable the conclusion that available housing pool of the municipalities of Latvia comprises 3286 housings while only 1046 of them meet the requirements of the law “On Support in Handling the Housing Matters”. Therefore, two thirds of them are not suitable for residential purposes and for performance of the autonomous function. Further, the received replies demonstrate that no supplementing of housing pool or active improvement of its technical condition is taking place, with the exception of cities like Riga, Valmiera, and Cēsis. Supplementing of the housing pool basically takes place on the account of unclaimed property or through purchase or acceptance of donations.

The Ombudsman emphasized that the economic survey of Latvia published by the Organization for Economic Cooperation and Development (the OECD) in September 2017 demonstrates that expenditures allocated from the State budget to social housings and housing allowances to low income households are among the lowest ones. Housing allowances to low income persons through payment of rent in private sector are not effective as long as the private housing market remains underdeveloped. Therefore, sufficient number of social housing might serve as solution in the nearest future to improve their availability to low income households.

Therefore, municipalities performing their autonomous function – providing support to their inhabitants in the handling of their housing matters have to allocate funds as a part of their annual budget for development of the housing pool, in particular facilitating the availability of social housing to the vulnerable groups of persons.

[54] Individuals apply to the Ombudsman for several years already with their concerns regarding the distribution of water consumption difference in multi-residential houses. At present, water consumption difference is distributed according to the number of separate property units pursuant to the Cabinet Regulations No. 1013 “Procedure for

payment by apartment owners at multi-residential houses for the services related to the use of property units".

The Ombudsman found out that the Ministry of Economics had already formed a task force for exploring in relation to the minimizing of water consumption difference the issue of changing the border for provision of utility service, namely, payment only in accordance with readings of the meters installed at property units, as well as for discussion of the submitted proposals related to the minimization of water consumption difference. The Ministry of Economics, having assessed the opinions expressed by the task force, also held that resolution of the distribution of water consumption difference required improvement of the regulatory acts that govern the provision and receipt of water supply services at multi-residential houses, and consequently the regulatory norms that govern the housing policy should be extensively assessed. Therefore, elaboration of the potential resolutions for minimization of water consumption difference and the payment procedure is going to be continued in 2019.

Right to employment

[55] The Ombudsman repeatedly joined the discussion of amendments to the Labor Law during the reporting period since certain aspects of the Law impose restrictions on the rights and interests of employees. For example, the Ombudsman objected to the proposal of the Ministry of Welfare that a employment relations with a member of trade union on lasting sick-leave would be terminated without obtaining approval from the trade union.

Section 101, Part One, Paragraphs 7 and 11 of the Labor Law refer to health condition of employees. Health condition is eventually related to disability. Mass media recently quite often quote the opinion of employers on inability to terminate employment agreement in case of employee with disabilities and on unwillingness to employ persons with health impairments. The Ombudsman therefore appealed to the legislator for scrutinizing of the given issue to avoid the risk of breach of non-discrimination within the meaning of Section 91, the second sentence of the Satversme, and Section 29 of the Labor Law; the legislator however did not appreciate the above-mentioned reasoning.

The Ombudsman also objected to the proposal of the Ministry of Welfare that employer would no more be responsible for payment of severance fee in case of employee who terminates employment due to considerations of honesty and morality. The proposed amendments envisage that employer would only pay severance fee if the employee specifies a good cause in his termination notice. Application to the court is also transferred from employer to employee as the more exposed party, notwithstanding that employer is the one who actually objects to the payment of severance fee.

The Ombudsman noted that no information could be derived from summary of the draft law about the how probable would it be in practice that employer would treat the employee's termination notice as well substantiated and accordingly agree to pay the severance fee. Therefore, such norm would gain declarative nature in practice and not applicable, in particular given the sensitive circumstances involved in termination of employment relations.

The Ombudsman has also drawn attention to the fact that Section 100, Part Five of the Labor Law most frequently concerns breaches of unequal treatment (mobbing, bossing, whistleblowing). The principle of reverse burden of proof applicable to similar occasions stipulated that, where an employee points out to any circumstances that lead to presume groundlessly different treatment, the burden of proof is transferred to the employer who has to demonstrate that no such breach has been committed. If the legislator only defines the right of employees to file claims with the court, this contradicts with the principle of reverse burden of proof.

The Saeima unfortunately did not take into consideration the risks referred to by the Ombudsman and therefore, in the Ombudsman's opinion, the given amendments mean a "drop-back" in terms of implementation of the principle of socially responsible state, because the Parliament has reduced protection of the rights of employees as the most vulnerable party in legal employment relations. The weakness of trade unions giving way to the representatives of employers in relation to the given issues is also regretful.

The Ombudsman also objected to amendments to the Labor Law proposed by the Ministry of Economics and seconded by the Government regarding the possibility to reduce overtime pay where a general agreement is reached in the industry.

[56] The Ombudsman identified in the course of investigation of an inspection case systemic shortcomings in the work of the SRS that affect the rights of private individuals. Hence, where a person applies to the SRS for involvement in protection of such person's subjective rights, for example, to forward information to the Social Insurance State Agency about mandatory social insurance contributions of the employee because the employer intentionally avoids from doing so, the SRS does not treat such request as an application within administrative proceedings, notwithstanding that Section 20.[1], Part Three of the Law "On State Social Insurance" and Sub-Paragraph 30.1 of the Cabinet Regulations No. 827 of 7 September 2010 "Regulations concerning registration of the payers of state mandatory social insurance contributions and reporting on State mandatory social insurance contributions and individual income tax" provides such for right of the SRS.

On the given occasion, a young mother applied to the Ombudsman because, when paying wages to her, the employer failed to pay the due tax. The Social Insurance State Agency refused payment of social allowances. The SRS treated the application of that person as formal provision of information without addressing the issue on its merits.

Involvement of the Ombudsman insisting on the need to address the given issue resulted in tax surcharge by the SRS and notice to the Social Insurance State Agency of the tax surcharge; the Ombudsman concluded, however, that the SRS had no established criteria (procedure) to distinguish between the occasions where applications of persons seeking to exercise their subjective rights with involvement of the SRS in accordance with the regulatory acts, including tax control measures against third parties, are handled in accordance with the administrative procedure, and the occasions where information provided by the person is only taken into consideration. The Ombudsman therefore recommended that the SRS should identify and develop the relevant criteria (procedure).

[57] The Ombudsman has received a number of similar applications in 2018 outlining not only non-homogenous practice of the SRS's involvement in the exercise of social rights of employers and punishing of dishonest employers, but also certain problems of systemic nature.

In particular, where an employer makes no tax payments for a person and no reports on tax payment to the STS, the established vehicles for legal protection impose disproportional burden on employees. Regulatory acts stipulate, for example, that the employee has to apply for insolvency including payment of the state fee and a deposit that may considerably exceed the amount of potentially recoverable remuneration to ensure that the unpaid taxes are declared n the event of the employer's insolvency so that the employee can enjoy his or her social guarantees. The Law also imposes on employees the obligation to apply for dissolution of the employer and act as liquidator, etc.

Given the above-described problems, the Ombudsman intends to continue the studies of vehicles established for legal protection of employees, and the effectiveness and improvement of such vehicles in 2019.

[58] As a part of inspection case, the Ombudsman investigated an application where the applicant pointed out to breach of non-discrimination at workplace. The applicant was employed by SIA "Rimi Latvia", and fringe benefits from the said employee included health insurance policies. The applicant was on child care leave at that time and, when she contacted the employer, insurance of her health was refused on the grounds of personnel policy. SIA "Rimi Latvia" pointed out that health insurance was classified as fringe benefits not subject to regular provision, and therefore there was no breach of non-discrimination.

Having reviewed the inspection case, the Ombudsman draw attention to the regulatory norms that stipulate payment of wages without any discrimination, whether direct or indirect. According to the Labor Law, remuneration means regular payments to employees for their work, including wages and bonus payments prescribed by regulatory acts, collective agreement or employment agreement, as well as bonuses and any other remuneration paid in relation to their employment.

The term "remuneration" has broader meaning than "wages" since it includes wages, bonus payments envisaged in employment agreement, bonuses and any fringe benefits. The term "fringe benefits" include, for example, tuition fees, payment for sporting activities, and health insurance policies.

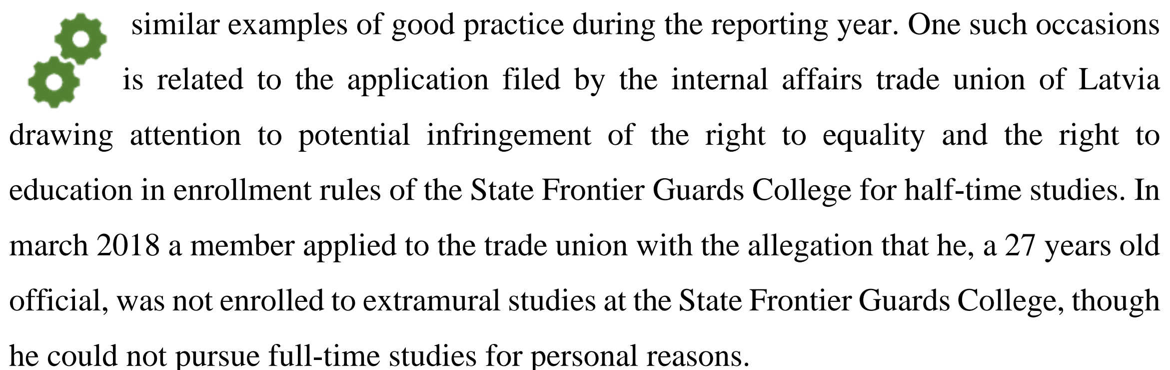
On the given occasion, internal regulatory acts of SIA "Rimi Latvia" stipulate that no health insurance is available to employees on child care leave. The said norm is gender-neutral, however it affects specific group of employees: those exercising their statutory rights for family-related reasons are subject to less favorable remuneration conditions.

In the Ombudsman's opinion, clarification provided by SIA "Rimi Latvia" does not conform with regulatory acts, and direct breach of non-discrimination because of family-related reasons is present here.

The Ombudsman recommended that SIA "Rimi Latvia" should modify their Health Insurance Policy to prevent discrimination, yet SIA "Rimi Latvia" refused to undertake such modifications.

Examples of good practice

[59] Along with the situations where the Ombudsman's recommendations are ignored or only partially accepted, in practice there are numerous occasions where opinion of the Ombudsman is accepted and the shortcomings are eliminated. There have been many similar examples of good practice during the reporting year. One such occasions is related to the application filed by the internal affairs trade union of Latvia drawing attention to potential infringement of the right to equality and the right to education in enrollment rules of the State Frontier Guards College for half-time studies. In march 2018 a member applied to the trade union with the allegation that he, a 27 years old official, was not enrolled to extramural studies at the State Frontier Guards College, though he could not pursue full-time studies for personal reasons.

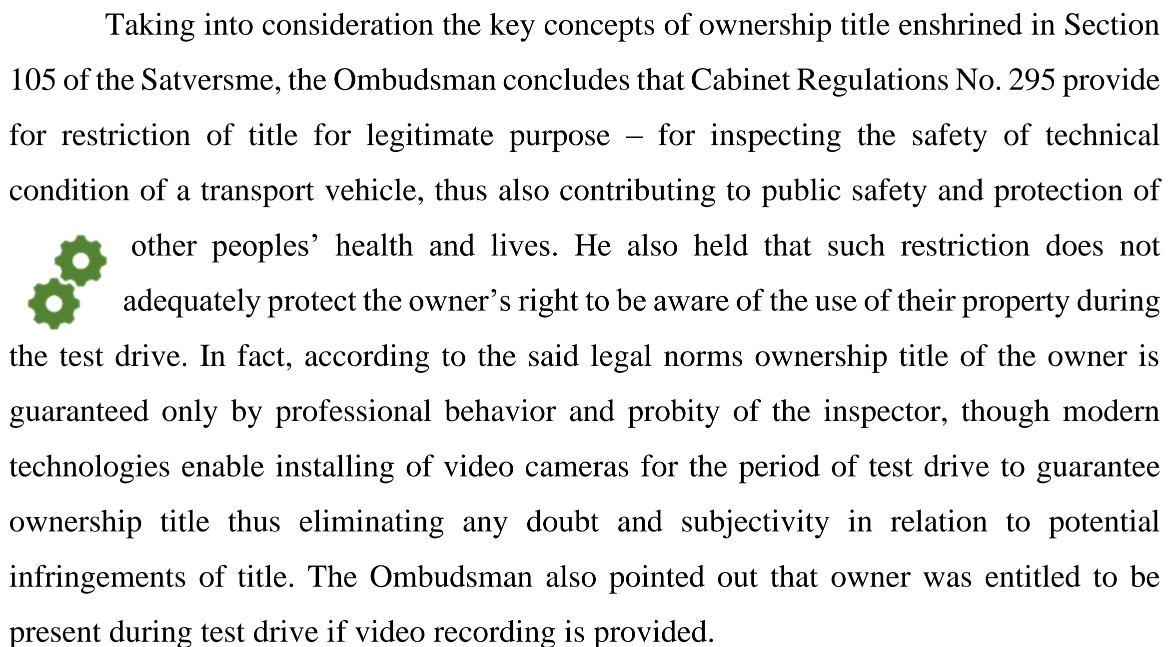


The Ombudsman contacted the Ministry of Interior and found out that, as a result of the Ombudsman's recommendation, the new enrollment rules of the State Frontier Guards College contained no requirement for service experience any more, and no minimum age limits were set for half-time studies. The Ombudsman appreciates the fact that shortcomings have been eliminated still in the course of reviewing the application.

Another example is related to complaint on actions on the Road Traffic Safety Directorate upon technical inspection of transport vehicle. The applicant stated that clutch of the transport vehicle has been damaged by official of the RTSD during inspection drive

outside the inspection station in absence of the owner. The inspector's fault was impossible to prove, yet in the applicant's view the regulatory act that permits such test drives amounts to disproportional restriction of title.

The Ombudsman identified that Paragraphs 20 and 24 of the Cabinet Regulations No. 295 of 30 May 2017 "Regulations concerning State technical inspection and technical control of transport vehicles in road traffic" were applicable to the above-described situation. The said norms stipulate that owner (driver) has to deliver the transport vehicle and registration certificate thereof to the inspector for inspection of technical condition. The inspector inspects technical condition of the transport vehicle and the related equipment by means of the inspection devices, tools and diagnostic equipment available at the technical inspection station. Where such inspection is impossible due to construction peculiarities of the transport vehicle or due to other objective reasons, the inspector is entitled to undertake a test drive in road traffic for inspection of technical condition of the transport vehicle.



Taking into consideration the key concepts of ownership title enshrined in Section 105 of the Satversme, the Ombudsman concludes that Cabinet Regulations No. 295 provide for restriction of title for legitimate purpose – for inspecting the safety of technical condition of a transport vehicle, thus also contributing to public safety and protection of other peoples' health and lives. He also held that such restriction does not adequately protect the owner's right to be aware of the use of their property during the test drive. In fact, according to the said legal norms ownership title of the owner is guaranteed only by professional behavior and probity of the inspector, though modern technologies enable installing of video cameras for the period of test drive to guarantee ownership title thus eliminating any doubt and subjectivity in relation to potential infringements of title. The Ombudsman also pointed out that owner was entitled to be present during test drive if video recording is provided.

The Ministry of Transport informed the Ombudsman in late 2018 about amendments to the internal regulatory acts of the RTSD so that the owner can be present at the transport vehicle during test drive. The Ministry of Transport substantiated their decision by the fact that the existing regulation did not prohibit the given solution. Therefore, the authority demonstrated responsiveness in addressing the problem.

The Ombudsman also mentions among positive examples of his work the case No.2017-15-01 "On compliance of Section 53.[1] Part Seven of the Medical Treatment Law with Section 91, first sentence, and Section 107 of the Satversme" adjudicated by the Constitutional Court; proceedings were instituted upon the Ombudsman's application since he believed that the contested norm restricted the right of medicine professionals to adequate remuneration for overtime work. The Constitutional Court rendered their award in case No.2017-15-01 on 15 May 2018 and established non-compliance of Transitional Clause 31 of the Medical Treatment Law with Section 91, first sentence, of the Satversme, and declared in null and void as from 1 January 2019.

Right to property

[60] During the reporting period the Ombudsman initiated upon application of a private individual an inspection case regarding legitimacy of actions on part of the SRS in the imposing individual income tax (IIT) on capital gains from real estate sold as a part of insolvency proceedings.

The Ombudsman established in the course of investigation that formally the SRS could apply general requirements of the Individual Income Tax Law to the applicant's situation because none of the exemptions stipulated in Section 9 of the Individual Income Tax Law applies, and this is also accepted by administrative courts. From systemic view, however, the applicant's situation reveals further problems, namely, discrepancies between the insolvency law and the tax law that are not clearly defined on the level of regulatory acts.

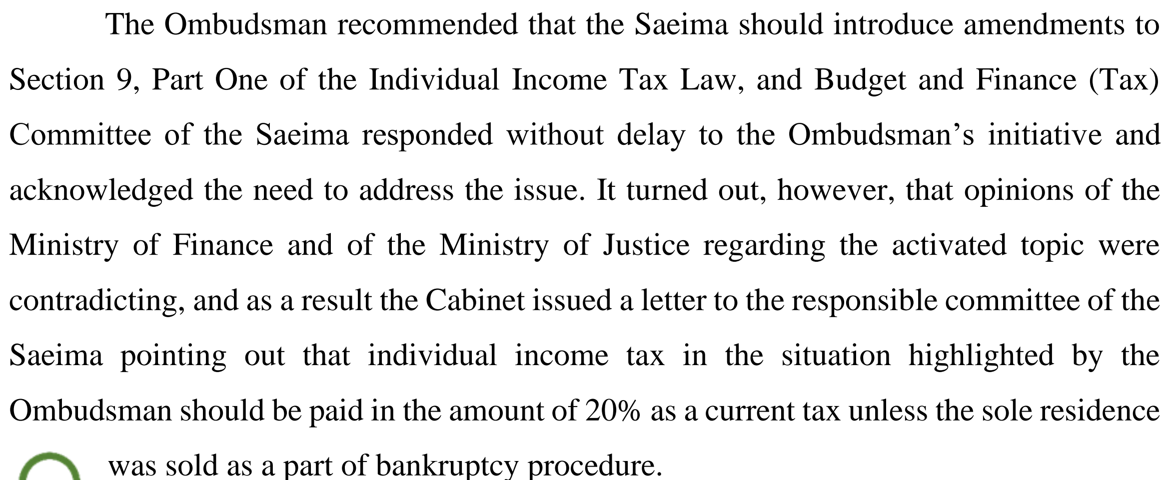
In particular, the Individual Income Tax Law provides for exemption from payment of the IIT in case of individual debts written off as part of release from obligations in case of insolvency procedure. Exemption from payment of the IIT also applies to the debts written off because no creditor claims are filed in respect of them. IIT is payable on such occasion in accordance with the general procedure.

Contrary to the above-stated, the Individual Income Tax Law stipulates that insolvent private individual has to pay IIT on real estate sold as a part of insolvent bankruptcy procedure.

Having investigated the situation, the Ombudsman concluded: historically, the legislator's action indicated to the purpose of exempting an insolvent private individual from payment of IIT on occasional (casuistic) income that would be non-taxable in accordance with the general procedure.

The said action on part of legislator and the essence and purpose of insolvency proceedings require that, for the sake of equity, the income gained as a part of bankrupt procedure should also be exempted from payment of IIT, similar to release from obligations procedure. Such opinion is rationally substantiated: recovery of funds on equitable terms throughout the insolvency proceedings for repayment of debt obligations and therefore achievement of the goal of insolvency proceedings, namely, release of debtor from obligations and granting of the creditors' interest to the maximum possible extent. The Ombudsman therefore established the need for amendments to the Individual Income Tax Law supplementing the said law with clear statement that no income gained from sale of movable and immovable property as a part of bankruptcy proceedings prescribed by the Insolvency Law is included in taxable income for the year and it is not IIT-taxable.

The Ombudsman recommended that the Saeima should introduce amendments to Section 9, Part One of the Individual Income Tax Law, and Budget and Finance (Tax) Committee of the Saeima responded without delay to the Ombudsman's initiative and acknowledged the need to address the issue. It turned out, however, that opinions of the Ministry of Finance and of the Ministry of Justice regarding the activated topic were contradicting, and as a result the Cabinet issued a letter to the responsible committee of the Saeima pointing out that individual income tax in the situation highlighted by the Ombudsman should be paid in the amount of 20% as a current tax unless the sole residence was sold as a part of bankruptcy procedure.



The Ombudsman discontents with the above-described solution and finds it appropriate to initiate discussion of exempting from IIT, or authorization of the SRS to join insolvency proceedings in the capacity of creditor. Taking into consideration the above-stated, the Ombudsman intends to apply repeatedly to the Saeima during this year for reviewing of this matter.

[61] The Ombudsman reviewed in the reporting period an inspection case No. 2018-38-26G concerning proportionality in the charging of state fee for corroboration of ownership title in case of actually cohabitating individuals.

Having investigated the ECHR case law, the Ombudsman established that the State has to provide legal framework for the recognition and protection of relations in unisexual families. The State has the right to decide on the form of such recognition and on the scope of rights granted to unisexual families. The Ombudsman further established that treatment of unisexual couples in the regulatory norms is neither reasonable nor proportional, and therefore it is discriminating in accordance with Section 91 of the Satversme.

The Ombudsman further pointed out that the principle of legal equality cannot be achieved by means of interpretation; there has to be action on part of the State in the form of positive obligation, that is, establishing of legal framework for the recognition and protection of actual cohabitation in case of two persons that treat themselves as a family. Development of regulatory norms and political resolution of the issue of recognition of actual cohabitation of two individuals is not aimed at derogation from the institute of matrimony.

The Saeima has on 15 December 2005 already adopted amendments to Section 110 of the Satversme and enacted them on 17 January 2006 providing that the State shall protect and support marriage –union of a man and a woman. Therefore, while the institute of matrimony is constitutionally enshrined and protected on national level, the same does not apply to the form of family where partners cohabitate without registration of marriage. The possibility to legally corroborate relations, however, constitutes an essential element of identity and "family life" of an individual.

Obligation of the State to establish legal framework for recognition and protection of different forms of family arises from the above-stated. Therefore, the Ombudsman recommended to the Cabinet and to the Saeima upon completion of the inspection case to meet the obligation of establishing legal framework for recognition of different forms of family in line with the latest conclusions of the ECHR and Section 110 of the Satversme, and to review the regulatory norms so that uniform understanding of the notion and protection of family, etc. is established.

The right to live in healthy environment

[62] Having received applications from private individuals, the Ombudsman studied the regulations on keeping of the territory of Riga City and the effectiveness of their application.

It was established in the inspection case that, first, authorities of Riga City Council demonstrate formal approach to administrative liability for continuous neglecting of territories; this is evident from the fact that imposed sanctions are limited to reprimands notwithstanding that the breaches continue from year to year; moreover, the owners neglect their obligation prescribed by mandatory regulations. Second, different decisions are adopted in similar actual and legal circumstances. Third, no effective cooperation exists between the authorities of Riga City Council, and this prevents proper protection of public interest; reaction to individual opinions is formal, without going into details, etc.

The Ombudsman applied to Riga City Council for improvement of the work of municipal authorities and to draft amendments to the mandatory regulations in question; Riga City Council replied they could not agree with the Ombudsman's conclusions on certain positions, however they would take steps to improve the work of municipal authorities. In spite of that, inhabitants of Riga continue complaining to the Ombudsman, and this situation demonstrates that statements made by Riga City Council are not implemented in real life; therefore, the Ombudsman has repeatedly applied to the municipality requesting them to amend the mandatory regulations on keeping the territory.

The Ombudsman notes that, as a part of the concerned inspection case, disproportional bureaucracy can be occasionally observed in the work of Riga City Council authorities.

Fostering of the principle of good governance

Good governance in public administration and civil service in relation to officials and employees

[63] In 2018, like in 2017, the Ombudsman repeatedly faced systemic shortcomings in the handling of civil service matters.

The Ministry of Health and the subordinated institutions should be especially mentioned here. First, it should be emphasized that, according to the interviewed representatives of this industry, problems here have historically developed as an adverse tradition. Political influence largely prevails in this industry, instead of the rule of law, and employees are therefore not happy.

Second, continuous systemic bossing and mobbing is observed in the industry. The Ombudsman has also received applications concerning unfair working conditions or unintelligible actions on part of the SRS and management of State Police. This means that a lot of work would be required to ensure that the principle of good governance is implemented throughout public administration.

[64] Having reviewed an application from an individual who asked to assess whether or not breach of the principle of good governance and infringement of the applicant's human right is involved in the situation where the applicant has been transferred on four occasions in a period of two years, the Ombudsman initiated an inspection case. It was established that formally no rights of the individual have been infringed by transfer because the applicant was dully listened to; she was transferred to appropriate offices and physically available on all occasions. In spite of that, the Ombudsman identified shortcomings in the internal organization of the given institution from the information provided by the SRS and the applicant, and such shortcomings eventually could result in breach of the principle of good governance from a wider context.

Given that the Ombudsman has earlier established in the course of inspection case "Regarding the ensuring of equal treatment in the actions of the State Revenue Service" that the SRS has adopted no regulatory act to govern the transfer of officials suspended as a result of decisions adopted in pending criminal proceedings, the Ombudsman

recommended to consider the conclusions of that inspection case and to take them into consideration in the drafting of internal regulatory act.

[65] Having reviewed an application filed by official of the State Police concerning the legitimacy of transfer (within the service), the Ombudsman established that the ordered issued by Chief of the State Police is not only non-compliant with the principle of good governance but also unlawful because is constitutes a breach of the law on service procedure for special rank grade officials of the institutions within the Ministry of Interior system and the Prison Administration.

In particular, the respective norms of law envisage transfer for definite period, and the official has to be transferred back to the previous position after the expiration of that period. Contrary to requirements of the Law, instead of transferring the official back to the previous position, Chief of the State Police dismissed the official and repeatedly appointed to the transferred position.

In early 2018, the Ombudsman applied to the State Police and to the Ministry of Interior for assessment of the given situation and taking steps in compliance with the requirements of law. The said institutions, however, neither assessed the situation in its merits nor took into consideration the presented recommendation. In the Ombudsman's opinion, such behavior on part of the State Police and the Ministry of Interior is non-compliant with the principle of good governance. It undermined public trust not only towards the State Police and the Ministry of Interior but also towards the rule of law in general.

[66] The Ombudsman has also identified essential problems in the field of good governance in relation to a complaint on formal investigation by the Ministry of Education and Science of a substantiated alarm by the applicant concerning the work of State Education Quality Service (SEQS). The MoES in fact quoted the opinion of the SEQS without ascertaining potential breaches of the rule of law.

Apart from other circumstances identified by the Ombudsman in the course of investigation, the SEQS is employing officials with different status, namely civil servants and employees, entrusted with similar job duties. In the Ombudsman's opinion, the existing

situation of the SEQS in relation to the preservation of status for most of the employees regardless that in fact they should have the status of servant is impermissible. This situation poses a number of risk. First of all, these are risks of legal nature because the situation contradicts with the Law on State Civil Service.

Second, the risk of non-transparency and arbitrariness is involved: servants are appointed in open tender while no tender is required for engagement of employees. This situation prevents any other professionals from application to a public administration office in a fair, open tender. An explicit negative example here: Director of the SEQS Quality Control Department is appointed to the office in the status of employee, while the status of such office is servant. The State Chancery has accepted such situation as permissible.

Third, the very conceptual idea has to be discussed here, why there is distinguishing between the status of servant and that of employee. Unlike employee, a servant is entrusted with the exercising of state power, and therefore subject to more stringent transparency and responsibility requirements (responsibility for filing servant returns, disciplinary liability, etc.) so that the community can exercise maximum supervision of legitimacy and effectiveness of the operation of public administration. Less stringent requirements apply to employees.

The Ombudsman emphasizes that the situation is still more unacceptable because the responsible authorities take to efforts to change it though being aware it for years.

The Ombudsman formulated a number of recommendations in relation to the above-described inspection case. In describing the attitude of the SEQS and the State Chancery, responsiveness and willingness to identify and address the issue on part of the State Chancery deserves appreciation in the given occasion, unlike that of the SEQS. In the Ombudsman's opinion, the SEQS in fact formally addressed the issue focusing on considerations that justify the existing procedure, and this does not demonstrate real implementation of the principle of good governance in the SEQS's activities.

Public Administration duty to improve services

[67] The Ombudsman requested the to investigate ensuring of the protection of personal data by the Social Service of Liepāja City Council in relation to a complaint where the provided information prima facie indicated to breach of the principles of the rule of law, legitimacy and good governance by the municipal authority thus compromising the protection of any personal data and undermining public trust in the State, with the view to promote the rule of law including development in equitable practice in the internal organization and ensuring compliance with the principle of good governance to serve general public interests.

The Data State Inspectorate informed that investigation was initiated and the Ombudsman would be informed about the results thereof. In spite of that, the Ombudsman has received no information about any progress. No information was also provided upon the Ombudsman's request. The Data State Inspectorate addressed the situation no sooner than representatives of the Ombudsman called the involved authority in accordance with the supervision procedure. The given attitude shows noncompliance with the principle of good governance. The Ombudsman observes potential systemic problems in the organization of work.

Information of the Ombudsman Office

[68] Operation of the Ombudsman Office in the performance of assignments prescribed by the Law is funded from the State budget. The scheduled funding from the State budget in 2018 was EUR 1 493.3 million, and the actual uptake was EUR 1 489.8 million. The amount of applied funds has increased in comparison to 2017 by 10.8% or EUR 145.2 thousand. The increase is attributable to the funding additionally allocated in 2018 for a priority action: the national preventive mechanism. As a part of performance of that function, periodic and systematic visits were conducted to the establishments where persons may be subject to restrictions/deprival of their liberty with the view to prevent torture, inhuman or humiliating treatment as the most severe infringement of human rights.

Staff of the Ombudsman Office including the Ombudsman counts 51 positions including 49 non-vacant positions in the reporting year.

Staff of the Ombudsman Office is composed of 6 men and 43 women. Distribution of the staff by education level: 40 hold MA degree, four BA degree, three officials hold university degree and two officials pursuing the BA degree in the reporting year.

[69] In pursuing the duty prescribed by the Ombudsman Law to promote public awareness and understanding of human rights and good governance and of the role, functions and performance of the Ombudsman, in 2018 the Ombudsman Office has been not only clarifying the opinions drawn on the basis of inspection cases as well as the opinions and petitions filed with the Constitutional Court but also expressed the opinion on certain matters of public relevance. The Ombudsman, for example, proactively focuses on the risks of social expulsion in society of Latvia, protection of the rights of children at care and treatment institutions and on health care funding reform and compliance with the principle of equality in fixing remuneration to medicine professionals.

In total, the Ombudsman Office has organized 108 events in 2018: discussions, educative seminars, meetings with industry experts, field consulting, conferences, etc. For example, staff of the office has organized public consulting and conducted seminars at six libraries outside Riga with the view to promote public awareness and understanding of human rights, vehicles established for the protection of rights and activities of the Ombudsman's activities in general and to ensure availability to the Ombudsman's advice on regional basis.

Similar activities not only improve identification of the Ombudsman institution but also provide detailed understanding of specifics of the Ombudsman's work and of the assistance available at complicated situations in human lives.

[70] Representatives of the Ombudsman Office conducted public awareness events during the reporting periods including development of different informational and explanatory materials. Apart from that, active cooperation has continued in the reporting period with young people and higher educational establishments, including traditional simulation of court sessions on human rights organized for the third time already.

The Ombudsman has invited students of legal science from all higher education establishments of Latvia to participate at the simulation and expects

not only to attract active and talented students but also to continue cooperation with outstanding experts in legal science. The purpose of such simulation is fostering knowledge of human rights and promoting the interest of prospective professionals in the given area of science so that young lawyers select pursuing of their professional specialization in human rights.

The Ombudsman has already announced registration of applicants for proceedings simulation on human rights in 2019!

[71] The Ombudsman has been actively participating at the work of various international and regional bodies within the scope of his mandate. The Ombudsman proactively cooperates with the UN on the international level and responds to enquiries and opinion polls conducted by different institutions of European countries and international bodies.

In 2018, for example, 12 international enquiries have been received at the Ombudsman Office on the topic of the rights of children including request for information about regulation of the homework to be accomplished by children; about determining of the budget allocated nationally for exercising of the rights of children; about the rights of children with disabilities; about terminology at educational facilities for children with mental impairments; about suspending/deprival of the right to custody for the reason of illness of parents; about rules on advertising toys, and request for detailed information about the national regulations in the international adoption and in the area of mental health of children.