

ANNUAL REPORT 2020

BY

# OMBUDSMAN OF THE REPUBLIC OF LATVIA

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2021

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Dear reader,



This year, most probably each address starts from the statement that the year 2020 has been abundant in challenges. It is certainly true for everyone because all had to accommodate to changes in work and private life during the continuous increases stress and to face the future with much more uncertainty than ever before.

Many of us had to quickly adapt to the new circumstances last March and to succeed in work from distance to ensure uninterrupted operation of our office and performance of the Ombudsman functions.

As soon as the state of emergency was declared and even after its lifting people have been addressing me asking different questions concerning the provision of fundamental rights in relation to the nationally implemented measures for limiting the spread of pandemics as well as concerning support available from the State to those affected by the consequences of pandemics for strengthening of their social welfare.

The year 2020 in general has been marked by active, multifaceted work, yet I would like to emphasize the four cases won before the Constitutional Court in relation to the minimum personal income as the most remarkable achievement. Even though formulation of the claim was focused on adequacy of the amount of minimum income, it was in fact a claim concerning lack of coordination of the social security system. Another ruling from this series, namely, on the minimum disability pension, is expected this year.

The previous period has made me to think of how does the pandemics highlight shortcomings in the areas I have been continuously focusing on, writing repeated letters, making recommendations, applying to the Parliament Deputies, the Prime Minister and also to the Constitutional Court. It is because of these issues lacking coordination that many groups of society have become so vulnerable at present when the whole world is affected by Covid-19.

People accommodated in State social care centers are among the core groups affected by the pandemics most severely. The pandemics experienced worldwide clearly shows that social care institutions accommodating high numbers of people are mostly exposed to the risk of massive spread of infection, and this is also demonstrated by the current statistics.

While last summer I was concerned by disproportionately high restrictions retained in respect of the customers of state social care centers in comparison to the rest of society, at present I can see that even the measures of unofficial forced quarantine have been insufficient to safeguard population of the care centers from the spread of Covid-19.

As the Ombudsman I would also like to draw attention to the relevance of human rights during the Covid-19. I would like to accentuate that human rights are neither repealed nor suspended even during pandemics. Therefore, the principles and considerations of human rights must be adhered to upon adopting of all governmental decisions including during the period of emergency.

**The Ombudsman Juris Jansons**



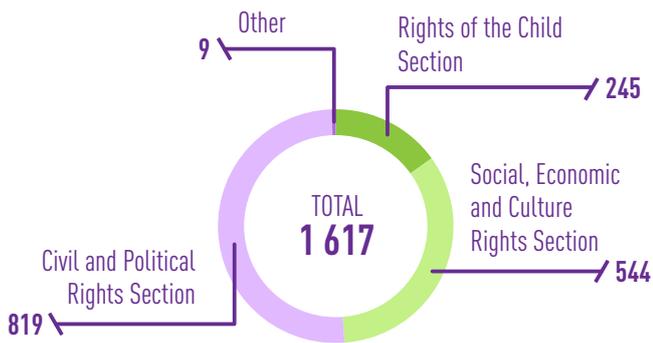
# FIGURES AND FACTS OF THE YEAR

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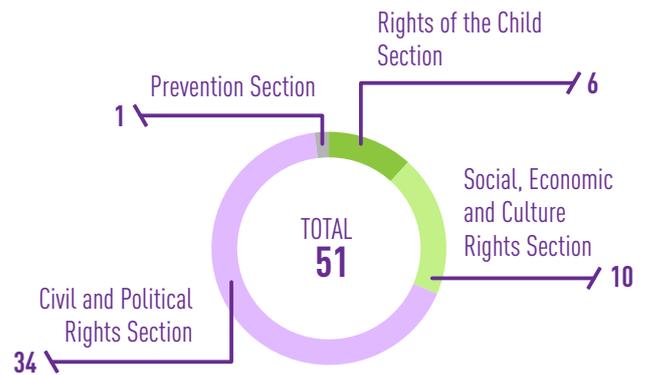
## IMPLEMENTATION OF THE OMBUDSMAN'S RECOMMENDATIONS (%)



### APPLICATIONS FROM PERSONS

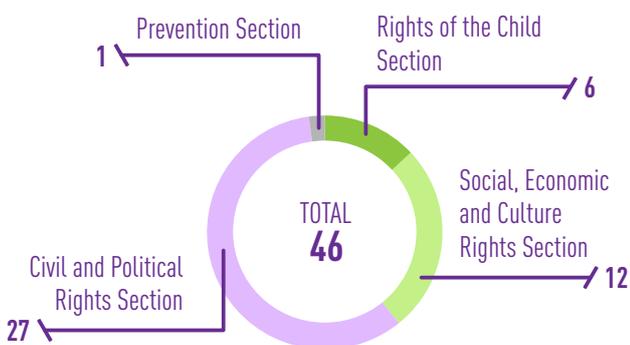


### INSTITUTED INVESTIGATION CASES

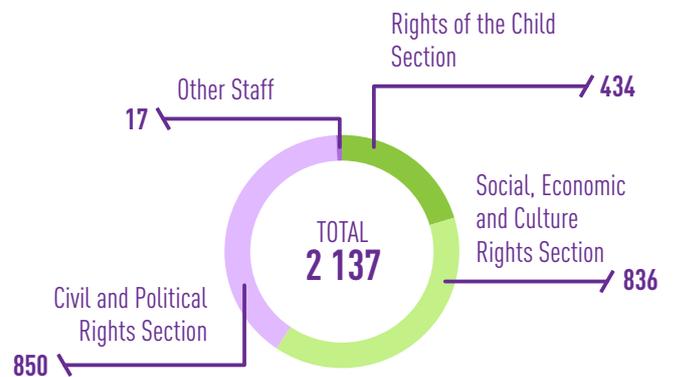


Including at our initiative - 5

### COMPLETED OR DISMISSED INVESTIGATION CASES



### REPLIES AND CORRESPONDENCE RELATED TO APPLICATIONS



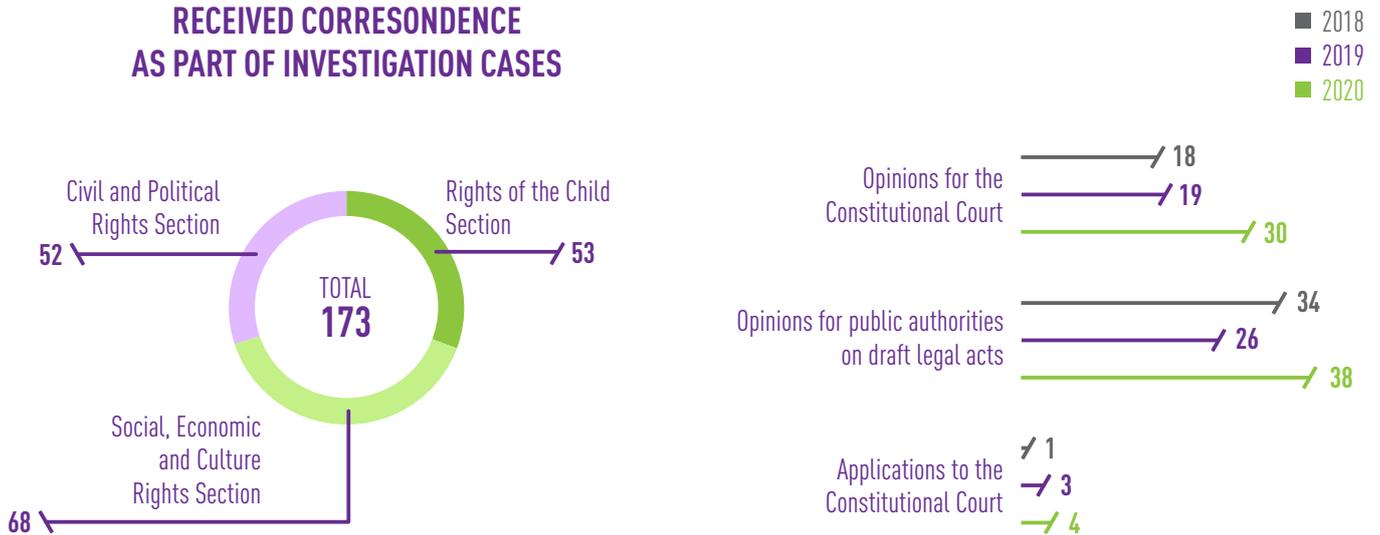
### DOCUMENTS RECEIVED AND SENT BY OMBUDSMAN OFFICE



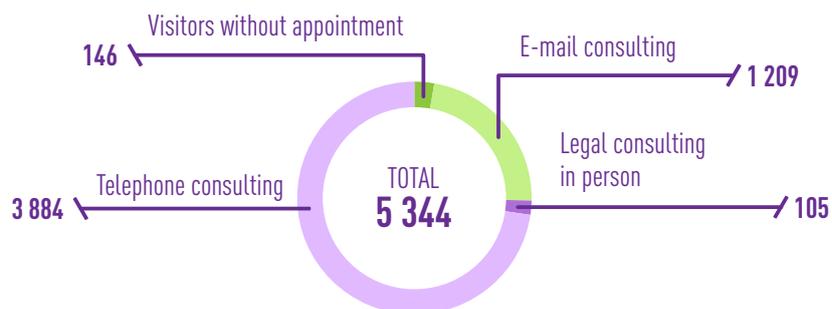
### DOCUMENTS RECEIVED AND ELECTRONICALLY



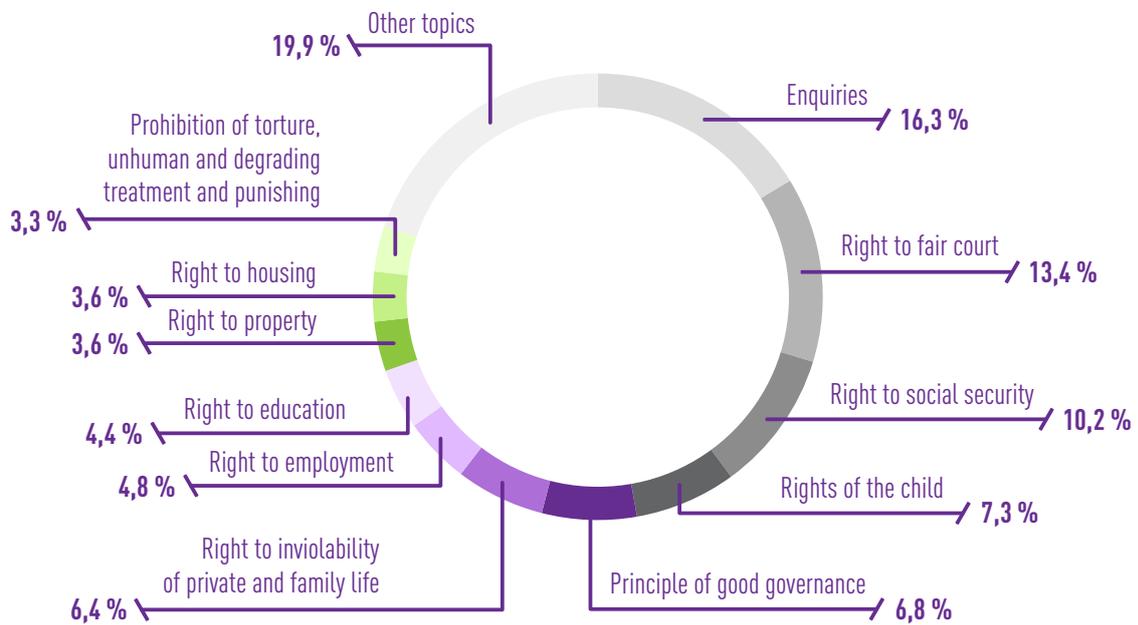
### RECEIVED CORRESPONDENCE AS PART OF INVESTIGATION CASES



### CONSULTING



### TOPICS OF LEGAL CONSULTING (%)



### COVID-19 RELATED APPLICATIONS



**108**

E-mails



**77**

Applications in paper form

### INFORMATION FOR PUBLIC



**4 785**

Publications



**102**

News and press releases



**72**

Events, seminars, discussions organized by the Ombudsman



**145**

Lectures, participation at discussions at events organized by other institutions



**102**

Participation at groups of action and commissions

09.01.2020.



*Representatives of the Ombudsman Office participating at discussion of improvement of the procedure for identification of victims of trafficking in human beings as a part of extradition procedure*

12.02.2020.



*The Shadow Day at the Ombudsman Officebirojā*

13.10.2020.



*Press conference held by the Ombudsman "The right to live in society: deinstitutionalization process and state social care centers in reality"*

12.11.2020.



*Recording of addresses by organizers of the Contest "Annual Award for Support of People with Disabilities – 2020": Juris Jansons, the Ombudsman; Anda Lamaša, Deputy Director of the Latvian National Library; and Ivars Balodis, Chairman of the Board of the Association "Apeirons"*

03.12.2020.



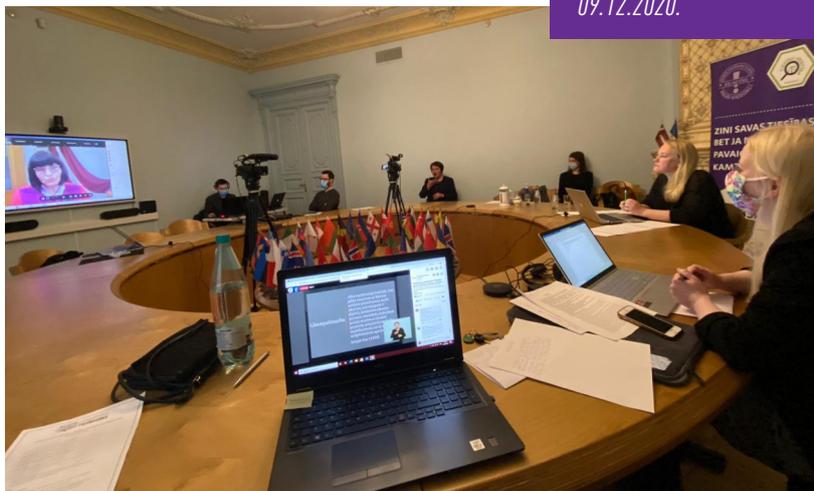
*Presenting of the virtual "Annual Award for Support to People with Disabilities – 2020" to Ēstere Zemīte*

03.12.2020.



*Presenting of the virtual “Annual Award for Support to People with Disabilities – 2020” to Valters Sīlis*

09.12.2020.



*Behind the scenes of online conference of the Ombudsman  
“Why is it so hard to trust the opinion  
and decisions of the government at crisis situation?”*



# PUBLIC AWARENESS AND INVOLVEMENT

# PUBLIC AWARENESS AND INVOLVEMENT

## Public awareness

### *Discussions*

The Ombudsman Office arranged in 2020, jointly with business partners, multiple discussions of the project “Implementation of effective monitoring and extradition procedure”. Various activities have taken place as part of the project: numerous discussions, training sessions and meetings with participation of experts from different areas for exchange of their topic-related experience and knowledge, as well as representatives of the Ombudsman Office.

### *Conferences*

Representatives of the Ombudsman Office participated in 2020 also at numerous conferences arranged by business partners on various topics: [“Legal challenges in sports”](#) held by the Anti-Doping Office of Latvia; conference hosted by the organization “Sustento” [“The UN Convention “On the rights of persons with disabilities – 10 years in Latvia”](#), and also at the scientific conference arranged by municipality of Jēkabpils City and the Ministry of Welfare with in cooperation with the Ombudsman Office [“Actualities of institutional cooperation and development vision in the field of protection of the rights of children”](#).

### *Informational materials*

Two informational and explanatory materials have been developed by the Ombudsman Office in 2020 for providing information to different social groups on their rights. These are: informational booklet/journal [“Key information on life in social care center”](#) and informational material [“Human rights in mandatory extradition process”](#) developed as part of implementation of the project “Effective enforcement of monitoring and extradition procedure”. An educational material has been developed Identification of Victims of Trafficking in Human Beings as Part of Extradition Procedure. The informational material is available [here](#).

### *Facebook site*

Communication Section of the Ombudsman Office created in late 2020 the [Ombudsman Site](#) on the social medium *Facebook* to provide information on activities of the Ombudsman and the scheduled events. It also enables direct communication with public because replies are published un various questions asked to the Ombudsman on the *Facebook* site.

## Community involvement

### *Annual Award for Support of Persons with Disabilities – 2020*

For six years already the Ombudsman in cooperation with the “Apeiron” Organization for People with Disabilities and their Friends and the Latvian National Library is holding the contest “Annual award for support of persons with disabilities”. The purpose of such contest is to identify examples of good practice, highlight and appreciate individual achievements and operation of the NGOs providing support to people with disabilities and seeking to improve the quality of their life on daily basis.

In 2020, the contest experienced a record high number of applications – 63. Further information on the contest and winners of awards is available [here](#).

### *The annual Ombudsman conference*

In 2020, the Ombudsman Conference was held in unusual manner – online. The conference addressing the topic “Why is it so hard to trust the opinion and decisions of the government in crisis situation” brought together experts in various fields who discussed the key topic from scientific, legal and business angle.

Further information on the conference is available [here](#).

### *Press conference*

On 13 October 2020, the Ombudsman jointly with the society “Latvian Movement for Independent Living” held a press conference [“The right to live in society: deinstitutionalization process and State social care centers in reality”](#). It was aimed at presenting the reality of deinstitutionalization process and State social care centers in Latvia to the media and public.

### *Public opinion poll*

The Ombudsman Office conducted an opinion poll in 2020 during the period from March 9 to March 23 on awareness and experience of population in application for legal assistance from administrative procedure authorities and court to establish whether and what do people know about the possibility to apply to a public of municipal institution for covering of lawyer or attorney fees in case of complicated administrative proceedings, taking into consideration financial condition of the applicant.

1 222 respondents participated at the opinion poll; further information is available [here](#).

## Education on Human Rights

### *Shadow Day*

The annual [Shadow Day](#) was held by the Ombudsman Office on 12 February 2020. Representatives of the Ombudsman Office were shadowed by six students from various Latvian schools. They could find out what do the human rights and good governance mean, which areas of daily life they affect, and ask questions on routine work of a lawyer.

### *School program “Prepared for Life”*

As part of the school program “Prepared for life”, representatives of the Ombudsman Office conducted educational lectures in 2020 at various Latvian schools to increase the students' knowledge of the rights and obligations of themselves and other children and to improve their skills in responsible approach to their rights and obligations.



HUMAN RIGHTS ISSUES  
RELATED TO THE SPREAD  
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# HUMAN RIGHTS ISSUES RELATED TO THE SPREAD OF COVID-19 INFECTION IN

## Introduction

The Covid-19 pandemic has also affected the nature of complaints received by the Ombudsman Office just like any other area in the reporting period. Each decision and communication by the government with the view to limit the spread of Covid-19 infection found nearly immediate reflection in the content of e-mail correspondence and applications received by the Ombudsman Office.

In reply to the question whether or not the state of emergency can justify restriction of human rights it should be reminded that restrictions of human rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms have been and still are a reality for population of Latvia as well as of other Member States of the European Union. [Article 15 of the Convention](#) provides certain deviations from adherence to the norms of the Convention, however the rights contained in such norms should be narrowly interpreted to permit deviation from obligations only to the extent inevitable due to extraordinary nature of the situation. It does not mean that the government of Latvia could impose disproportional restrictions on the rights of population in any areas or any manner not inevitably essential for protection of public health to limit the spread of Covid-19 pandemics. Restrictions are permissible and even necessary as long as it is kept in mind that human rights have not been rescinded, people have not been deprived of their right to file individual complaints with law enforcement authorities, such as police, prosecution office, or court.

The Ombudsman has been thoroughly following up to ensure that restrictions of personal rights are proportional and their duration is not incommensurable. Particular focus was on exact, timely enabling of population to exercise their right to availability of information in compliance with the principles of human rights and on provision of the rights of vulnerable groups of population.

It may be quite clearly concluded at present that neither the Parliament nor the Government have been prepared for the crisis situation. Even though convincing pragmatism could be observed initially in the monitoring and handling of epidemiologic situation, communication of clear, plain, objective and timely information to the population failed, moreover communication in various forms to reach all groups of population including persons with impaired vision or hearing, for example, or persons accessing to information on social networks. One observing from outside could certainly feel that the government had no clear plan of actions appropriate to certain number of infected people, whether or not, and how would be availability of health care provided, support measures available if restrictions are imposed on economic activities, or similar.

Initially, growing number of applications concerned stoppage or unpaid leaves directed by employers, their specific requirements or, on the contrary, lack of care in Covid-19 circumstances; excessive interference by police in privacy of self-isolated persons, free lunch and food packs for school children.

In autumn, people applied to the Ombudsman wondering whether or not the requirement to use face mask at public places, including by school children, restrictions imposed on operation of certain sectors of national economy and restrictions applied at shops could be treated as proportional and whether or not they infringe the fundamental human rights.

## Initiatives

### *Communication by the government with public*

Following up with the situation in our country during the Covid-19 pandemic and monitoring how the public authorities inform the population on the measures adopted to overcome the crisis, the Ombudsman has identified a number of problem aspects to be considered by the government in order to improve public awareness and better understanding of decisions adopted by the government.

The Ombudsman's letter is available [here](#).

### *Regarding persons in closed type facilities*

The Ombudsman has applied to the government for paying particular attention to the recommendations issued by the international bodies and binding upon Latvia for ensuring adherence to the human rights during the pandemics to avoid infringements of human rights insofar practicable, especially in relation to the persons in closed type facilities.

Such persons certainly should be considered as a high risk group exposed to massive infection, and therefore particular attention in preventing the pandemics should be paid to ensure that such persons are enabled to exercise their right to health care in due time and quality and in responsible manner. It is also relevant to ensure that uninterrupted access is available at each closed type facility to qualitative information from direct sources on the symptoms of disease and spread of pandemics to minimize lack of knowledge of the current situation. Information must be also available for persons with various disabilities including persons with retarded mental development.

The Ombudsman has issued the following in relation to protection of the rights of persons kept in closed type facilities:

- [A letter to the Cabinet](#) on the application of measures for limiting the spread of Covid-19 at closed type facilities;
- A letter *"On the provision of human rights at continuous social care and social rehabilitation institutions during the Covid-19 pandemics"* to all social care centers reporting to the Ministry of Welfare (5 institutions with 25 branches) and 146 continuous social care and social rehabilitation institutions reporting to municipalities, non-governmental organizations or private merchants and providing services throughout the territory of Latvia;
- A letter *"On the provision of the rights of children during the state of emergency"* to all municipal non-family care institutions;
- [A letter](#) *"On the situation at continuous social care and social rehabilitation institutions during the Covid-19 pandemics"* to the Ministry of Welfare.

### *Regarding control over self-isolated persons*

The Ombudsman has issued the following recommendations to the State Police on respecting the right of privacy in the course of supervision of self-isolated persons:

- Contact initially the persons to inform of supervision and methods of supervision. Seek to agree on supervision to minimize infringement of the persons' privacy;
- Consider the possibility to apply more widely the supervision solutions that enable protection of persons from disclosure of their sensitive health information to their neighbors. The situation where neighbors are interrogated about the person in question and information is disclosed about such person's health condition should be avoided. Along with that, where the use of digital solutions is considered, it should be noted that such solutions may only be used to the extent necessary for achievement of the legitimate purpose, and proportionality of such tools should be assessed with particular care;
- The need for and intervals of attendance visits should be assessed taking into consideration previous cooperation with police officers by the person in question, age and health condition of the persons who are subject to supervision and other individually assessable criteria;
- Instruct the State Police officers to ensure respectful treatment of contacted persons taking also into account the difficulties experienced by such persons because of disease and isolation.

### *Restrictions in mental care*

The Ombudsman received information from clergymen drawing his attention to the fact that access by clergymen and chaplains to patients at hospitals and treatment facilities, social care centers and prison facilities was incommensurably and unequally prevented.

The Ombudsman applied to the concerned ministries for considering how would the right of persons to provide and access to mental care be implemented with the existing situation and for providing access to information on the relevant regulations to clergymen as well as to the establishments listed in Section 14, Part Five of the Law on Religious Organizations.

### *Regarding availability of custodian courts*

The Ombudsman applied to the Ministry of Welfare for providing a prompt development of regulations on transferring the functions of custodian court to a custodian court of another municipality where the former is unable to perform such functions because of Covid-19 affected staff, and also to develop recommendations for municipalities and custodian courts for their operation until development of the required regulatory norms.

Regulatory norms were amended with due regard to the above recommendation.

### *Regarding the exercise of visiting rights*

The Ombudsman has issued a letter to the Government recommending to promptly develop an informational material on the exercise of visiting rights in respect of children during the Covid-19 crisis.

### *Regarding the requirement to children at special educational establishments for wearing a face cover and on the visiting right of grandparents*

Given the uncertainty among parents regarding observation of the rights of a child and epidemiologic safety, the Ombudsman applied on 21 December 2020 to the Center for Disease Prevention and Control for supplementing the information provided to public including clarification of the wearing of masks at special educational establishments and the exercise of visiting rights.

### *Regarding the provision of teaching aids*

Schools have to provide communication with school children by alternative means to ensure that children who have no personal computer or other devices at home and who have limited access to internet connection are able to efficiently participate at distance learning and pursue their education. School children or their parents should be able to obtain information about their homework either in telephone conversation with teachers at agreed time or in person from a representative of the school. Alternatively, the school would prepare printed sets of teaching aids and distribute them to children or their parents for use in education process.

The question of making a digital teaching aid and internet connection available for a child should be coordinated with the educational establishment. Municipalities can eventually subscribe for routers and provide them on temporary basis to the students who need them.

Amendments to the Education Law adopted on 20 November 2020 also stipulate that municipalities have the right “to fund acquisition of or subscription for electronic resources, interactive teaching platforms and educational and communication software by the subordinated educational establishments”.

### *Regarding arrangement of graduation events*

The Ombudsman received questions from school directors and parents of children about how to arrange graduation events at educational establishments in strict conformity with the measures for limiting the spread of Covid-19. The Ministry of Education and Science defined [the appropriate guidelines](#) upon the Ombudsman's proposal.

### *Regarding unequal and discriminating treatment in approach to the downtime support*

In spring 2020, the support measures were changed nearly from day to day, in particular in terms of eligibility to support by certain groups of persons. Notwithstanding the Prime Minister's statement that "we have as much money as never before", the principle followed in practice was rather "better less than more". Lack of individualized approach was justified by ease and speed of administration, and therefore numerous people who were facing crisis initially could receive no support because of formal obstacles, mainly because a person had some other source of income, like pension, half time salary or income from apartment lease.

No support was also available for a person employed by a public or municipal establishment of a share company: support was declined, for example, for a person employed on prime-time basis in tourism industry and concurrently with that as a teacher of music at the municipal music school a few hours a week.

The Ombudsman identified unfair and discriminating situations in relation to the granting of downtime support last spring and applied to the government for their elimination as soon as practicable with regard to the following recommendations:

- Employed persons who receive old age pension, service pension or disability pension are eligible to downtime support as well as the persons engaged in economic activity. The government took [the recommendation](#) into consideration and eliminated the shortcoming.
- All persons operating in good faith in tax regimes recognized by the State are eligible to downtime support including [self-employed persons](#), payers of patent fee and recipients of royalties, and also [self-employed pensioners](#). Unfortunately, no support was provided in spring by the State to the payers of patent fee and recipients of royalty.
- Non-flexible criteria for the granting of downtime support were identified on numerous occasions. [In the Ombudsman's opinion](#), criteria for the granting of downtime support should be much more flexible, including the State Revenue Service should be authorized to assess the severity of breaches committed by company officials, for example, and approach to such breaches by the company.
- Another [point to note](#) was that downtime support should also be granted to all medicine professionals who were not directly involved in overcoming of the Covid-19 crisis yet subject to limitations in the provision of health care services due to the state of emergency.
- The Government was asked to draw attention to the fact that the minimum amount of downtime support was not clear (initially 130 euro, later 180 euro) as well as the needs and daily spending it was supposed to cover. Initially it was fixed according to the low level income and later increased by 50 euro.
- Recipients of disability pension should also be eligible to [unemployment support](#) because they are eligible to the status of unemployed persons and consequently to support. The legislator, however, did not eliminate that shortcoming.

### *Regarding discrimination against health care personnel in the granting of public transport fare exemptions*

Given the limitations applied by the municipality of Riga in public city transport whereby health care professionals employed by the municipal share companies of Riga, [the Ombudsman asked](#) the municipality of Riga and the Government to prevent discriminating treatment and to exempt from public transport fare all health care professionals employed by the municipality of Riga and involved in the overcoming of the Covid-19 crisis. The Ombudsman's recommendation was not taken into consideration.

## Analysis of cases

### *Regarding different treatment of patients during the Covid-19 pandemics*

Individuals have expressed their concerns in relation to the announced information that Ethics Commission of the Latvian Association of Doctors has decided: it is ethical to avoid application of all possible means for treatment of persons over 75 years, chronic patients and other patients with severe conditions in the circumstances of the Covid-19 crisis so that younger persons with less severe conditions could have access to the therapy that would eventually save their lives.

[The Ombudsman informed](#) that the guidelines issued by the World Health Organization “Ethics and Covid-19: allocation of resources and defining of priorities” permit prioritizing of patients, as long as actions by health care professionals are based on key principles of medicine ethics and implemented as appropriate in each situation seeking to save as much lives as possible. Respect to human life is a core of any actions by health care professionals so that health care is provided regardless of the patient’s nationality, race, religion, age, gender, sexual orientation, political beliefs and public position without discrimination in any form.

### *Regarding the requirement to wear face covers*

The Ombudsman approached to the requirement imposed by the Government for wearing face covers from the aspects of legislation quality, right to privacy and freedom of movement, and no breach of the human rights was identified. [The Ombudsman clarified](#) to private individuals the legal remedies available to persons and pointed out to the considerations the State should be guided by when deciding on restrictions imposed on human rights.

### *False news*

The Ombudsman received during the reporting year an application from a private individual who objected to deletion of Covid-19 related content from social media and against the *Facebook* initiatives for check of facts implemented in Latvia by the Baltic Center for Research Journalism “Re:Baltica”.

The Ombudsman noted that, from the view of human rights, the issue of eventual limitation of false news forms a part of legislator agenda in numerous European and Asian countries, yet at present there is no common acceptance of the extent to which the State may interfere with the exercise by persons of their freedom of speech. On the other hand, the Ombudsman noted that the use of Internet platforms was governed by their respective rules of operation and that legal norms did not prohibit control of contents by such platforms and to censor the information they find contradicting with such rules of operation.

### *Regarding the freedom of speech*

Chief Editor of the newspaper “Ventas Balss” wrote on 13 November 2020 in her rubric “Thinking of environment and us”: “[...] *what has happened to the young generation, why have they lost their chivalry, the youngster craziness or simply their own position, as evident at present most objectively from their blind obedience to the wearing of masks that are most obediently worn by young people. [...] What is going on in their heads? They manifest no resistance, no personal view at all. Once we have to, we have to! [...]*”

In the Ombudsman’s opinion, journalists should adhere to higher professional and ethical standards and avoid encouraging people to ignore the rules adopted by the Government where their breach may lead to liability. The Ombudsman recommended that people continue the pursuing of the freedom of expression and speech to express their position on situation in our country and decisions adopted by the Government, whilst avoiding from enticing the society, in particular children and young people as one of the most vulnerable social groups, to ignore the health protection measures imposed by the national law so that young people are exposed not only to danger to their health but also to the risk of administrative liability.

### *Regarding free lunch for school children*

Most of uncertainties among population in Spring 2020 were related to the provision of free lunch for school children.

The Ombudsman encouraged, for example, three neighboring municipalities to cooperate and seek the best solution for families in need regardless of educational establishment attended by the child whether or not the child has reached school age, and to prevent situations where no equal treatment of all children from one family is provided, and also to assess whether or not free lunch is made available to all eligible children without unequal treatment of the children attending schools on the territory of another municipality where no support (substantial lunch) can be provided to them because of distance or other objective reasons.

Unreasonably unequal treatment was identified in another municipality in respect of children from certain groups of society, for example, food packs were provided for low income families and large families while families with children outside the said groups received certain amount of money. It was argued that needy, low income or large families could use money for other purpose than provision of food products (buy alcohol, for example). In the Ombudsman's opinion, such unequal treatment is neither legitimate nor reasonable.

The Government had determined<sup>1</sup> that municipalities were entitled to use funding from the State for catering of children in grades 1-4 from needy, low income or large families (regardless of form or location of education). Riga City Council had decided<sup>2</sup> that, starting from 13 March 2020, support would be provided to the families of all students who have the status of needy or low income family or who are registered in family support register of the municipality of Riga where at least one family member is attending an educational establishment on the administrative territory of Riga city. No family could apply for support from municipality of Riga unless their children were attending educational establishments in Riga.

In the Ombudsman's opinion, such a norm was unsubstantiated. The Ombudsman's recommendation was taken into consideration by Riga City Council, and the invalid legal norm was amended accordingly.

The Ombudsman has also reviewed applications concerning non-conformity of the content of food packs provided for school children during the state of emergency with the requirements of regulatory acts regarding selection and quantity of food products. Composition of food packs was highly different even within a single municipality.

The Ministry of Health has prepared recommendations to facilitate the composition of food packs by municipalities during the state of emergency. Recommendations are intended for information purpose, and decision on the content of food packs is made by each individual municipality specifying also requirements to the products contained in food packs. The Food and Veterinary Service controls conformity of the food packs with the requirements set by the municipality, rather than with the nutritional norms or recommendations issued by the Ministry of Health.

### *Regarding unequal treatment in sports*

The Ombudsman has received an application concerning the adopted changes in co-funding of practical classes in a football school. According to the new procedure, the fee payable for one child remains unchanged where at least one of parents is employed by a public or municipal authority, that is, 100% exemption, while 50% fee applies to children where both parents are employed in the private sector. In case of siblings, 100% exemption applies to the second child during the period from April 2020 until full time practical classes are resumed.

The Ombudsman could not share the opinion of the football school that decision on application of exemptions from co-funding of practical classes depending on whether parents of the trainee are employed in the private sector or in public/municipal sector was objective and substantiated. In the Ombudsman's opinion, no equal treatment is provided in the application of exemption from co-funding of practical classes: for example, no exemption is applied for one child where the parents are employed by a municipality in non-skilled positions and receive remuneration below the minimum wages fixed in the State while 50% exemption applies for a child with both parents employed by a private company in the IT industry and receive remuneration well above the average.

<sup>1</sup> Cabinet Regulations No. 103 of 12 March 2020 "On declaring of the state of emergency", subparagraph 4.3.3

<sup>2</sup> Decision of Riga City Council No. 220 of 3 April 2020 "On support provided by the municipality of Riga City for families of school children during the state of emergency".

### *Regarding restrictions imposed on legal capacity during the state of emergency*

The Ombudsman established as part of the investigation case No. 2020-30-4D that hearing on first instance of an application for imposing restrictions on legal capacity of a person with mental impairments (disability granted for the person since childhood and the person has reached the age of majority) was scheduled on a date more than one year from filing of the application, moreover the court meeting scheduled in spring was postponed in contradiction with the instructions issued by the Supreme Court and applicable during the state of emergency declared in our country. The rights of person with disability were not efficiently provided even though temporary regulation was ordered in the given case. Earlier hearing of the case was achieved by application to the chairperson of the court in question, and therefore infringement of rights and interests of the vulnerable person was prevented.

Assessment of an application filed by a person with restricted legal capacity in the investigation case No. 2020-42-4D for reviewing the restrictions imposed on the person by revealed no breaches related to postponing of the hearing during the state of emergency declared in our country. The court had thoroughly analyzed the criteria prescribed by regulatory norms (relevance of and objective need for infringement of the person's rights) and their attribution to circumstances of the given case. Therefore, no disproportional restriction of rights of a vulnerable person to hearing of their case in reasonable time was established.

### *Regarding access to court*

An applicant complained in relation to his right to be heard and access to court that his case had been heard in appellate and cassation instance in record procedure instead of oral procedure requested by him. The Ombudsman concluded that, notwithstanding that hearing of a case in its merits in oral procedure is available according to the civil procedure by two court instances: the first instance and the appellate instance, hearing of the applicant's case in appellate instance was subject to the state of emergency declared in our country for limitation of the spread of Covid-19.

Taking into account the above-stated and according to the principle enshrined in case law of the European Court of Human Rights regarding the right to oral procedure at one court instance at least, no breach of effective protection of rights was identified by the Ombudsman in the part concerning the right to access to court and the right to be heard.

### *Regarding the limitation of spread of the Covid -19 infection at prison facilities*

Several applications have been received concerning epidemiologic safety measures and restrictions on rights imposed at prison facilities:

- Concerning the actions on part of the officials of Riga Central Prison ignoring the epidemiologic requirements and using no protective face masks. The Ombudsman applied to the Prison Administration for conducting inspection of the above-mentioned actions and on the cases of Covid-19 infection identified at Riga Central Prison and Jelgava Prison;
- Concerning epidemiologic safety at court meetings held in video conference mood, in particular regarding the size of premises and number of people there. A recommendation was issued for the Prison Administration to provide larger space for that purpose. The Prison Administration stated in their reply that anti-epidemic measures were taken at premises after each video conference and no participants of the video conference in question had any claims in relation to the given circumstances with regard to the applicable restrictions;
- Concerning the prohibition of visiting applied at open prison sections while short-term visits were permitted at closed and partially closed prisons. The issue of alternative measures was brought for discussion to ensure that prisoners accommodated at open prison sections could meet their family members. In the opinion of the Prison Administration, the different treatment was compensated by use of mobile telephones allowed to such prisoners for contacting their families. In the Ombudsman's opinion, once short-term visits are allowed at closed and partially closed prisons, the possibility to meet family members should be also provided at open prison sections, subject to epidemiologic safety measures.

### *Regarding limitation of the right to be present at child birth*

The Ombudsman established that decision on limiting participation at child birth was made upon defining of the epidemiologic requirements in relation to the rapid and uncontrolled spread of the Covid-19 infection and also because of infection cases identified upon screening among family members of the patients. In the Ombudsman's opinion, where limitation of the right to be present at child birth in a hospital arises from epidemiologic situation in our country or from conditions in the hospital in question and the related need for precaution measures to prevent both the patients, the staff and other persons from potential infection, the requirement for father of the child to present the result of Covid-19 test can be treated as legitimate and justified.

### *Regarding increase of grants for students funded from the State budget*

Amount of the minimum monthly grant for students of national higher educational establishments was increased in 2020/2021 academic year from 99.60 to 200 euro. Society is concerned for discrimination by such support during the Covid-19 pandemics against students who pay tuition fee may.

The Ombudsman established that the amended grant procedure was not discriminating against students who pay tuition fee because they are not subjects of grants. Funding is distributed in proportion to the number of students funded from the State budget rather than to the total number of students because only those funded from the State budget are eligible to grants in accordance with Section 52 of the Law on Higher Education Establishments. In addition, other forms of support are available during Covid-19 to the students who pay tuition fee.

### *Regarding availability of the SRS*

Numerous individuals have pointed out to problematic access to the State Revenue Service (hereinafter also referred to as the SRS) at small cities during the Covid-19 pandemics. The Ombudsman established that services provided by the SRS were available for population during the Covid-19 pandemics. Further, arrangement of attendance in person at the SRS is changed not only because of the Covid-19 pandemics but also due to the small demand for attendance in person and the related considerations of efficiency and economical application of public resources.

### *Regarding restrictions imposed on the fundamental rights after the end of the state of emergency*

An application was filed with the Ombudsman Office in June 2020 concerning restrictions imposed on fundamental human rights after the end of the state of emergency. Opinion issued by the Ombudsman is available [here](#).



# DISCRIMINATION AND LEGALEQUALITY

# DISCRIMINATION AND LEGAL EQUALITY

## Introduction

The highest number of complaints received by the Ombudsman during the reporting period was filed by people with disabilities regarding their treatment at working environment and environmental or housing adjustments. A number of complaints received from people with disabilities point out that people feel discriminated because of their low income, in particular the amount of income prevents them from providing wholesome food, medicines and essential goods.

Numerous complaints are related to discrimination by age in the granting of real estate tax exemptions; people also complain on discriminating advertisements and announced vacancies.

Increasing number of complaints is filed regarding unequal treatment at working environment, showing improved awareness of the rights of employees and willingness to apply for assistance. On the other hand, it should be noted that employees are not always able to properly identify mobbing. Strict requirements on part of employers do not necessarily constitute bossing or mobbing. The Ombudsman has arranged a number of seminars with the view to educate employers on impermissibility of mobbing and bossing at working environment, including on the latest judicial practice in mobbing cases. Seminars have also taken place on ageism as an eradicable, unwelcome treatment at working environment, on violence and abuse at workplace and how to combat it.

## APPLICATION STATISTICS

	Public sector activities	Employment	Education	Property	Availability of goods/ services in private sector	Social services/ support	Heat speech	Total
Breaches of legal equality	6	7	3	1	-	-	-	17
Grounds of discrimination:								
Racial, national, ethnical origin	1	-	1	1	2	-	-	5
Gender	2	-	-	-	-	-	-	2
Age	2	-	-	-	2	-	-	4
Language	1	-	-	-	-	1	-	2
Religion	-	1	-	-	-	-	-	1
Sexual orientation	-	-	-	-	-	-	1	1
Disability	2	2	-	-	3	-	-	7
Political membership	-	1	-	-	1	-	-	2
Other grounds	4	3	-	-	1	-	-	8
<b>Total</b>	<b>18</b>	<b>14</b>	<b>4</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>49</b>

## Initiatives

### *Discrimination in working environment*

A study was conducted in cooperation with AS "Norstat Latvija" [with the view to identify public opinion on the spread of discrimination in working environment in Latvia in 2020 and to establish development of the situation compared to the year 2011.](#)

The collected data show increased public awareness of discrimination issues compared to the year 2011. 21% of employed respondents state they have faced discrimination in person at workplace during the previous three years. Age is stated as the prevailing discrimination factor by 58% of respondents. Discrimination by age has been experienced in practice by younger people as well as by people in pre-retirement age. Discriminating treatment is most frequently experienced from the direct superior (46%), other colleagues and management of the company, less frequently from customers of business partners.

It can be also concluded that employees are more prepared to apply for help in case of discrimination. The State Labor Inspectorate is the first source of available help (47%), and the Ombudsman Office would be applied to by 11% of employees which is by 5 percent points more than in 2011.

### *Regarding discrimination by age in regulations of Sigulda county on the application of real estate tax*

Binding regulations of Sigulda municipality on the application of real estate tax stipulate that the rates fixed in the Real Estate Tax Law apply to subjects of real estate tax if persons at the age of majority have declared their residence at a property owned, legally possessed or used by private individuals. In case of residence declared by a minor person, the rate of 1.5% of cadastral value of the property applies.

The Ombudsman established that the municipality failed to consider the fact that a property may also be owned by a minor person, and therefore age-based unequal treatment takes place in application of privileged tax rate. The Ministry of Environment Protection and Regional Development also shares the Ombudsman's opinion and appeals to the municipality for taking into consideration the Ombudsman's statements.

*Further information on discriminating treatment of recipients of old age or disability pension in approach to the downtime support and against health care professionals in granting exemptions from public transport fare is described in section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report.*

## Analysis of cases

### *Discrimination by age in the field of crediting*

Credit institutions frequently trend to set age limit for crediting services in order to avoid eventual financial loss if the clients are in default of their loan obligations, fully or partially, because age is seen as an important risk factor. In the Ombudsman's opinion, age of a person may be among the factors considered to decide whether or not a loan can be granted to a person. It is not acceptable, however, as the sole and basic criteria for a credit institution to automatically refuse crediting services to a person without conducting additional complex analysis of situation based on objective and comparable criteria, solvency of the person, spending habits, credit history and study of reasonable and credible sources like statistics, for example.

### *Discrimination by age in advertisements*

Having reviewed a shop advertisement, the Ombudsman established that price discounts for rims were offered depending on the person's age, namely, the older is a person the smaller is the discount, and vice versa – the younger is a person the higher is the discount. The Ombudsman concluded that such differentiation among consumers where discounts are granted depending on age can be qualified as direct discrimination by age.

The Ombudsman contacted the concerned company and explained the advertisement-related problems, and the company promptly removed the advertisement from their websites and shops.

### *Discrimination by age in job advertisements*

The Ombudsman identified discrimination by age in a number of job advertisements during the reporting period. One advertisement referred to a vacancy for a 25 to 35 years old electrician. Another one contained a requirement for sending photo of the applicant.

The Ombudsman contacted the person responsible for publishing of job advertisement referred to in the complaint for elimination of breach, and it was promptly eliminated.

### *Unequal treatment (mobbing and bossing) in working environment*

The Ombudsman is periodically applied to by individuals in relation with eventual mobbing and bossing. It can be hardly ever identified and proven, however. Moreover, in the applicants' opinion, emotional differences at workplace are groundlessly interpreted as mobbing or bossing, or these terms are referred to without revealing any specific actual or legal circumstances for examination including position of the employer as well.

The Ombudsman's experience shows that disputes of emotional nature arising at work cannot be resolved by legal means or procedures. In the Ombudsman's opinion, disputes related to legal employment or service relations should be resolved as far as practicable by the conflicting parties within the workplace, the industry right upon the first sign of differences so that conflicts cause no interruption in ethical, respectful business communication and so that they are not eventually escalated into external processes before law enforcement authorities or legal proceedings.

Appellate procedures outside the workplace or industry and litigation may not bring about the expected satisfaction unless the actual and legal circumstances are in favor of the employee; they can on the contrary maintain bitterness, wounded feelings and sense of unfairness, spending financial and time resources for unfruitful struggle, moreover if the conflicting parties continue working together.

*Further information on unequal treatment in the provision of free lunch for school children during the state of emergency; on increased grant for students funded from the State budget compared to those who pay tuition fee, and on inequality in co-funding in sports is available in section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report".*

## Implementation of recommendations

### *Regarding the breached of legal equality in granting exemptions from public transport fare in Riga city*

Riga City Council has asked for opinion whether or not the exemptions currently available for foreign nationals – pensioners declared in Riga would be maintained following the [Opinion of 2019](#) issued by the Ombudsman regarding the binding regulations of Riga City on exemptions from public transport fare in Riga, and municipality of Riga would grant no new exemptions in future.

The Ombudsman pointed out that the given proposal would not eliminate the established breach of Section 91 of the Constitution. Therefore, Transitional Administration of Riga City council adopted on 15 July 2020 [amendments to the Binding Regulations No. 89](#) and therefore the Ombudsman's recommendation has been implemented.

*Regarding the obligation to pay OIK (mandatory procurement component) as a part of net payment for electric power*

In 2018, having examined the investigation case, the Ombudsman established [noncompliance of the procedure envisaged by net payment system for electric power](#) with Section 91, sentence one of the Constitution whereas the procedure was not applicable to the mandatory procurement component or OIK. The Ombudsman noted in particular that the household users who are participants of the net payment system for electric power and who have made capital investments in solar batteries installed at their households to generate electric power for their own consumption should not pay the OIK upon receipt of the electric power supplied to the overall network and not consumed by them.

Pursuant to the Ombudsman's opinion, the Parliament adopted on 30 January 2020 amendments to the Electric Power Market Law to amend the norms referred to by the Ombudsman, and on 7 April 2020 the Cabinet adopted Regulations No. 201 "Amendments to the Cabinet Regulations No. 50 of 21 January 2014 "Regulations concerning trade in and use of electric power"" so that exemption was granted from payments for mandatory procurement component of electric power as a part of the net system.



GENDER EQUALITY

# GENDER EQUALITY

Gender equality covers aspects like equal employment opportunities and pay for women and men, increased involvement of women in decision-making processes, reconciliation of employment and family life, etc.

A lot of achievements can be marked in our country in providing equal rights and opportunities for women and men, and still integration of gender equality is required in certain areas. This is evident from gender-based violence, for example, or various stereotypes.

Lawyers of the Ombudsman Office have been participating in the reporting period at various action groups on national as well international level: The Committee for Gender Equality and the Equinet Working group on Gender Equality. The Equinet Working Group is engaged in examination of gender equality issues in Europe and development of recommending documents.

In November 2020, the Ombudsman issued [Opinion for the Constitutional Court in case No. 2020-39-02](#) "Regarding compliance of certain articles of the Council of Europe Convention of 11 May 2011 on Preventing and Combating Violence against Women and Domestic Violence" (The Istanbul Convention) with the Constitution. The Ombudsman substantiated in his opinion compliance of the respective articles of the Convention with sections of the Constitution. The Ombudsman also emphasized in his opinion that domestic violence widely spread in Latvia is based on deep-seated stereotypes regarding the role of a woman in family. Particular increase of such stereotypes could be observed during the last year in the conditions of pandemics where women were exposed to excessive load and frequently also to violence by their partners.

Applicants in the given case referred to protection of the "traditional families", yet the Ombudsman noted that family formed the grounds of integrated society referred to in Preamble to the Constitution, and such grounds also formed from equality, liberty and solidarity of people. Domestic violence is a global problem affecting not only women but also men – potential victims of violence.

The values enshrined in the Istanbul Convention are universal, their development should start in family to be strengthened as a part of education system. The Ombudsman pointed out in his opinion that the relevant issues are already made a part of curricula since children have to learn respect towards each other, non-violent conflict resolution as a part of their competence education, and social roles of genders beyond stereotypes should be discussed. Latvia seeks to develop an educated, knowledgeable society, and therefore religious considerations favoring probation to teach and discuss ethical, respectful and socially acceptable issues stands no criticism.



RIGHT TO FAIR COURT

# RIGHT TO FAIR COURT

## Introduction

328 applications in total concerning aspects of the right to fair court have been received in the reporting period, which means increase from the previous year when 282 applications were received. Appealing to the Ombudsman and objections in the merits of decisions or actions on part of the officials in pre-trial procedure indicate to some extent to the low trust in supervisory authorities or doubt among population about effectiveness of the actions taken by such authorities.

The applicants continuously apply for information on the possibilities to protect their rights and interests and complain on counsellors and the quality of their work. Therefore, conclusions can be drawn from the nature and content of the received applications regarding lack of awareness by the persons involved in various proceedings of their rights and possibilities to protect their rights, including the right to qualitative legal assistance.

The state of emergency declared in our country has certainly affected also the court work, and therefore on certain situations the Ombudsman has been assessing the guaranteed right to fair court in that period. Also, continuous signals are received on limited access to court, incommensurate hearing periods, and the fact that the number of applications has increased concerning dissatisfaction of reasoning presented in court rulings and enforcement aspects also deserves attention.

Taking into consideration the above-stated, it has to be noted that the guaranteed right to fair court remains an issue of fundamental importance among population of Latvia, in particular in case of vulnerable persons.

## APPLICATION TOPICS

	2018	2019	2020
Pre-trial investigation	0	0	3
Actions of persons directing pre-trial proceedings	33	24	27
Appeals against decisions by persons directing the proceedings	17	17	14
Delay of pre-trial proceedings	16	10	9
Other breaches in pre-trial proceedings	46	30	18
Unlawful investigation methods	0	0	10
Impartial, objective forum according to the law	11	4	10
Right to fair court. Access to court	27	17	21
Right to hearing in reasonable period of time	9	4	11
Principle of equality of the parties	14	9	10
Fair hearing of cases	40	34	41
Open hearing of cases	1	5	5
Presumption of innocence	1	2	1
Availability of information on charges	4	11	17
Time and resources for preparing to defense	0	4	2
Counsellor work	6	13	15
Interrogation of witnesses	1	1	0
Right to free translator	0	1	0
Enforcement of rulings	27	17	18
Enforcement of rulings in custody and visiting cases	0	0	18
Substantiation of rulings	32	22	34
Decisions and actions of certified enforcement officials	29	31	34
(Unethical) actions of a judge	13	7	10

## Initiatives

### *The need for uniform service fee system at governmental and judicial authorities*

The Ombudsman has established in the reporting period that fee for identical services differed notably not only among different institutions but also among institutions reporting to or supervised by the same ministry (the State Police and the Office of Citizenship and Migration Affairs, for example). Charging different fee for identical services by different public authorities without objective grounds contradicts with the principles enshrined in the State Administration Law and eventually restricts access to court as an element of the right to fair court.

The Ombudsman focused on this issue in 2019 already, and in 2020 the Ombudsman [applied repeatedly to the State Control](#) for information on [results of the conducted audit](#).

### *Opinion on amendments to the Criminal Procedure Law*

In response to application filed by group of lawyers, the Ombudsman issued [opinion](#) on amendments to Sections 64 and 67 of the Criminal Procedure Law. The Ombudsman noted that any amendments should be adopted with reasonable assurance that the legitimate purpose is actually achieved, moreover the State has to ensure that in case of any dispute it can prove that confession is not obtained from a person by compulsion, and that in case of testimony the suspected or accused persons are aware of the consequences of making testimonies and are able to foresee the consequences of their actions to reasonable extent.

### *Opinion on the right to record proceedings*

During the reporting period the Ombudsman has issued [opinion on amendments to Section 485 of the Criminal Procedure Law](#). Intensive discussions have resulted in supplementing the Criminal Procedure Law with Section 484.<sup>1</sup> stipulating the right of journalists to record the proceedings to ensure that information is reflected with maximum accuracy and quality.

### *Bearing of procedural costs arising in administrative offence proceedings*

The new Administrative Liability Law and consequently a number of Cabinet Regulations were enacted on 1 July 2020. The Ombudsman issued [proposals to the Ministry of Justice](#) on the currently applicable Cabinet Regulations No. 228 "Regulations concerning the bearing of the procedural costs arising in administrative offence proceedings" in 2019 already. The Ombudsman requested to prevent unreasonably different treatment of the parties to administrative offence proceedings, to provide equal protection to their rights regardless of the form of gaining income, therefore advocating the right of self-employed persons to have procedural costs repaid to them. Proposals issued by the Ombudsman have not been taken into consideration, however.

### *Regarding the frequency of sectoral inspections*

Pursuant to application of a private individual, the Ombudsman issued a [letter](#) for the Ministry of Finance and the SRS for drawing attention to define in a regulatory act the frequency of sectoral inspections by Tax and Customs Police Administration of the SRS in order to strengthen legal certainty and timely collection of evidence. The responsible authorities accepted the Ombudsman's recommendation and [informed](#) on action group appointed on 16 September 2020 responsible for developing the procedure for conducting sectoral inspections by the Tax and Customs Police Administration and Internal Security Administration of the SRS. The new procedure has to be developed by 31 December 2020.

### *Study of legal aid available in administrative procedure before authorities and court*

In 2020, the Ombudsman studied the situation in terms of availability of legal assistance available in administrative procedure before authorities and court (Section 18, Part Four of the Administrative Procedure Law). Results of the study lead to conclusion, that those who would essentially need such assistance lack information on the possibility and procedure thereof. In addition, no criteria have been formulated by authorities and courts in relation to complicated administrative proceedings and therefore authorities can exercise wide discretion in application of law and this can constitute an invincible obstacle to access to legal assistance.

Information on results of opinion poll is available [here](#).

### *On access to court if deposit is paid into improper bank account*

The Ombudsman established during the reporting period that parties to civil proceedings were prevented from access to court if deposit was paid into improper bank account, and therefore the Ombudsman applied to the Ministry of Justice [proposing to improve the regulatory norms](#). The Ombudsman's proposals have been included in the draft law "Amendments to the Civil Procedure Law" (No. 599/pp.13) presented for considering to the Parliament. Supplementing of the Law with Section 43.<sup>3</sup> is proposed stipulating that any paid up litigation costs or deposit shall be transferred to the proper bank account by decision (in form of resolution) adopted by the judge who has identified the mistake.

### *Protection of the applicant's rights in compulsory enforcement of obligations upon warning*

The Ombudsman has identified problems in providing legal protection for applicants in case of compulsory enforcement of obligations upon warning where the debtor has improperly or incompletely filled in the reply form. The Ombudsman has [applied to the Ministry of Justice](#) for amending regulatory acts pointing out that incorrect information provided to the court has irreparable effect on the subsequent proceedings for compulsory enforcement of obligations upon warning.

## Analysis of cases

### *Protest in the interests of a vulnerable person*

It was established upon reviewing of an application that the first instance court has eventually adopted a ruling that is unfair and unsubstantiated in the part concerning the person's obligation to bear the costs of defense in criminal proceedings because of non-effective legal assistance funded from the State budget and also because of objectively limited condition of the person including senior age. Therefore, condition of the vulnerable person has been still more aggravated without proper grounds in contradiction with the regulatory norms. Reasoning by the court is not available for familiarization because summary ruling has been issued in the given case.

The Ombudsman applied to the Office of Prosecutor General with petition for filing a protest regarding such ruling of the first instance court. The prosecutor office found the petition substantiated and filed a protest with the Supreme Court; the Supreme Court ruled out that the ruling of first instance court was repealed in the concerned part. As a result, the costs of defense in criminal proceedings groundlessly enforced from the person on compulsory basis were repaid to the person.

### *The right of counsellor in administrative offence procedure*

Having reviewed a complaint filed by a private individual concerning refusal by the municipal police to enable the counsellor in administrative offence proceedings to familiarize with the collected evidence, the Ombudsman assessed compliance of the new norms of the Administrative Liability Law from the context of right to defense as a part of [investigation case No. 2020-08-01](#). The Ombudsman established that the key principle of the right to defense as a fundamental value in exercising of the right to fair court required that the right to familiarize with the evidence collected in administrative offence proceedings should be granted to the counsellor including to make extracts, transcripts and copies of such evidence. Along with that the Ombudsman asked the Ministry of Justice to issue their opinion and clarification of the right of counsellor in administrative offence proceedings to ensure that the norms governing the right of counsellor in administrative offence procedure are successfully implemented in practice.

Reply issued by the Ministry of Justice is available [here](#).

### *Hearing in administrative offence proceedings in absence of counsellor*

The applicant pointed in investigation case No. 2020-20-4J that postponing of the court meeting has been requested in administrative offence proceedings because their counsellor could not attend because of participation at proceedings before another court. The case was heard in absence of counsellor by the first instance court as well as by the regional court.

The Ombudsman established that the applicant failed to enter appearance to the court on several occasions and to present an authorization in evidence of the right (authority) of the named lawyer to represent the applicant before court or any circumstances that prevented the applicant from appointing another provider of legal assistance. Taking into consideration the above-stated, the Ombudsman established that infringement of the person's rights guaranteed by Section 92, the fourth sentence of the constitution was not manifestly incommensurable.

*Regarding the reviewing of application concerning restrictions imposed on legal capacity during the state of emergency declared in our country, please see section "Human rights in relation to the spread of Covid-19 infection in our country" of the report.*

## Opinions for the Constitutional Court

The Ombudsman has issued a number of opinions for the Constitutional Court assessing the compliance of regulatory norms with Section 92 of the Constitution.

[Opinion on case No. 2019-21-01](#) "On compliance of Section 14, Part Four and Paragraph 4 of transitional provisions of the Law on Indemnification against Damage Caused in Criminal Proceedings and Administrative Offence Proceedings with Section 1 and Section 92, the third sentence of Constitution of the Republic of Latvia". The Ombudsman established non-compliance of Section 14, Part Four of the Indemnification Law with Section 92, the third sentence of the Constitution, insofar it limits the right of court to grant indemnification to person in excess of the statutory limit in proportion with the infringement of the fundamental right.

[Opinion on case No. 2019-22-01](#) "On compliance of Section 316, Part One of the Criminal Law in the version effective from 2 January 2004 to 31 March 2013 with Section 92, the second sentence of Constitution of the Republic of Latvia". The Ombudsman concluded that, if the contested norm was interpreted and appropriate legal assistance was provided using the court practice, the applicants could foresee that they would be treated as public officials within the meaning of the contested norm and therefore called to criminal account for commitment of criminal offences while in service of public bodies. Therefore, the contested norm is sufficiently clear and predictable, and it complies with Section 92, the second sentence of the Constitution.

[Opinion on case No. 2019-23-01](#) “On compliance of Section 464, Part One of the Civil Procedure Law with Section 92, the first sentence of Constitution of the Republic of Latvia”. The Ombudsman pointed out that Section 464, Part One of the Civil Procedure Law would entail restriction of the rights guaranteed by Section 92, the first sentence of the Constitution, insofar it prevents applicants in cassation procedure from access to information on full composition of the court panel decides on institution of cassation proceedings and from filing objection to a judge or composition of the court panel.

[Opinion on case No. 2020-23-01](#) “On compliance of Section 236, Part One of the Criminal Law (in the version effective before 31 March 2013) with Sections 90 and 92 of Constitution of the Republic of Latvia and compliance of transitional provision of the Law of 29 October 2015 “On amendments to the Criminal Law” with Sections 1 and 92 of Constitution of the Republic of Latvia”. The Ombudsman concluded that Transitional Provisions of the amendments were not applicable to the persons who had committed a criminal offence prior to enactment of that law, and therefore they provide for deviation from retroactive effect of a favorable ruling. The Ombudsman pointed out to the failure to properly consider and discuss such deviation, and therefore it contradicts with the principle of good legislation practice arising from rule of law and principle of democratic state enshrined in Section 1 of the Constitution.

[Opinion on case No. 2020-30-01](#) “On compliance of Paragraph 2 of Transitional Provisions of the Law on Indemnification against Damage Caused in Criminal Proceedings and Administrative Offence Proceedings with Section 1 and Section 92, the third sentence of Constitution of the Republic of Latvia”. The Ombudsman established that the contested norm was inadequate to provide reasonable period of time for all private individuals affected by that norm to get prepared for application of the new legal instrument and to exercising of their rights from the date of publishing thereof. The contested norm had been enacted without adherence to the principle of legal reliance, legal certainty and proportionality, and therefore it fails to comply with Section 1 of the Constitution.



# ENFORCEMENT OF RULINGS

# ENFORCEMENT OF RULINGS

## Introduction

Filing of numerous complaints continued in 2020 concerning the matters related to enforcement of rulings. The Ombudsman received 17 applications in total in 2020 related to complaints on enforcement of rulings, and 29 applications were directly related to actions or decisions of certified enforcement officials. The total number of applications has decreased compared to 2018 when the total number of applications concerning enforcement of rulings was 56. On the other hand, it is still comparable to the level in 2019 when the total number of applications was 48.

It may be concluded that quite a number of complaints – 45 complaints have been filed in the form of e-mail application while verbal advice (in person as well as on telephone) related to the matters of enforcement has been provided on 89 occasions, and their number has notably increased.

Similar to the situation in previous years, most of the applications and provided advice form from debtor complaints on actions of enforcement officials. In this respect, the Ombudsman has proposed numerous initiatives to the competent authorities for resolving the problems that equally affect the interests of debtors and debt collectors.

## Initiatives

### *Regarding effective enforcement of rulings and enforcement system*

Pursuant to the applications filed during the previous year by private individuals, the Ombudsman brought to attention and focused on the issue of effective enforcement of court rulings. The applicants draw attention of the Ombudsman to the fact that, notwithstanding all reasonable steps on part of enforcement officials, enforcement of court rulings on collection of debt remains continuously delayed, and therefore no satisfaction is obtained from what has been adjudged by the court.

The Ombudsman accentuates that the State has to ensure that enforcement system is effective by its nature not only in regulatory norms but also in practical application. In addition, the measures taken to ensure compulsory enforcement have to enable achievement of the objective to ensure enforcement.

Therefore, the Ombudsman applied to the Ministry of Justice and to the Council of Certified Enforcement Officials of Latvia for information on the actions and tools required to enable effective enforcement of rulings on collection of debts.

The letter issued by the Ombudsman to the Ministry of Justice and to the Council of Certified Enforcement Officials of Latvia is available [on the Ombudsman's website](#).

### *Regarding the amount of funds to be preserved within the executive procedure in case of debtors engaged in economic activity*

In 2020, the Ombudsman repeatedly focused on the issue initiated in 2018 regarding the amount of funds to be preserved within the executive procedure in case of debtors engaged in economic activity.

According to the currently applicable legal regulations, no funds in the amount of social security allowance for each minor child dependent on the debtor gaining income from individual work, unlike in case of conventional employment relations. Moreover, on certain situations a person employed on the grounds of contract agreement or royalty can be left without any financial means.

In the Ombudsman's opinion, no debtor may be put in a disadvantageous situation solely because of selecting individual work instead of entering an employment contract. The Ombudsman therefore applied to the Ministry of Justice for opinion whether or not the current procedure where no funds are preserved for a debtor engaged in economic activity for each child dependent on the debtor, and occasionally with no financial means at all, is adequate and commensurable with the debtor's interests.

The letter issued by the Ombudsman to the Ministry of Justice is available [on the Ombudsman's website](#).

## Analysis of cases

The current trend in enforcement of rulings continuously observed by the Ombudsman also in 2020 is manifest complaints by debtors on the actions of enforcement officials who apply enforcement also to their income without preserving the amount prescribed by law or apply enforcement to amounts that are not subject to collection. Notwithstanding proactive involvement of the Ombudsman in the handling of this issue in cooperation with the Council of Certified Enforcement Officials of Latvia by means of investigation and conducting of various discussion, this issue remains unresolved.

Reviewing of the received applications constantly shows that the above-described problems most frequently occur due to failure on part of the debtor to actively cooperate in the enforcement procedure and to meet the duty imposed by the law to keep the enforcement official informed of their financial condition. Therefore, the Ombudsman continues active informing of debtors of the need to communicate with the enforcement official and not to escape from the executive procedure that can otherwise cause unnecessary misunderstandings and significantly affect financial condition of the debtor.

## Implementation of recommendations

In response to the Ombudsman's letter concerning the need for improvement of effective enforcement, the Ministry of Justice held a meeting with participation of representatives from the Ministry of Justice, the Council of Certified Enforcement Officials of Latvia and the Ombudsman Office.

A number of ideas and ways were constructively discussed as a part of that meeting to improve effective enforcement of rulings on debt collection. In conclusion of the meeting, the Ministry of Justice expressed commitment to implement certain concepts, and the Ombudsman is committed to proactively follow up and involve in seeking and finding by joint efforts effective tools to ensure the rights of debt collectors guaranteed by the Constitution. Replies issued by the participant institutions and information on the meeting is available [on the Ombudsman's website](#).

As regards the amount of funds to be preserved within executive procedure for debtors engaged in economic activities, [the Ministry of Justice shared the opinion of the Ombudsman and informed](#) that this issue required addressing. The Ministry of Justice confirms their commitment to undertake complex review of requirements set forth in the law. The Ombudsman is committed on his turn to continue active participation in assessing this issue in 2021.



THE RIGHT TO LIBERTY AND SECURITY,  
EFFECTIVE INVESTIGATION

# THE RIGHT TO LIBERTY AND SECURITY, EFFECTIVE INVESTIGATION

## Introduction

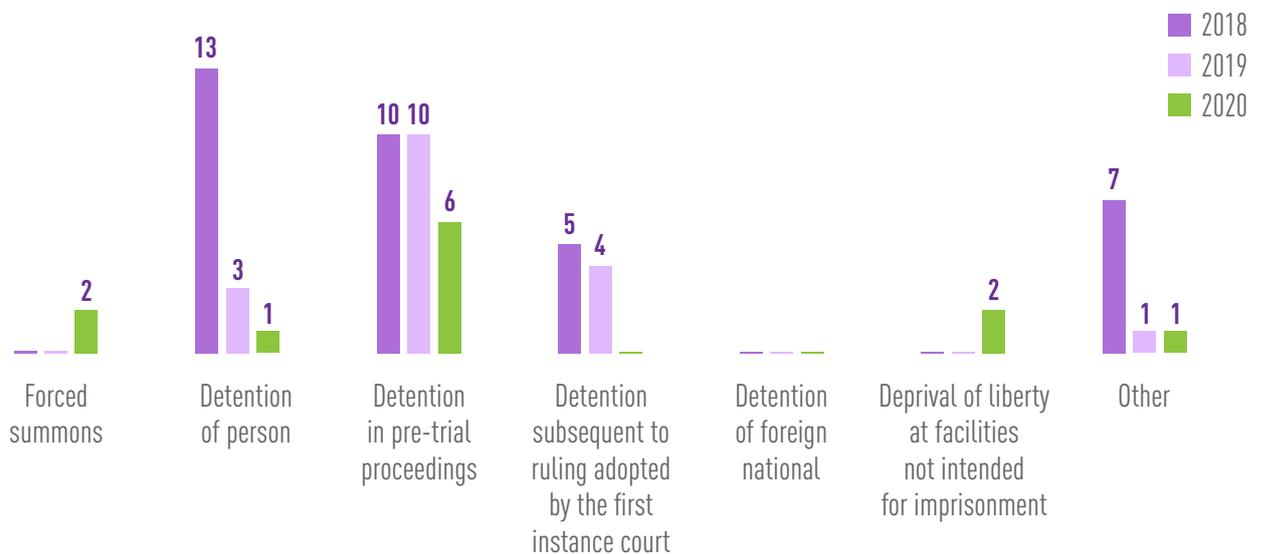
The right to liberty and security is not absolute per se, and it is subject to restrictions in the manner and scope prescribed by the law. Deprivation of liberty is only justifiable where it takes place on the occasions and according to the procedure prescribed by the law. It has to be substantiated, and it may not be arbitrary.

The right to liberty is a wide notion that should be viewed not only in the context with legitimacy of detention, imprisonment of a person or forced placement in a medicinal institution but also in the context with the duty to be enlisted for civilian service and provision of functioning of the crucial national infrastructure.

Another issue brought to attention during the reporting period is about deadlines for periodic control of imprisonment by the court after lapse of the period of two months fixed in Section 281, Part Four of the Criminal Procedure Law. Along with that, attention was drawn to the occasion where a person is detained before visit to the prison facility and the potential consequences if such detention turns out to be groundless. Another question arising in the context with enactment of the new Administrative Liability Law is related to enforcement of the rulings adopted and pending enforcement in accordance with the procedure prescribed by the Administrative Offence Code of Latvia.

It is crucially important to ensure that even in case of limitations imposed on the right to liberty the competent public authority undertakes objective and impartial investigation of a filed complaint and thorough investigation of the underlying circumstances. The situation is impermissible where the court renders a summary award along with replacement of the means of security to more stringent ones and later continuously delays the rendering of full award, the person has no access to information on motives of such replacement and is therefore prevented from appealing against replacement of the means of security.

### APPLICATION STATISTICS



Statistics show that the number of applications concerning the right to liberty and security trend to decrease. The number of advice issued verbally, on telephone or via e-mail has not changed compared to the previous year.

## Initiatives

### *Duty to call up for civilian service and involvement in providing functions of crucial national infrastructure*

On 8 August 2019, the Ombudsman issued [Opinion No. 1-8/15](#) to the Ministry of Defense and also attended in person the meetings of action group and discussion of the draft laws developed by the Ministry of Defense: “Amendments to the National Security Law” (VSS-702), “Amendments to the Mobilization Law” (VSS-703), “Amendments to the Law on the Emergency Situation and Exceptional State” (VSS-704).

The Ombudsman drew attention to essential aspects of human rights and good legislation to improve predictability of such amendments, their compatibility with the applicable regulatory acts and proportionality of eventual restrictions in state of emergency. They include, for example, adherence to the principle of good legislation and the need for uniform terminology in related regulatory acts. An opinion was also issued on the authority to call up for service and to involve private individuals in providing functions of crucial national infrastructure. Discussion of the draft laws continued also in 2020. The set of above-described amendments was presented to the Parliament for discussion in May 2020.

## Case Analysis

### *Substantiation of ruling on applied detention*

Detained persons have complained on several occasions regarding the content of rulings on applied detention (non-considered evidence or arguments) denying the commitment of criminal offences. The Ombudsman informed such persons on appellate procedures and on the right to application for considering the need for continued detention. The Ombudsman is not authorized to issue his opinion on the merits of substantiation of such rulings.

### *Periodic control of detention in reasonable periods*

Two detained persons applied to the Ombudsman during the reporting period and complained on eventually delayed control of the need for continued detention. Information collected from courts enabled the conclusion that periodic control of detention could take place in practice a number of days after the lapse of the two months stipulated in Section 281, Part Four of the Criminal Procedure Law because of objective circumstances, like coordination of court meeting with parties to the case, with due regard to the scheduled operation of video conference rooms at prison facilities, etc. It should be also taken into account that the detained person or their defense counsel can file an application at any time for considering the need for continued detention. The Ombudsman established no infringement of the persons' right to liberty.

### *Detention of persons prior to the visit to prison facility*

A person applied to the Ombudsman because the person had been detained and delivered to the State Police station and subjected to search before visiting a relative in prison facility, and therefore liberty of the person was restricted. No unauthorized items or substances were found during the search.

The State Police identified no breaches on part of their officers during inspection. [The Ombudsman established](#) that reliable initial information on unlawful behavior of the person could serve as grounds for detention and search of the person (restrictions imposed on privacy).

On the other hand, if the officials rely on the above consideration alone and their information turns out to be incorrect, there is risk of liability for indemnification against damage because rights of the person have been restricted in accordance with the procedure prescribed by Section 2, Part Two, and Section 18, Part Two of the Law on Indemnification Against Damage Caused in Criminal Procedure or Administrative Offence Procedure.

### *Enforcement of a ruling adopted in accordance with the procedure of Administrative Offence Code of Latvia*

The Ombudsman was applied to by a person subject to administrative arrest in accordance with the procedure prescribed by Administrative Offence Code of Latvia. The administrative arrest had not been enforced until enactment of the Administrative Liability Law on 1 July 2020 that prescribes no similar punishment. The person believed that in the given circumstances more favorable norms should apply without administrative arrest.

The Ombudsman pointed out that pursuant to Paragraph 2 of Transitional Provisions of the Administrative Liability Law, the procedural actions initiated before enactment of the Administrative Liability Law have to be finalized in accordance with the procedure prescribed by the Code. Renewal of proceedings on the grounds of new identified circumstances is a separate procedural stage that is only permissible if the grounds prescribed by the law exist, and this was not the case.

[The Ombudsman concluded](#) that enforcement of administrative arrest imposed according to the Administrative Offence Code of Latvia after enactment of the Administrative Liability Law cannot be classified as manifestly incommensurable restriction of the person's fundamental rights.

## Opinion

### *Effective check of restrictions imposed on the right to liberty*

The Ombudsman issued [opinion in the investigation case No. 2019-15-2B](#) instituted at his own initiative concerning effective official check conducted by the State Police pursuant to the complaints filed by a person on accommodation procedure at police section. It was established in the investigation case that the person was kept ten hours at temporary detention premises, notwithstanding that regulatory norms permit such detention for four hours only. It was established that obtaining of a material evidence (a video record) as part of the control action was delayed and also other relevant circumstances were examined. The Ombudsman established that the official check was not conducted with proper care and it was qualified as ineffective in terms of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Ombudsman applied in relation to the findings in the investigation case to the Acting Chief of the State Police who acknowledged the breaches referred to in the opinion on the investigation case and noted that, starting from February 2020, the State Police was conducting regular checks at police stations to ensure provision of the rights prescribed by regulatory acts for detained and imprisoned persons and observing of the statutory detention.

### *Substantiation of replacement of the means of security in brief judgment*

The Ombudsman established upon completion of investigation case No. 2019-30-3E an infringement of the right to liberty enshrined in Section 94 of the Constitution and Article 5, Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

A less restrictive means of security applied to the sentenced person were replaced by imprisonment upon announcement of the summary judgment, and no full judgment was issued subsequently because of illness of the judge; therefore, the sentenced person and their defense counsel were prevented not only from appealing against substantiation of imprisonment but also from obtaining information on the reasons for replacement of the initial means of security by more stringent means. The Ombudsman found that the court was liable for issuing substantiation of the application of specific means of security and applied to the Ministry of Justice for considering the need for amendments to the Criminal Procedure Law to prevent similar situations.

Discussion of the above topic by action group of the Ministry of Justice is pending.



# INVIOABILITY OF PRIVATE AND FAMILY LIFE

# INVIOABILITY OF PRIVATE AND FAMILY LIFE

## Introduction

Individuals have been applying to the Ombudsman in 2020 in relation to various privacy issues including restrictions imposed on privacy because of the pandemics. Numerous enquiries were received concerning the protection of personal data. People were complaining on publishing photos and videos with them in social networks without their consent. The “right to be forgotten” within the meaning of the General Data Protection Regulation was brought to attention.

The Ombudsman also received a number of applications concerning breaches in the processing of personal data in criminal proceedings: for example, personal data of the accused had been made available together with the evidence to other parties to criminal proceedings, and medicinal and personal data had been disposed to accused persons in criminal proceedings. Another complaint referred to unsubstantiated control over means of communication conducted pursuant to the Operational Activities Law.

## Initiatives

### *Publishing of videos in social media*

The issue was activated in autumn 2020 concerning the legitimacy of recording the proceedings at custodian court and publishing of videos on social media by authorized representatives of certain associations as legal guardians of children. Experts of the Ombudsman Office were asked to participate at various discussions and present their opinion.

*Further information on provision of the right of a child to privacy is available in section “Rights of children and young people” of this Report.*

### *Legal regulation of video surveillance*

The State Data Inspectorate applied to the Ministry of Justice for considering the need for legal regulation of video surveillance. The Ombudsman seconded that initiative of the State Data Inspectorate in his [letter to the Ministry of Justice](#). The reply issued by the Ministry of Justice was negative, however.

### *Participation at conference “Legal Challenges in Sports”*

Lawyers of the Ombudsman Office attended on 4 December 2020 the conference “[Legal Challenges in Sports](#)” arranged by the Anti-Doping Office of Latvia with the view to identify the issues present in the sports laws and to outline conceptual solutions for strengthening the rule of law in sports and observation of human rights, in particular in disciplinary anti-doping proceedings. The presentation outlined recording, processing and sharing of biometric data as an aspect of the right to inviolability of privacy as well as gender identification and inconsistency in sports.

### *Lectures on data protection*

Lawyers of the Ombudsman Office held lectures for school children on the current issues in data protection as part of the project “Prepared for Life”.

## Case analysis

### *Massive leak of e-mails*

A former employee of a company applied to the Ombudsman in relation to massive leak of the employees' e-mail communication containing personal data. The Ombudsman promptly filed an application with the State Police for assessing such information and deciding on the need for procedural actions.

### *Disclosure of personal number by award nominees*

A person expressed his concerns in relation to the requirement contained in municipal council regulations for disclosure of full personal number by award nominees. The Ombudsman explained that such processing of data was based on legitimate grounds to enable clear identification of the award recipient by municipal officials. It was also noted that municipalities have to adhere to the principle of data minimization in data processing.

### *Publishing of a person's name and surname on competition website*

A participant of the International Informatics Competition selected to exercise the "right to be forgotten" and asked to have deleted information on her participation at that competition. Since name and surname of the person could not be found by search tools, however, it should be considered that publishing of the person's name and surname on the competition website is required for public awareness and for scientific and historical research.

### *Refusal to release a body of deceased person*

An association applied in the reporting period for [the Ombudsman's opinion](#) on whether or not refusal to release a body of deceased person until full payment by the relatives for the provided services constituted a breach of legal acts and human rights of the deceased person. Given that the funeral allowance is granted to relatives of a deceased person, care institutions by the State Social Insurance Agency and municipalities for covering the costs of storage and burial of a deceased person, providers of funeral services should timely inform recipients of their services of the related costs and the part of such services not covered by the granted allowance to enable respectful burial of the deceased person.

### *Use of photo radar for non-intended purposes*

A private individual noted in application to the Ombudsman that photo radars could be configured for uninterrupted processing of personal data and that therefore data of drivers and transport vehicles would be also processed without consent by persons and without any offence committed by them.

[The Ombudsman established](#) that the given issue affected certain fundamental rights and that operation (of devices) was governed by different laws. The opinion was therefore issued with due regard to the requirements of regulatory acts concerning the situation until reform of administrative liability system.

*Information on non-proportional control of self-isolated persons by police during the Covid-19 pandemics and regulations on wearing of face covers by private individuals is available in Section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report.*



FREEDOM OF SPEECH

# FREEDOM OF SPEECH

## Introduction

The year 2020 manifested massive disinformation in our country, basically on the topic of Covid-19 pandemics and the related restrictions. Numerous applications were received concerning content deleted from social media and screening of facts initiated by Facebook and carried out in Latvia by “Re:Baltica” in relation to dissemination of false news. The Ombudsman reminded to the applicants that the use of Internet platforms and social networks was governed by their rules of operation and that no legal norms prevent such platforms from screening of their contents including from censoring information they find inappropriate with such rules of operation.

The Ombudsman also noted much more frequent occasions of hate speech against persons with different color and ethnic background and also against sexual minorities, compared to the previous year. The Ombudsman has applied to law enforcement authorities on a number of such occasions.

## Initiatives

### *Discussion of eradication of hate speech at the association “Mozaika”*

A representative of the Ombudsman Office participated on 9 October 2020 at a meeting held by association of LGBT and their friends “Mozaika” with participation of representatives from security and law enforcement authorities, the Parliament and the State Police College. The purpose of that meeting was discussing and seeking solutions for eradication of hate speech in social media.

Representative of the Ombudsman Office asked the experts to comment on possible application of administrative liability for hate speech because not all occasions of hate speech exceed the limit of criminal liability. Some participants of discussion agreed this would be a good solution. Subsequent to the meeting the Ombudsman Office also received a copy of the letter addressed by the “Mozaika” to the Ministry of Justice whereby the association proposed eventual amendments to the regulation of hate crimes. The letter contained certain proposals for eradication of hate speech from social networks and for improvement of regulatory norms in respect of hate crimes in general, including by means of administrative liability.

### *Liability for wearing of Saint George Ribbon*

The Ombudsman participated at meetings of committees for human rights and social affairs of the Ministry of Justice and the Parliament upon discussion of the draft laws “Amendments to the Law on Security at Public Entertainment Events and Festivals” ([No. 321/Lp13](#)) and “Amendment to the “Law on Meetings, Processions and Pickets”” ([No. 322/Lp13](#)).

The said draft laws provide in their merits for total prohibition of wearing of the symbols of totalitarian regimes and their stylized imitations as well prohibition of wearing of Saint George Ribbons at public events and processions. The Ombudsman noted that, even though the use of symbols for glorification of totalitarian regimes was unacceptable, total prohibition of the use of such symbols as a part of culture and historic events would be incommensurable (except for the purpose of glorification of such regimes).

Attention of the members of committees was drawn to the concept that the right to peaceful expression of opinion including different opinion is inseparable from the right to freedom of speech. Any limitation of such right has to pursue a legitimate goal and it has to be proportional to the existing threat to public security. Representatives of security authorities did not point out to specific threat eventually caused by persons wearing the said ribbons and representatives of law enforcement authorities informed about objective difficulties in meeting requirements of the law formulated this way, the Parliamentary Committee for Human Rights and Social Affairs motioned the prohibition to wear Saint George Ribbons for the first reading on 17 September 2020. The motion was also seconded by the Parliament on the first reading.

### *Criticism of the council by municipal deputy in regional newspaper*

The Ombudsman instituted and conducted investigation case on restrictions imposed on freedom of speech in case of municipal deputies. An interview was published in a regional newspaper with a municipal council deputy who criticizes certain projects implemented by the municipality and professional activities of certain council staff. The municipal ethics committee investigated the case on certain expressions by the said deputy during the interview and decided to order publishing of the deputy's name, surname and breaches of the norms of Code of Ethics on website of the municipality.

[It was hold in the investigation case](#) that the deputy's right to freedom of speech was therefore restricted.

## Case analysis

### *Free broadcasting time for candidates to interim elections of Riga City Council*

In August 2020, applications were filed with the Ombudsman by several candidates to interim elections of Riga City Council who were prevented from use of free broadcasting time on public media.

The Ombudsman reviewed the application and recommended that the candidates should use the vehicle for protection of their rights, namely, to file applications with the National Council for Electronic Mass Media. [The Ombudsman issued the opinion](#) that the norm on eligibility of candidates to interim municipal elections to use free broadcasting time complies with the objectives of the Law on Electronic Mass Media, the Law on pre-Election Campaign and the right of society to information and free elections.

### *Expressions by a deputy on social network Facebook*

The Ombudsman issued opinion on behavior of a Parliament Deputy who published on *Facebook* a post containing expressions of racism; the post was subsequently removed as non-conforming with rules of operation of the platform. The Ombudsman noted in a letter to the official that any Internet posts by politicians always draw massive public attention and that readers are free to support or criticize the contained information in their comments. Whenever any person finds a published post to be offending, they are free to express their concerns including the right to report on specific post to administration of the *Facebook* platform.

Without contesting the right of officials to freely express their position on topics of social importance, [the Ombudsman](#) called for wider considering of racism discourse in our and its role in forming the public opinion.

*Details on dissemination of false news are available in section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report.*

### *Description of crime on "Delfi" portal*

An imprisoned person applied to the Ombudsman noting to the person's name, surname and description of the committed crime published on Internet portal. The prisoner presumed leak of information from closed court meeting. [The Ombudsman assessed](#) whether or not informational value of such publication was sufficient to justify interference with privacy of the concerned person.

There is no dispute about public interest in crimes, their detection and calling the culprits to liability. The ways for achievement of the goal have to be discussed, however, with minimum infringement of the person's right to privacy. In the Ombudsman's opinion, the goal to initiate discussion of eventual amendments to regulatory norms could be achieved on the given occasion by other means less infringing of the person's right to privacy.



RIGHT TO PROPERTY

# RIGHT TO PROPERTY

## Introduction

In terms of the right to property, individuals have been appealing to the Ombudsman basically in relation to individual infringements related, for example, to borders of property, historic injustice in returning property, actions of the Construction Board, the State Land Service and the SRS, in particular related to the calculation and imposing of individual income tax and real estate tax.

Apartment owners at multi-residential houses have been complaining on actions of house managers. Indignation continues in relation to inability on part of the State to find fair solution of the issues arising from joint property. Individuals have been applying to the Ombudsman regarding the issues of unjustified requirement for connection to natural gas distribution system; encumbrances imposed on real estate without fair compensation; omissions on part of public authorities in taking over abandoned property and covering the managerial costs. On some occasions, persons have applied also for reviewing of court rulings.

Most of applications concerning eventual infringement of ownership right are attributable to private rights, and therefore the Ombudsman can only recommend the possible solution instead of assessing similar situations in their merits. It can be observed that non-awareness of law, exceeded deadlines or otherwise improper actions has resulted on most occasions in loss of property or funds. Individuals should also understand that the Ombudsman has no authority to review court rulings taking into consideration independence of the judiciary.

## Initiatives

### *Regarding the draft Cabinet Regulations "On base cadastral value in 2022, 2023, 2024, and 2025"*

Updating of cadastral value has found wide public resonance demonstrating strict objections against the forecasted amount of increase in cadastral values. Given that changes in cadastral values are related to numerous estimates of tax and levies in real estate sphere, the legislator has to exercise particular care in making statements on material changes in this sphere.

Even though the State-imposed liability for payment of tax as such does not infringe fundamental rights of persons, taxations specifics also defines the scope of constitutional control: limitations on fundamental rights can be assessed insofar it has to be established whether or not a tax payment constitutes an incommensurate load on the payer, and whether or not regulatory taxation norms comply with the general principles of law. Regulatory taxation norms must be based on objective and efficient considerations. No tax may be of confiscating nature.

Taking into consideration direct correlation of changes in cadastral values and the amount of real estate tax that directly affects the person's right to property and housing, the Ombudsman finds that the information on the projected new cadastral values should be communicated along with the proposed changes in the estimate of real estate tax.

### *Regarding real estate tax exemptions made available in Jelgava County*

Binding regulations of Jelgava County on real estate tax exemptions provided for 70% real estate tax exemption in case of the 1 st group disabled persons who have no lawful 1 st degree heirs if their monthly income does not exceed the minimum wages fixed by the Cabinet.

The Ombudsman applied to the municipality for adjusting the regulations to stipulate that tax exemptions apply to persons with disabilities who have no lawful 1<sup>st</sup> degree heirs at the age of majority, and recommended to use appropriate terminology in terms of the UN Convention on the Rights of Persons with Disabilities, namely, to use the term “persons with disabilities” instead of “disabled persons”.

Pursuant to the recommendations issued by the Ombudsman, the Municipality has amended the binding regulations.

*Discrimination on basis of age in binding regulations of Sigulda County on imposing of real estate tax is detailed in section “Discrimination and legal equality” of this Report. novada saistošajos noteikumos par nekustamā īpašuma nodokļa piemērošanu sk. šī ziņojuma sadaļā “Diskriminācija un tiesiskā vienlīdzība”.*

### *Regarding regulatory norms of the Power Industry Law*

Based on the findings made in course of drafting opinion on the Constitutional Court Case No. 2019-28-0103, a proposal has been made for the Ministry of Economics to assess the need for adjustment of regulatory norms of the Power Industry Law with the view to provide clarification of certain matters related to the use of natural gas transmission and distribution systems. In particular: 1) connection to transmission system by non-industrial users – whether or not available according to the current norms of the Directive; 2) whether or not the establishment of a common operator of distribution and transmission system is permitted, on what occasions and subject to what preconditions.

### *Regarding the lack of effective legal remedies*

Having analyzed the effectiveness of legal protection mechanism available for persons in relation to continuous limitations imposed on their ownership right as a part of criminal proceedings instituted in Latvia and forwarded to a foreign country in pre-trial investigation stage as a part of international cooperation, the Ombudsman established shortcomings in regulatory norms because a decision adopted by Latvian institutions on arrest applied to property in pre-trial proceedings eventually remains effective during non-proportionally long period of time without any subsequent control.

The Ombudsman has [notified the Office of Prosecutor General and the Ministry of Justice](#) of his conclusions and proposed to discuss the need for improvement of regulatory norms. It follows from [reply issued by the Ministry of Justice](#) that upgrading of regulatory norms is scheduled to prevent potential infringement of persons' right to property. On the other hand, experts continue to discuss whether or not the drafted amendments would also apply if arrest is imposed as part of criminal proceedings instituted in Latvia and subsequently forwarded to a foreign country.

## Case Analysis

### *On encumbrances imposed on property in protected area without compensation*

The Ombudsman has reviewed the investigation case on encumbrances imposed on ownership in case of real estate owned by a private individual and located in a protected area – a nature protection area “Jaunciems” with the status of protection area of European importance Natura 2000, and established that restrictions were imposed on the applicant's ownership for legitimate purpose according to the law, yet it is not proportional because no national compensation vehicle is available to compensate for restrictions imposed on ownership if the real estate located in a Natura 2000, is does not exceed 1 hectare; it is neither a forest nor cultivated land, while it is subject to stringent requirements in terms of nature protection. The Ombudsman noted that fair balance of general public interests and protection of fundamental rights of individual was not ensured.

Being aware of the eventual impact on the State budget if the recommendations are implemented, the Ombudsman still advocates for considering fair adjustment of the situation where persons are compensated for restrictions imposed on real estates owned by them if the property of less than one hectare is located in a protected area.

The Ombudsman's opinion is available [here](#).

### *On proportionality of restrictions imposed on the right to property*

Having reviewed an application concerning power transmission contact networks attached to external wall of a multi-residential house, the Ombudsman noted that any restrictions imposed on the right to property have to be proportional. In the Ombudsman's opinion, compatibility of Section 7.1 Part Three of the Road Traffic Law with the right to property enshrined in Section 105 of the Constitution depending on the impact of such contact network fastenings on technical condition of the residential house according to the technical opinion as well as on the grounds for removal of contact strengthening elements by owners of the residential house. The Ombudsman established that case No. 2020-59-01 was initiated by the Constitutional Court.

### *Availability of the minimum financial services*

The Ombudsman finds in relation to the applications received from private individuals concerning refusal on part of credit institutions to provide financial services that from the view of human rights it is necessary to develop a mechanism to enable persons to make payments for provision of their essential needs if their possibility to open account is limited due to requirements of regulatory acts. Proposals will be made for the Ministry of Finance after consulting with the industry.

### *Regarding the Individual Income Tax Law*

Having reviewed an investigation case on the imposing of individual income tax (IIT) upon transfer of real estate and investment of the gained income in another estate, the Ombudsman established that for the purposes of the law the tax payer's marital status makes no difference as well as the fact that the real estate acquired during marital cohabitation constitutes a joint spousal property, or the fact that the other spouse has been declared at the real estate during the period prescribed by the law and therefore meets the statutory requirement for declaring of residence, because the criteria for exemption from payment of tax only apply to owner of the real estate registered in the Land Register.

Legal system in a law-based state has to be operated as a unified, harmonized set of laws aimed at fostering justice and serving the rights and lawful interests of persons. The Ombudsman therefore noted that close spousal relations should be taken into account for taxation purposes in case of joint spousal property, like in family law. This would facilitate implementation of the principle of justice and rule of law and also protect lawful interests of the family. The Ministry of Justice has not supported the Ombudsman's proposal.

The Ombudsman's opinion is available [here](#).

### *Individual income tax for operators of economic activities*

The previous procedure for IIT payment by operators of economic activities has been changed since 2018, in particular the provision that no IIT had to be paid by operators of economic activities if the incurred costs equaled to the gained income (0 income) or exceeded it (operation with loss). According to the current regulation, an operator of economic activities has to pay IIT on 20% of income from the economic activities (rather than profit), because only 80% of the incurred costs are attributable. In other words, operators of economic activities are required to pay IIT even if they gain no profit for any reason.

The Ombudsman notes that the above procedure does not conform with the principle of justice and causes disproportionate restrictions on the tax payers' rights, and advocates for amending of the legal norm. The Legislator has not taken the recommendation into consideration, and the Ombudsman is therefore considering application to the Constitutional Court.

The Ombudsman's opinion is available [here](#).

## Opinions and Applications to Court

### *Proportion of the state fee for corroboration of ownership title of actually cohabitating persons*

In 2018, the Ombudsman established disproportion in charging of the state fee for corroboration of ownership title of actually cohabitating persons upon inheritance. The state fee of 0.125% of value of the real estate that is 60 times less is charged where the heir – spouse of testator inherits on the grounds of inheritance contract. The Ombudsman applied to the legislator for providing legal framework for various forms of family in accordance with the latest concepts of the European Court of Human Rights and Section 110 of the Constitution and reviewing of regulatory norms so that uniform understanding of the family concept and protection of family is ensured. The Ombudsman also advocated for amending the governmental regulations concerning state fees.

Neither the legislator nor the government have taken the Ombudsman's recommendations into consideration, so the Ombudsman has filed an [application with the Constitutional Court](#) and the latter has instituted case No. 2020-34-03.

### *Imposing of the VAT in case of compulsory land lease*

The Ombudsman pointed out in his [opinion for the Constitutional Court in case No. 2020-24-01](#) on the legal norms that define the obligation to pay VAT on certain occasions in case of compulsory lease of land that the position of the applicant was not equal and comparable to that of the land owners who have no obligation to pay the VAT into the state budget, and therefore a breach of Section 91 of the Constitution can be established.

The Ombudsman believes that the legitimate purposes for restriction of the right to property include provision of obligations assumed by the State upon joining the European Union, and it is important to note that the contested norm has been adopted by transposing the norms of the Directive 2006/112/EC. In the Ombudsman's opinion, the contested norm fails to serve that purpose. Whenever decisions are made by the legislator on exempting real estate lease from payment of VAT or applying exceptions, the decision has to be based on case law of the European Court to achieve as fair balance of conflicting interests of different members of society as possible.

### *Proportionality of fines in tax breaches*

The Ombudsman established in his opinion to the Constitutional Court in case No. 2020-31-01 on compliance of the legal norm that provides for charging and recovery of fine at the rate of 100% of the tax payable into the budget with Section 105 of Constitution of the Republic of Latvia that the current version of the contested norm presents the risk of disproportionate application. It should be adjusted to provide for individual approach in determining liability for breach of the contested norm. Such individual approach has to be compatible with legitimate purpose of the contested norm, that is, to prevent recurrent breaches by the individual through effective and timely collection of tax and inflicting penalty on the individual as appropriate to the committed breach.

### *Restrictions on advertisement of medications*

The Ombudsman concluded in his [opinion to the Constitutional Court in case No. 2020-02-0306](#) concerning compliance of restrictions on advertisement of medications with Sections 100 and 105 of the Constitution and Article 288, Part Three of the Treaty on European Union that the regulatory norms imposing restrictions on advertising of medications is neither transparent nor clearly aimed at the legitimate purpose to protect the community from poorly considered purchase of medications. Information on price discounts for medications authorized for distribution by pharmacies is not transparent.

Whilst operating in the conditions of regulated mark-up, pharmacies are authorized to apply discounts to medications, Therefore, pharmacies should have the possibility to distribute information on such discounts to ensure that consumers are entitled to obtain information on advantageous conditions to purchase of medications, ensuring on the other hand that the provided information is not in breach of the requirements prescribed by the Cabinet for advertising of medications.

### *Disputable aspects of natural gas transmission and distribution system*

The Ombudsman concluded in his opinion to the Constitutional Court in case No. 2019-28-0103 “On compliance with decision No. 1/7 adopted by the Council of Public Services Regulation Committee on 18 April 2019 concerning the connection of biomethane producers, liquefied natural gas system operators and users of natural gas to the natural gas transmission system” with Sections 1, 64, 89 and the first sentence of Section 105 of the Constitution as well as on compliance of with Section 45, Part Seven, and Section 84.<sup>1</sup>, Part One of the Power Industry Law with Section 64 of Constitution of the Republic of Latvia that the above-named decision of the Public Services Regulation Committee complies with Sections 1, 64, 89 and the first sentence of Section 105 of the Constitution, and that Section 45, Part Seven, and Section 84.<sup>1</sup>, Part One of the Power Industry Law complies with Section 64 of the Constitution.

Along with that, the Ombudsman applied to the Ministry of Economics for assessment of the need to adjust the Power Industry Law so that transparent norms are ensured in specific matters related to the use of natural gas transmission and distribution systems.

### *Proportionality of obligation of a user of natural gas to compensate for inappropriate use of natural gas meter*

The Ombudsman established in his [opinion on the Constitutional court case No. 2019-19-0103](#) where the contested legal norms provided that user of a natural gas who has used the gas consumption meter in contradiction with the regulations had to compensate for the consumed natural gas at the rate estimated by the system operator and to pay double compensation that the above-described procedure was not compliant with the principle of proportionality and that it constituted infringement of the right to property.

The purpose of ensuring safe, effective and efficient operation of power supply system to serve the best public interests and compensating the system operator and other users for the caused damage and costs incurred by the user’s actions aimed at reducing the accounting for natural gas consumption or use of natural gas free of charge, and protecting users from the power industry operators in dominating position could be achieved by less stringent regulatory norms, for example, by stipulating that natural gas operator has to prove the incurred loss and by introducing a natural gas accounting system that enables recording of actual gas consumption regardless of readings of the installed gas meter.

### *Regarding the prohibition to provide study programs in foreign languages by private higher education establishments*

The Ombudsman confirmed in his [opinion on the Constitutional Court case No. 2019-12-01](#) on the legal norm that prohibits the provision of study programs in foreign languages by private education establishments without exceptions that the said norm complied with Sections 1, 105 and 112 of the Constitution.

The Constitutional Court divided and extended the case to establish non-compliance of the contested norms with Sections 112 and 113 of the Constitution.

## Implementation of Recommendations

*More information on the obligation to pay the OIK (mandatory procurement component) as part of net payment system for power supply is available in Section "Discrimination and legal equality" of this Report.*



RIGHT TO EMPLOYMENT

# RIGHT TO EMPLOYMENT

## Introduction

Individuals continuously apply to the Ombudsman for advice on problematic aspects related to the right to employment beyond the Ombudsman's competence, for example, on improperly calculated or unpaid salary; on payment for overtime, annual leaves, substantiation of removal or firing, etc. The Ombudsman can only abstractly clarify the situation on such occasions and recommend that the applicant should apply to the State Employment Inspectorate or to court for protection of their rights.

The highest number of applications in context of the right to work have been filed for unequal or unfair treatment at working environment and for eventual psychologic terrorism on part of the employer or fellow employees. *(For further details please see the section "Discrimination and legal equality")*

The Ombudsman has issued a number of opinions during the reporting period on the prohibition to take certain positions by those who have previously committed a criminal offence.

Following up with the situation in the right to fair remuneration by health care professionals, the Ombudsman has filed a petition with the Constitutional Court.

## Initiatives

### *On limitation to take the office of Ombudsman by a person who has earlier committed a criminal offence*

The Ombudsman has issued his opinion assessing the limitation to take the office of Ombudsman by a person who has earlier committed a criminal offence. As regards the grounds for absolute prohibition in case of persons who have intentionally committed a severe or especially severe crime, it was established that intentional commitment of severe and especially severe crimes presents the highest public danger. On the other hand, the office of Ombudsman requires that the person protects all fundamental human rights enshrined in Chapter 8 of the Constitution where such rights are attributable to protected interests within the meaning of criminal law and infringed by a criminal offence, and therefore properly protected by the Criminal Law. It is therefore impossible to name any group of criminal offences where protection of endangered interests falls outside the scope of protected human rights. So their differentiation is impossible due to specifics of official activities of the Ombudsman. It was therefore concluded that no individual assessment impossible in respect of intentionally committed severe and especially severe crimes.

### *Pon limitation to join the Home Guard and military service by a person who has earlier committed a criminal offence*

The Ombudsman has issued [opinion on the draft legal norms](#) regarding the conditions for joining the Home Guard and military service by persons who have criminal law rulings adopted against them. The lifting of absolute prohibition in case of criminal offences committed through negligence deserves appreciation, while intentionally committed crimes and less severe offences would be subject to assessment on case-to-case basis.

Assessing the applicability of absolute prohibition to joint military service and the Home Guards by persons who have intentionally committed severe and especially severe crimes, the Ombudsman concluded that the possibility to discuss the proportionality of absolute prohibition in relation to such crimes is quite limited because of the currently applicable limitations prescribed by the State Secret Law. Along with that, comparing the norms of the Military Service Law and the Home Guard Law of the Republic of Latvia and provisions of the State Secret Law, the Ombudsman advocated for specification that dismissal of criminal proceedings on non-rehabilitating grounds would not serve as grounds for refusal to join military service or the Home Guards. The competent Parliamentary Commission did not support the Ombudsman's recommendations.

*Information of the opinion poll "Discrimination at working environment" is presented in section "Discrimination and legal equality" of this Report.*

## Case Analysis

### *On restrictions imposed on aircraft pilots*

The profession of aircraft pilot is among the increased risk professions due to considerations of safety and required prudence. Therefore, as soon as any material changes are observed by the employer in the health condition of a member of aircraft crew, and prima facie evidence leads to assume that health condition of a crew member is not compatible with performance of their job duties and their continued work would pose risk for the employee and for other persons, the employee is entitled to refer the person for unscheduled medical examination and discontinue legal employment relations with such person where disorders of mental nature diagnosed by doctor are incompatible with performance of job duties. In the Ombudsman's opinion, such approach is both legitimate and reasonable.

*Information on unequal treatment (mobbing and bossing) at workplace is detailed in Section "Discrimination and legal equality" of this Report.*

## Opinions and Applications to Court

### *Regarding the compliance with funding envisaged by the annual budget 2020 with the Constitution, insofar the amount of funding prescribed by the law to increase remuneration for medicine professionals is not included in the budget*

When preparing the annual national budget 2020, the Parliament fail to include full amount of funding prescribed by Paragraph 11 of Transitional Provisions of the Health Care Funding Law for increase of remuneration to health care professionals in the budget. Taking into consideration the lasting crisis in health care industry, namely, the urgent shortage of labor resources where fair remuneration is among the decisive criteria for personnel recruitment, and inability on part of the Government and the Parliament to implement the promises continuously contained in policy planning documents regarding purposeful and systemic increase of remuneration to those employed by health care industry, and the resulting incompatibility of two applicable laws, the Ombudsman applied to the legislator for elimination of the established shortcoming and to include the missing amount of funding in the annual state budget 2020.

The Parliament did not take into consideration the Ombudsman's recommendations, and therefore [application was filed with the Constitutional Court](#) and case No. 2020-40-01 was instituted on non-compliance of the annual state budget 2020 with Sections 1 and 66 of the Constitution.

### *Regarding the prohibition to grant a certificate of security guard in case of a person with diagnosed alcohol addiction*

The Ombudsman established in his opinion issued to the Constitutional Court in case No. 2020-29-01 regarding the legal norm that prescribes absolute prohibition to grant a certificate of security guard to persons with diagnosed alcohol addiction that the contested norm is reasonable and proportional insofar the limitation prescribed by it is not absolute. Given that no less restrictive legal regulation is available for achievement of the legitimate purpose set by the legislator, no public benefit is evident that justifies the restrictions imposed on the specific rights of persons. The prohibition contained in the contested norm does not conform to the principle of proportionality, moreover it is discriminating given that more flexible norms apply to comparable groups of persons in comparable conditions in terms of limitation on application for certain jobs.

*Regarding the prohibition to hold the office of a member of the board in public and municipal share companies by persons with previous conviction*

The Ombudsman concluded in his [opinion to the Constitutional Court in case No. 2020-18-01](#) on compliance of the legal norm prohibiting to apply for the office of member of the board of a share company owned by derivate public entity by a person who has previous conviction for intentional criminal offence with the right to freely selected employment that the legislator had not properly weighed the meaning and consequences of application of the absolute prohibition and had not substantiated impossibility to serve in equal quality the legitimate purpose of restriction imposed on fundamental rights if exemptions from absolute prohibition were provided for. Given that the purpose of absolute prohibition contained in the contested norm can be served in equal quality by alternative means, absolute prohibition contained in the contested norm does not conform with the principle of proportionality.

*Regarding the prohibition to hold a public service office in the Ministry of Interior system by a person previously convicted for intentional criminal offence*

The conclusions drawn by the Ombudsman in his [opinion to the Constitutional Court in case No. 2020-50-01](#) on compliance of the legal norm that prohibits service in the Ministry of Interior system by a person previously convicted for intentional criminal offence with the right to perform public service and the right to freely select employment were similar to those in Constitutional Court Case No. 2020-18-01, where he established that the purpose of absolute prohibition contained in the contested norm could be served by alternative means, and therefore absolute prohibition contained in the contested norm does not conform with the principle of proportionality.

## Implementation of Recommendations

*Regarding restrictions imposed on selection of employment because of an earlier committed offence*

Subsequent to the study conducted by the Ombudsman in 2019 [regarding the restrictions imposed by regulatory acts](#) on a person in selecting the desired employment because of an earlier committed offence, the Prime Minister acknowledged the need for reviewing regulatory acts. All ministries, Finance Intelligence Service and the Corruption Preventing and Combating Bureau were entrusted with drafting proposals for amendments to the laws of their respective areas of responsibility and in governmental regulations concerning the prohibitions or restrictions imposed on persons because of an earlier committed criminal offence. The proposals presented by the institutions were reviewed and accepted for considering at the Meeting of Secretaries of the State on 17 December 2020.



# THE RIGHT TO SOCIAL SECURITY

# THE RIGHT TO SOCIAL SECURITY

## Introduction

The reporting year can be treated as a nearly historical period in the field of social security. This year was marked as a result of efforts in previous years by four important awards adopted by the Constitutional Court on conformity of the minimum income with the Constitution. The Constitutional Court established in nearly all awards that the issue of social security was so relevant that it has to be decided by legislator on the level of principles. The Court also noted that any values have to be fixed with specific objective and based on empiric and scientific estimates appropriate to the economic situation in our country. Therefore, the minimum amount of support shall not be fixed by means of political agreement; they shall be based on logical considerations to ensure for everyone the living standards appropriate to human dignity.

The Ombudsman was looking forward with a lot of interest to the results of work by the Government and the legislator on enforcement of awards of the Constitutional Court in the field of welfare so that they not only demonstrate reliance by the Government and the Parliament on Latvia as a socially responsible state but also show whether or not the awards of Constitutional Court with the effect of law are respected at all.

As regards the applications in the field of social security, increasing number of applications are filed concerning incorrect or unfair, in the persons' opinion, calculation of old age pension, the amount of pension and the need for resuming extra payment for work during the soviet era, in particular for work under unhealthy working conditions. Complaints were made on individual occasions on the insufficient amount of social aid, in particular in relation to medicinal costs and treatment by municipal social services. Also, a number of applications referred to the fixing of the minimum rate of mandatory State social insurance contributions expected by the Government to take effect from mid-2021.

## Initiatives

### *Regarding the enforcement of awards rendered by the Constitutional Court in the field of welfare*

Enforcement of Constitutional Court awards was initially expected by adopting a uniform method for determining the minimum income threshold based on social and economic situation in our country thus facilitating minimization of poverty and inequality of income across the country. The Government proposed to define income median<sup>3</sup> as a milestone for fixing the minimum income threshold in the field of social security.

It was proposed to define that the minimum income threshold under which a person is eligible to support from public resources may not be less than 20 percent of the income median published for the reporting year and that the minimum income threshold is annually reviewed on July 1 on the basis of actual value of income median published on website of the Central Statistics Bureau<sup>4</sup>. In spite of individual shortcomings, the initially proposed model in general would conform the concepts established by the Constitutional Court.

At present, however, the amount of allowance (pension) expressed in specific figures is prescribed by law without objective grounds, to be reviewed at least every three years, and the method applied for defining the amount of allowance can be only found in summary of the legal act.

[The Ombudsman points out](#) that the Constitutional Court has emphasized in particular the obligation of legislator to define the key principles of method for defining the minimum income threshold including adequacy and periodic reviewing of the minimum income threshold, accentuating that the state has limited discretion in deciding on the minimum social aid. The state has to properly substantiate the selected amount of minimum social aid and the related conceptual decision-making.

<sup>3</sup> Income median is a statistic parameter describing the central value (distribution midpoint) of observations grouped from the lowest value upwards. Income median therefore means the midpoint of income grouped from the lowest value upwards (rather than the average income).

<sup>4</sup> Informational report "On proposals for the state budget revenue and expenditures in 2021 and the period of 2021-2023".

*Information on discriminating and unfair treatment in approach to downtime allowance is available in section “Issues of human rights in relation to the spread of Covid-19 infection in our country” of this Report.*

### *Regarding refusal of the status of unemployed person to assistant*

The Ombudsman established that assistant of a person with disabilities could not apply for the status of unemployed person after termination of employment relations because formally a contract agreement on the provision of assistant services means establishing of legal employment relations. The Ombudsman advocated for amending such procedure given that provision of assistant services on most occasions, in particular where assistant services are provided to a relative, is objectively necessary to provide support for a person with severe or very severe functioning restrictions against symbolic remuneration paid by the state (municipality), rather than gaining income to provide means of subsistence for the person (the family), also because the availability of professional assistant services is highly limited.

The Ombudsman established, for example, that assistants would be eligible to downtime allowance, notwithstanding that such eligibility is not contained in regulatory acts on the granting of downtime allowance<sup>5</sup>. Similar approach should apply to termination of legal employment relations. The Ministry of Welfare acknowledged the need for considering amendments to the regulatory norms in future.

### *Regarding social protection of various forms of family*

Opinion of the need for social protection of various forms of family was presented to the Parliamentary Committee for Social and Employment Matters to ensure that the duty to protect family prescribed by Section 110 of the Constitution is duly met. The Ombudsman argued that changes in social and culture models of family life should be taken into account to stipulate that existence of family can be confirmed not only by a legally registered marriage but also by actual family life characterized by financial or psychological dependence, for example, cohabitation or common children. Therefore, the term “family” should be understood not only in the context of single gender relations. According to the European court practice, Article 8 of the Convention provides not only for protection of individuals not only from arbitrary interference on part of the state with their private and family life but also for positive duty of the state to protect the rights enshrined in Article 8.

*Information on amendments to the Social Services and Social Aid Law in terms of protection of the rights of persons who have the status of refugee or alternative status granted to them is provided in Section “Rights of foreign nationals and persons without legal status; naturalization and deprivation of citizenship” of this Report.*

## Opinions and Applications to Court

### *Regarding the guaranteed minimum income level*

Constitutional Court Case No. 2019-24-03 was instituted at the Ombudsman’s initiative in 2019 regarding conformity of the guaranteed minimum income (GMI) level with the Constitution. The Cabinet has increased the GMI level from 53 to 64 euro effective from 1 January 2020. The Ombudsman pointed out that also the new fixed GMI level was not adequate for the provision of essential needs. In the Ombudsman’s opinion, the Cabinet had not eliminated non-compliance of the contested norm with Sections 1 and 109 of the Constitution by reviewing the GMI level, and therefore he supported the claim and requested the constitutional Court to proceed with hearing of the case.

The Constitutional Court held that the contested norm did not conform with Sections 1 and 109 of the Constitution.

<sup>5</sup> Cf. <https://www.lm.gov.lv/lv/jaunums/darba-nemeji-un-pasnodarbinatie-kuri-vientaikus-ir-asistenta-pakalpojuma-sniedzēji-var-pretendet-uz-dikstaves-pabalstu>

### *Regarding the level of low income*

Constitutional Court Case No. 2019-25-03 was instituted upon the Ombudsman's [application](#) in 2019 regarding conformity of the level of low income with the Constitution. The contested legal norm stipulated that a person could be treated as a low income person if the average monthly income per family member did not exceed 128.06 euro in the most recent three months, and the said amount has not changed during 12 years.

The Constitutional Court held that the contested norm did not conform with Sections 1 and 109 of the Constitution.

### *Regarding social security state allowance*

Constitutional Court Case No. 2019-27-03 was instituted upon the Ombudsman's application in 2019 regarding conformity of the social security state allowance with the Constitution. The Cabinet has increased the amount of social security state allowance by less than 16 euro starting from 2020. The Ombudsman accentuated that such increase was inadequate to essentially improve the situation of recipients, mostly persons with disabilities. It has always been fixed by means of political agreement rather than based on economic estimates, and it did not conform with the social and economic situation.

The Constitutional Court has already examined the reviewed allowance and held that it did not conform with Sections 1, 91 and 109 of the Constitution.

### *Regarding the minimum old age pension*

The Ombudsman had applied to the Government in 2019 already pointing out to non-conformity of the minimum amount of old age pension with the Constitution and advocating for increase thereof. The minimum old age pension was fixed in our country within the range of 70.43 to 108.85 euro/month. In case of persons with disabilities since childhood, the minimum amount of old age pension was a little bit higher ranging from 117.39 to 181.42 euro/month. Most important to note that such minimum pension was also received by persons with length of service over 40 years.

Even though the government increased the amount of minimum old age pension starting from 2020, the Ombudsman noted that increase of the base amount from 64 to 80 euro was not adequate and that it still did not conform with the principle of human dignity, and therefore the Ombudsman [applied for elimination of non-conformity with the Constitution](#). Since the Government failed to eliminate the notes shortcomings, the Ombudsman filed an [application with the Constitutional Court](#), in respect whereof case No. 2020-28-03 was instituted and pooled later with case No. 2020-07-03.

The Constitutional Court held that the contested norm did not conform with Sections 1 and 109 of the Constitution.

### *Regarding the duty to insure against unemployment the persons in child care leave with one and a half to eight years old children*

The Ombudsman concluded in his [opinion to the Constitutional Court on case No. 2020-35-01](#) regarding compliance of Section 6, Part Five of the State Social Insurance Law insofar it provides for no insurance against unemployment in case of persons (employees) in child care leave with one and a half to eight years old children, with the first sentence of Section 91 and Section 109 of the Constitution that the circumstances of the groups of persons referred to by the applicant are neither equal nor comparable by certain criteria. Therefore, different treatment of such persons is permissible, and therefore the contested norm complies with the first sentence of Section 91 and Section 109 of the Constitution.

*Information on the minimum disability pensions and social insurance of employees with I or II group disabilities is presented in Section "Rights of persons with disabilities" of this Report.*

## Implementation of Recommendations

### *Regarding protection of social guarantees in case of employees where the employer fails to declare or pay tax*

The Ombudsman recommended to the Cabinet in 2019 [as part of investigation case concerning the vehicles for protection of the rights of employees and effectiveness of such vehicles](#) that amendments should be developed to regulatory acts to provide for equal mechanism for protection of the rights of employees in case of failure on part of the employer to report to the SRS on: granting and expiration of child care leave; granting and expiration of a leave granted to father upon birth of a child; granting and expiration of a leave in relation to adoption of a child placed in institutional care.

The Cabinet did not take the Ombudsman's recommendation into consideration because in their opinion an effective mechanism was in place for protection of the rights of persons, namely, they have the possibility to apply to court.



# THE RIGHT TO HOUSING

# THE RIGHT TO HOUSING

## Introduction

Tenants of multi-residential housing have been complaining on most occasions during the reporting period on actions of house managers who fail to provide adequate and detailed clarification of their actions; on non-transparent, unclear bills; on compulsory collecting for renovations; on difference of water loss, and other. It should be a reminder that on similar occasions the Ombudsman can only seek to advise on possible actions without the authority to interfere with relations of the apartment owner and the house manager because these are classified as private legal relations.

Individuals also complain on refusal by municipality to provide support in housing matters or quality of housing provided as part of support. Along with that, the number of applications concerning arbitrary actions on part of lessors has experienced notable decrease. Several applications are received concerning the narrow definition of family thus preventing from accommodation of adult children in housing provided as part of municipal support, though on some occasions this would be the most appropriate solution for certain households, in particular in terms of access to the required support.

The Ombudsman has finalized in the reporting period the study of homelessness in Latvia and continues to follow up with actions of the legislator in adjusting legal norms on legal lease relations.

## Initiatives

### *Homelessness in Latvia*

The right to housing is constitutionally guaranteed in a number of Member States to the European Union. Adequate housing is a necessity as well as right. Housing is among human essentials and a precondition to decent life and social inclusion. Homelessness, on the contrary, contradicts with human dignity and human rights. In case of homeless persons, the right to housing a priori is not provided.

Poverty is not an offence and neither is homelessness, and therefore criminalization of homeless persons in some countries, enactment and application of socially irresponsible legal acts that infringe human rights does not conform with the principle of equal treatment and respect to human dignity.

The Ombudsman has conducted a [study of homelessness in Latvia](#) and eventual scope of this issue, and summarized the opinion of municipalities on potential solution of the problem. Most of municipalities keep no special record of homeless persons, and the relevant data are mainly based on the number of persons who receive shelter services.

The Ombudsman concluded according to results of the study that homelessness or lack of housing can lead to degrading of personality, social exclusion, discrimination by social status (for a vulnerable group) and occasionally even to death (especially in severe cold or hot seasons). Social inclusion of homeless persons is a complicated and difficult process. Homelessness is also a dynamic process; it is changing along with numerous factors. Eradication of homelessness as a social and personal problem is impracticable because it is based on a set of different personal and social conditions, while it can be minimized by various complex measures, cooperation and coordination among the involved industries and institutions, construction of new social houses and promoting housing at affordable price, as well as by increase of the overall welfare level and measures for minimization of poverty across the country including increase of the minimum allowance.

The awards rendered by the Constitutional court in 2020 in the field of welfare and the resulting amendments to regulatory acts would lead to some progress in resolving this situation, yet it is still true that homelessness requires complex solutions including involvement of the concerned persons and their willingness to cooperate in the improvement of their social situation.

*Information on the right to let a social apartment for lease to persons with disabilities is presented in section “Rights of persons with disabilities” of this Report.*

## Case Analysis

### *Regarding breaches of good governance and non-adherence to legal norms*

Jaunjelgava County Council refused to prolong the existing agreement on lease of residential premises and notified her to vacate the premises. The Ombudsman established that no reference to specific legal norms was contained in the documents as part of the given legal situation, and the prepared documents were incorrect and contradicting, and therefore legitimacy of actions of the institution in general could be contested. The Ombudsman concluded that the person was not deprived of the right to lease a social apartment, and decision adopted by the municipality to refuse renewal (prolongation) of lease agreement with the person was not substantiated; therefore, the municipality had acted in contradiction with the applicable legal norms.

Municipality of Jaunjelgava County Council prolonged the existing agreement on lease of social residential premises upon the Ombudsman's recommendation.

Opinion of the Ombudsman is available [here](#).

*Information on housing support available for a person released from imprisonment is presented in section “Rights of imprisoned persons” of this Report.*



# THE RIGHT TO HEALTH PROTECTION

# THE RIGHT TO HEALTH PROTECTION

## Introduction

Complaints continue, yet notably less frequently than in previous years, on mistakes made in the persons' opinion during the process of therapy and on treatment by medicine professionals.

The Ombudsman points out that no medicine experts are employed by the Ombudsman Office and therefore the Ombudsman is not competent to assess the quality of therapy in its merits. Reviewing of applications reveals that conflict situations are often escalated also by incorrect or unethical treatment of the personnel by patients or their relatives and by their unwillingness to adhere to the established procedure. Individuals continue to point out on some occasions to systemic problems like unavailability of medicinal services, refusal to compensate medications or high patient co-payments (in particular where oncologic condition is involved).

The number of applications concerning the work of the Health Inspectorate has notably decreased compared to the previous periods. In-depth case studies show improvements in work of the Health Inspectorate.

The Ombudsman has been thoroughly following up with ability of the Government to set the state budget according to the legislator's assignment and to allocate adequate funding from the state budget to remuneration of health care professionals. The Ombudsman has filed an application with the Constitutional Court concerning the annual state budget 2020. Ability on part of the Government and the legislator to agree on funding for increase of remuneration to health care professionals in 2021 deserves appreciation, moreover because it is crucial in the context of the current Covid-19 epidemics.

## Case Analysis

*Information on sorting of patients during the Covid-19 pandemics is presented in section "Issues of human rights in relation to the spread of Covid-19 infection in our country" of this Report.*

## Opinions and Applications to Court

*Information on conformity of funding allocated from the state budget 2020 with the Constitution insofar the amount of funding prescribed by the law to increase the remuneration of medicine professionals is presented in section "The right to employment" of this Report.*



# THE RIGHT TO ENABLING ENVIRONMENT

# THE RIGHT TO ENABLING ENVIRONMENT

## Introduction

It may be concluded regarding the right to live in enabling environment that people increasingly tend to pay attention to what is happening around and to their environment. Individuals have been applying to the Ombudsman with protests against construction of the National Security Service building at "Marsa Parks" in Riga, against the proposed location of a Ferris Wheel at Uzvaras Parks in Riga; occasionally against unsafe constructions, cutting of trees, obscure or unsafe routes, and waste management. Subsequent to the explosions at Beirut Post in Lebanon, people have been applying to the Ombudsman in relation to the construction of liquefied gas terminal.

Complaints to the Ombudsman continued regarding the lack of legal mechanism for protection of persons' rights in case of household noise. This problem persists since 2014 already when the Constitutional Court ruled out in case No. 2013-21-03 that no liability for household noise could be governed by mandatory municipal regulations. The respective regulation has to be enshrined in the law. Notwithstanding the efforts by the Ministry of Environment and Regional Development as the competent ministry to integrate the respective regulation in the Administrative Offence Code of Latvia, such efforts failed during all the previous years. In practice, police have no tools to eliminate noise, and therefore no protection at all is provided to the right to quiet night sleep (enabling environment). Given the number of persons advocating for years the need for solving this problem, no further delay is permissible in the introduction of reasonable legal norms for protection of persons' right to quiet night sleep.

## Case Analysis

### *Regarding construction of a Ferris Wheel at Uzvaras Parks*

Numerous applicants have applied to the Ombudsman concerned by eventual infringement of their right to property, enabling environment and social involvement by construction of a Ferris Wheel at Uzvaras Parks. The Ombudsman noted that actions of the Municipality of Riga City who leased a land parcel owned by them and arranged tender for the right to construction of the said object were not infringing the rights of persons, yet he pointed out to equality of the right to environment and economic rights, proportionality and thorough balancing of interests focusing on development.

The Ombudsman's opinions are available [here](#).

### *Regarding construction of liquefied natural gas terminal*

Having reviewed numerous applications filed by private individuals concerning the harm potentially presented by operation of SIA "Riga fertilizer terminal" and proposed construction of liquefied gas terminal at Kundziņsala, Riga, the Ombudsman has obtained assurance from the municipality of Riga that public and municipal authorities would apply higher (more stringent) safety requirements and solutions to the construction of such object if the construction of liquefied natural gas terminal in Kundziņsala is authorized.

he Ombudsman's opinion is available [here](#).

### *Regarding safe environment in residential area*

Having reviewed a person's application, the Ombudsman applied to the municipality of Ķekava County for immediate fencing of a municipal object – the Titurga Fountain with pools – from the adjacent playground in the inner yard of a multi-residential house to prevent danger and access by children to the dangerous object so that any risk to safety of children is eliminated.

Municipality of Ķekava County informed that fencing had been provided within three days from receipt of the recommendation so that access by children to the dangerous object is prevented.

The Ombudsman's letter is available [here](#).

## Opinions

### *Regarding the authority of municipalities to impose more stringent requirements to eliminate spread of odors*

Pursuant to request by the Supreme Court, the Ombudsman issued opinion on the authority of municipalities to impose additional (more stringent) requirements on their territories to eliminate spread of odors, compared to those set forth in the Law on Contamination. Municipality of Ventspils has adopted such regulations based on the Territorial Planning Development Law enabling regulation of environmental matters in general.

[The Ombudsman concluded](#) that the special law governing the field of odor contamination was the Law on Contamination. The Law does not grant such authority to municipalities. It provides for regular odor control system with involvement of municipality. Therefore, the municipality had no authority to include in their territorial planning additional (more stringent) requirements to eliminate spread of odors. This matter may be delegated to municipalities, yet primarily it has to be decided by legislator.



GOOD GOVERNANCE

# GOOD GOVERNANCE

## Introduction

The complaints filed concerning the aspect of good governance basically refer to decisions adopted by authorities, correctness of legitimacy of certain actions, or failure to issue replies or provide information. It should be noted that on most occasions lack of communication can be established rather than breach of good governance. On some occasions inadequate communication can be observed on part of authorities or their failure to explain their actions or decisions to persons. On other occasions it can be established that the complaint is based on personal dissatisfaction with institutional changes or transfer to another job.

Several applications are related to the legal norms that govern conflict of interest situations where, in persons' opinion, activities of public officials are subject to unreasonable restrictions. Individuals also apply to the Ombudsman for amending the legal norms that govern repayment of study loans, pointing out to breach of the principle of legal reliance.

## Initiatives

### *Regarding uniform regulation of participation by the Ombudsman in the operation of advisory councils*

With the view to provide uniform approach in regulatory acts regarding the participation by the Ombudsman in the operation of advisory councils of various public authorities that would be in harmony with the Ombudsman independence principle, the Ombudsman applied to the Cabinet for the following:

1. To amend the Rules of Operation of the National Council for Disability Cases so that the Ombudsman's membership of the said Council is discontinued whilst providing that the Ombudsman can take part in operation of the Council with the right of advisor;
2. To amend the Rules of Operation of the National Council for Policy Development so that the Ombudsman's membership of the said Council is discontinued whilst providing that the Ombudsman can take part in operation of the Council with the right of advisor.

### *Regarding the draft law on remuneration to the officials and personnel of public and municipal institutions*

Reviewing the draft "Law on remuneration to the officials and personnel of public and municipal institutions" announced at the meeting of Secretaries of the State, the Ombudsman focused on the fact that monthly salary of the Ombudsman was equated to that of the State Controller as stipulated in the currently applicable law and recommended to draw attention to reasonable conclusions of the State Control regarding the uniform system of remuneration.

### *Regarding the draft law "Amendments to the Public Service Law"*

The draft law activated the problem aspect that no mechanism existed for protection of senior level civil servants from political reprisal in situations where they refuse to implement eventually unlawful instructions of a Minister. The draft law was proposed to stipulate that manager of the institution has the right to file a complaint on legitimacy of an instruction or assignment with the Ombudsman.

The Ombudsman did not second the motion because, first, this is not a subject of public discussion. Second, it means narrowing of the remedies that already exist, such as application to law enforcement authorities. Third, application to mass media as representative of the fourth estate also should not be neglected as a solution. This is the issue of political culture that can be formed by wide public discussion to define the solution algorithm that is clear and acceptable for all stakeholders, rather than the issue of a single norm.

The Ombudsman's opinion is available [here](#).

### *Improvement of the portal Latvija.lv*

The Ombudsman established that the portal *Latvija.lv* in the current form of technical solution is not appropriate to enable the use by all persons at the age of majority and concluded that any activities at the portal on the grounds of authorization were only available for legal entities while such opportunity was not able for private individuals. In case of an elderly person with physical or mental restrictions and without network operation skills, support service of the portal *Latvija.lv* recommends to seek help from children, friends, family members, neighbors, etc. to handle the relevant matters using authentication data of the person. The above-mentioned recommendation and practice does not conform with the principle of good governance because of breach of the norms on protection of personal data, and also because the risk that any actions may be taken at the portal in contradiction with the person's interests, will and awareness, and they can lead to adverse legal consequences.

Agreement has been reached on upgrading of the portal to enable communication with public and municipal authorities on the grounds of authorization issued by a private individual and certified by notary public.

## Case Analysis

### *Permissibility and efficiency of transfer of an official to another office*

The Ombudsman was assessing transfer of several public service officials to another office from the view of permissibility and efficiency. No breaches were established, yet the Ombudsman notes that considering material infringements of human rights in case of officials transferred to another office can be based on the following criteria:

1. Establishing and assessment of the official's position before decision on transfer is adopted;
2. Whether or not the office to which the official is transferred corresponds with their education, qualification and professional skills;
3. Whether or not the previous remuneration level and social guarantees are preserved;
4. Physical availability of the workplace.

### *Regarding the use of artificial intellect in decision-making by the SRS*

The Ombudsman analyzed a complaint filed by a person and established that the SRS had been using an EDS artificial intellect for handling annual income returns in terms of IIT repayment. In the given occasion the employer had submitted data on IIT paid in the amount that exceeds three times the actually paid remuneration. The manifest error was not identified by the EDS artificial intellect, and decision was adopted on repayment of the overpaid IIT. Subsequently the SRS demanded repayment from the overpaid portion of IIT including late interest from the concerned private individual.

No assistance could be provided to the person due to procedural considerations, however the following issues should be subject to wider discussion: 1) overpaid IIT has to be repaid to the state, yet the question is about late interest once the situation developed without the tax payer's fault; 2) once use of the EDS artificial intellect was adopted on governmental level, maximum efforts should be made to prevent similar errors.

### *Actions by the municipality of Dobele County upon transfer of real estate*

The municipality had initiated an apartment transfer procedure. The Ombudsman identified irregularities in actions of the municipality where acquisition of the real estate was initially proposed to the tenant at the price determined by real estate surveyor, then the transfer procedure was suspended and acquisition of the real estate was proposed at higher price increased probably by the amount of overdue payments. About six months later the municipality proposed the real estate for transfer at a price determined by another surveyor nearly 2.5 times higher than that specified in the original survey.

The Ombudsman [established breach of the principle of good governance](#) and advocated for transfer of the real estate at the price originally determined by surveyor.

### *Regarding breaches of the principle of good governance at the municipality of Viļaka County*

[As a part of investigation case, the Ombudsman established](#) non-conformity of the actions and personnel policy of the Social Service of Viļaka County with the requirements of regulatory acts as well as disregard of legitimacy, basically arising from lack of professionalism, improper style of management, and problematic communication with personnel by the former manager, lack of competence of the personnel and non-critical, unreasonable nepotism on part of the municipality. Ineffective supervision was also established on part of the Ministry of Welfare and the Ministry of Environment Protection and Regional Development.

### *Regarding municipal function in the provision of water supply and sewage services*

The Ombudsman established as a part of investigation case that, notwithstanding that the autonomous municipal function defined in the Law on Municipalities should not be interpreted to read that municipality has to handle actual provision of utility services on their territory as a rule, yet it should be noted that actions of municipality related to performance of their statutory function is a matter of public law and therefore binding upon population of the municipal territory insofar access by population to such services is provided for in legal acts. Namely, municipality is responsible to ensure that a system is in place for providing the respective services to the population.

The facts established in the course of investigation case lead to conclusion that inhabitants of Sēbruciems at Babīte County in general can be neither sure about nor rely on provision of qualitative and safe water supply service without interruptions.

The Ombudsman's opinion is available [here](#).

*Information on breach of the principle of good governance without provision of enabling environment and making a newly build public building accessible by person with disabilities is presented in section "Rights of persons with disabilities" of this Report.*

*Information on accessibility to the SRS during the Covid-19 pandemics is detailed in section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report. [vid-19 infekcijas izplatību valstī](#)".*

## Implementation of Recommendations

### *Regarding the competence of municipal social service to enter into agreement on long-term social care service*

The Ombudsman reviewed an inspection case in 2019 and recommended to the: 1) Ministry of Welfare to ensure uniform municipal practice in deciding on the granting of social care service and on provision of long-term social care service; 2) social service to repeal the decision adopted beyond their competence; 3) the care home to amend the agreement.

The Ministry of Welfare pointed out pursuant to the Ombudsman's recommendation that discussions were scheduled in 2020 with municipalities on improvement of payment system for social services and development of guidelines on the process of granting of social care services in coordination with business partners. Practice of the social service in the granting of social care services was amended. The care home, on their turn, refused to amend the agreement and pointed out to private nature of the agreement.



# THE RIGHTS OF CHILDREN AND YOUNG PEOPLE

# THE RIGHTS OF CHILDREN AND YOUNG PEOPLE

## Introduction

The Ombudsman is a full-fledged member of the European Network of Ombudspersons for Children (ENOC) and also performs the functions of Ombudsman for Children. Five officials of Rights of the Child division are handling the issues of the rights of children.

The year 2020 passed in looking forward to reform of the system for protection of the rights of children. It was reduced to institutional changes: changed names of institutions and functional reporting, while no changes in fact have taken place. In the Ombudsman's opinion, institutional reform of system for protection of the rights of children can be developed in one direction only – the direction already approved and operating in all developed countries worldwide. In particular, the function of decision-making on custody and guardianship matters has been transferred from custodian courts to courts. Custodian courts are adopting legally binding decisions with legal consequences substantiated by the norms of Family Law chapter of the Civil Law imposing restrictions on fundamental human rights – the right to private and family life. The situation where destiny of children in Latvia is decided by custodian courts that do not belong to the judiciary occasionally borders in legal nihilism. Judicial cover in Latvia is optimal, yet the number of judges specializing in protection of the rights of children and family law eventually should be increased.

The number of applications filed in the field of the rights of children and young people has not changed in the previous year. 1009 applications were received (964 in 2019) including 235 in written form, 1 application received from a child (231 in 2019, 3 from children) and 764 consulting appointments in person, by telephone and on e-mail (733 in 2019).

The applicants most frequently apply to the Ombudsman on the matters related to exercise of the right to contact, suspending/renewal of custody, and the right to education. Essential issues of the rights of children and young people are discussed below in detail. The episodes described in the Report are of systemic nature.

## EXERCISING OF THE RIGHT TO CONTACT

### Introduction

The highest number of applications on the rights of children were filed on difficulties in exercising the access rights and enforcement of court rulings on the access rights. 53 applications were received concerning the enforcement of court rulings and 1103 concerning the access rights. Persons have applied to the Ombudsman in relation to the access rights on 163 occasions in total. Most of the applications were filed concerning the exercise of the access rights with a child by separated parents, and some also concerning access to a child placed in institutional care.

### Initiatives

The Ombudsman initiated investigation case on exercising of the access rights with the view to identify eventual shortcomings in the legal norms and their application.

Enforcement of court rulings is complicated where the rights of children are involved, if there is a dispute between parents and they are unable to reach agreement without referring to court. Discussion was arranged with the Latvian Council of Certified Enforcement Officials and the Ministry of Justice to identify problems related to the enforcement of court rulings.

Section 203, Part Three of the Civil Law stipulates that custody rights shall be terminated for a parent also in cases when the parent misuses his or her rights upon failing to fulfil the court ruling in a case arising from custody or access rights, if it causes significant harm to the child and if there are no obstacles for the other parent to take care of the child. Operation of the above-described mechanism for protection of rights is not effective enough. The difficulties in practical application of the above legal norm and possible solutions of application thereof have been discussed with officials of custodian court, the State Inspectorate for Protection of the Rights of Children, and the Ministry of Justice.

Section 168 of the Criminal Law provides for criminal liability for avoiding from enforcement of a ruling adopted by court or custodian court in relation to guardianship, custody or access right in respect of a child, intentional non-obedience to such ruling of intentional delay of enforcement. Reviewing of applications shows that operation of this mechanism for protection of rights is not effective as well. Possible solutions for the application of Section 168 of the Criminal Law were discussed with representatives of the Ministry of Justice and the State Police.

Exchange of opinions as a part of discussions fostered understanding of the rights and duties of each concerned institution and official in the matters related to guardianship and access rights to children. The involved institutions were recommended to take actions within the scope of their competence to adjust the above-mentioned legal norms to the legislator's intention.

Work on the investigation case continues to summarize in opinion the collected information, professional opinions and to make recommendations on improvement of the legal norms and their application.

## Case Analysis

### *Ķekava County*

Conclusions were made after reviewing of applications concerning the actions of the custodian court of Ķekava County in a case involving the access right to a child that the custodian court as the access entity was acting formally, without due regard to the actual purpose specified in the court ruling and the need for facilitating the formation of relations of a child and separated parents. In the opinion of the custodian court, the court rulings applied to the parent who has applied to the court concerning infringement of his access rights. Notwithstanding that the court had ruled out the interim procedure for exercising of the access right to serve the best interests of the child, the custodian court recommended that the parent should take into consideration opinion of the child on the access and agree with the other parent on different access procedure where appropriate.

The Ombudsman is critical about the position expressed by the custodian court regarding the child's right rather than obligation to maintain relations and direct contacts with the parent who lives separately. Position of the custodian court would apply in the situations where the access procedure is not governed by a court ruling. A court ruling has the effect of law, it is mandatory and has to be adhered to, including by the child. The parent who lives with the child is responsible for adherence to the ruling.

The Ombudsman has issued proposals for the custodian court to facilitate observing of the rights of the child:

- To adhere to and enforce court rulings;
- To prevent the situations where the access entity undertakes investigation of parent-child relationship during the access period stipulated in the court ruling.

### *Liepāja City*

An application was received by the Ombudsman from a parent whose custody rights had been suspended and the children were placed in foster care concerning the actions of custodian court of Liepāja City who refused to disclose information about the foster family to the parent. The parent has been unable to contact the person responsible for care of the children to reach agreement on access to the children and obtain other children-related information.

The Ombudsman recommended to the custodian court:

- To prevent that foster families and other providers of out-of-family care restrict or refuse to facilitate access to children by their parents, siblings (half-siblings), other close relatives;
- To adhere in their activities to the principle of good governance and to provide information to the concerned persons in compliance with the regulatory acts;
- To ensure that meetings of custodian court are organized, recorded in accordance with the respective regulatory acts and other legal norms that govern the activities of custodian courts.

The Ombudsman also established a breach of the principle of good governance in activities of the custodian court in refusal of information to the parent on placement of children in care of another person. Repeated shortcomings were identified in the work of custodian court. The Ombudsman applied to Liepāja City Council for ensuring that the principle of good governance and regulatory acts are adhered to by custodian court in future.

Similar practice – refusal of information to parents with suspended custody right on placement of a child in care of another person – has been also established in the work of other custodian courts.

## THE RIGHT OF CHILDREN NOT TO BE SUBJECT TO VIOLENCE

### Introduction

#### *The right of children to safe conditions at educational establishment*

The most frequent issues on which periodic advice is provided and applications are received are related to infringement the right of children to safe conditions and enabling environment because of other children's behavior and violence on part of personnel. The number of applications has decreased from 52 to 29 compared to the previous year, mostly because of distance learning as a part of measures aimed at limiting the spread of Covid-19.

Handling of the issues reflected in the Latvian TV program "Aizliegtais pašēmiens" (2 November and 9 November 2020) continued by action group formed by the Education, Culture and Sports Department of Riga City Council with participation of the State Education Quality Service. As soon as report is received from the action group, Education, Culture and Sports Department of Riga City Council shall inform the Ombudsman on the intended measures to prevent eventual violence at preschool educational establishments in Riga.

In the Ombudsman's opinion, reviewing of requirements applicable to the personal, in particular determining of the proportion of staff members and the students for assistant pedagogues (nurses) is crucial to prevent the risk of violence, because on some occasions there are as much as 25 children in a group with one pedagogue. Adequate support staff is necessary as well at each preschool educational establishment. The Ministry of Education and Science has launched work on solving the above-described issues.

## Initiatives

### *Regarding specification of the term “violence”*

The term “negligence” as a form of violence was deleted from Section 1 Para 9.<sup>1</sup> of the Law on Protection of the Rights of Children by amendments of 11 June 2020. The Parliamentary Commission for Human Rights and Social Affairs decided at the meeting on 8 December 2020 to entrust the Ministry of Welfare with drafting proposals in cooperation with other institutions for the required amendments to the Law on Protection of the Rights of Children in relation to deletion of the term “negligence”.

The Ombudsman participated at formulation and discussion of wording of the proposed amendments. Agreement was reached on definition of the terms “failure to provide child care duty” and “non-provision of child attendance”. The work on definition of violence towards child is expected to continue in 2021 because no agreement was reached till 118 December 2020 on certain relevant matters, such as definition of “child neglecting”.

### *Regarding jurisdiction in administrative offence proceedings*

Administrative liability for physical and emotional violence towards a child is provided for in Section 81 of the Law on Protection of the Rights of Children. Administrative proceedings for the offences committed by public or municipal officials or staff members are directed by the State Inspectorate for Protection of the Rights of Children.<sup>6</sup> In case of administrative offence committed by persons other than officials of staff members of public or municipal authorities including by staff members of private educational establishments, administrative proceedings before hearing of the case are directed by the State Police or by the Municipal Police. Administrative offence cases are investigated by administrative committee of sub-committee of the respective municipality.<sup>7</sup>

Competences were distributed according to legal status of the offender also before the introduction of system for codification of administrative offences on 1 July 2020. The Ombudsman asked the Ministry of Justice to issue their opinion on distribution of competences and the possibility to entrust the State Inspectorate for Protection of the Rights of Children with investigation of administrative offence case also on the occasions where the offence is committed by staff members of private educational establishments. [The Ministry of Justice supports the concept of uniform administrative liability](#) so that no further distribution of competences according to legal status of the offender takes place in the investigation of administrative offences.

### *Regarding restrictions imposed on custodian court in adopting decisions concerning a council deputy*

The Ombudsman has identified certain occasions where custodian courts neither adopt decisions nor perform the functions prescribed by regulatory acts in cases where county council or city council deputies involved. The Ombudsman applied to the Corruption Prevention and Combating Bureau for their opinion on whether or not any restrictions apply to officials of custodian courts in adopting decisions and performing the functions prescribed by regulatory acts in cases where county council or city council deputies are involved in their capacity of private individuals (parents, guardians, foster parents, adoptive parents, etc.).

According to the [opinion issued by the Corruption Prevention and Combating Bureau](#), no conflict of interests is present in a situation where official of custodian court has to take as part of their job duties any actions that affect, or eventually affect personal or financial a council deputy of the respective municipality, unless the council deputy is a related party or a business partner of the custodian court in terms of the law [“On the prevention of conflict of interests in actions of public officials”](#).

<sup>6</sup> Section 88, Part One of the Law on Protection of the Rights of Children

<sup>7</sup> Ibid, Part Two

In the Ombudsman's opinion, custodian court should be guided in their actions and decision-making exclusively by the rights and best interests of children regardless of the status of their parents or caretakers. The situation is impermissible where officials of custodian court are restricted in adopting decisions that serve the best interests of children solely because such officials are elected by council deputies of their municipality, given the eventual future impact on election of custodian court officials.

The Ombudsman communicated the opinion issued by the Corruption Prevention and Combating Bureau to the Ministry of Welfare, the State Inspectorate for Protection of the Rights of Children, the Ministry of Environment Protection and Regional Development, the Latvian Association of Municipalities and the Latvian Association of Staff Members of Custodian Courts.

The Ombudsman's letter is available [here](#).

## Case Analysis

### *Regarding representation of the rights and interests of injured child in administrative offence proceedings*

The State Inspectorate for Protection of the Rights of children is competent to decide on initiation of administrative offence proceedings where injury to child is caused by violence on part of a staff member of a public of municipal institution, and to decide on administrative liability of such person.

Having reviews an application filed by father of the child, the Ombudsman established a breach of the principle of good governance in work of the State Inspectorate for Protection of the Rights of Children because subsequent to application filed by father of the child concerning violence towards the child, the Inspectorate selected further communication in relation to the case with mother of the child who had not signed the application.

Joint custody of a child means that parents jointly make decisions on any matters related to the child. Therefore, the parents also have to cooperate in deciding on a matter related to representation of the child's rights and interests in public legal relations. The parents can agree that the rights and interests of the child would be represented in the matter in question by one of the parents and also decide which of them would represent the child. Where one parent filed an application concerning a child-related matter and the other parent does not object, it may be concluded that the parents have agreed on representation of the child's rights and interests in the given matter by the parent who has filed the application.

The State Inspectorate for Protection of the Rights of Children has to ensure that father of the child is informed on the decisions adopted pursuant to the application and exercised his right to represent the rights and interests of his child in administrative offence proceedings. Communication of decisions and other information to father of the child in this situation would not contradict with Section 5, Part Five of the Law on Notification and Section 55, Para 1 of the Administrative Liability Law to which the State Inspectorate for Protection of the Rights of Children had referred to in substantiation of their actions. The Ombudsman informed the State Inspectorate for Protection of the Rights of Children on his findings and called upon adherence to the principle of good governance.

### *Security of children at shopping centers*

In 2020, the Ombudsman has been receiving applications from parents and also from merchants for issuing opinion on the matters of behavior and security of children at self-service shops. The Ombudsman issued his opinion that responsibility for a child at self-service shops laid on parents or other persons accompanying the child and also on the merchant. On the other hand, behavior of the child is a responsibility of parents or the accompanying persons alone.

Regarding preventive measures taken by merchants to increase safety of children at shops, in the Ombudsman's opinion, the warning labels "Do not leave unattended children" at entrances and on inside doors of shops do not reach the target audience and they are ineffective. In addition, posters with similar content should be placed inside the shop, next to signboards of shop sections, for example. The vendor would make audio security notifications with periodic frequency (like those used in airports, for example, regarding unattended luggage and security-related matters) using loudspeakers.

In addition, shops would also provide child-care service at the vendor's option according to the regulatory norms, either for charge or free of charge.

## Opinion for the Constitutional Court

The Ombudsman issued his opinion on case No. 2020-36-01 "On compliance of Section 72, Part Five, Para 1 of the Law on Protection of the Rights of Children with the first sentence of Section 91 and the first sentence of Section 106 of the Constitution". The contested norm prescribes absolute prohibition for persons convicted for criminal offences involving violence or threat of violence, regardless of extinguished or removed conviction, to engage in voluntary work or to provide services (other than occasional or short term services or services provided in absence of children) at child care, educational, health care and other institutions where children are present, or at child-oriented events and events with participation of children.

The purpose of the contested norm is protection of children from contact to persons who have been convicted for criminal offences involving violence and therefore minimizing of the risk that a child would be subjected to violence.

The Ombudsman concluded that the contested norm did not comply with the first sentence of Section 91 and the first sentence of Section 106 of the Constitution insofar no individual assessment of a person convicted for criminal offence involving violence or threat of violence is conducted after extinguishing or removal of conviction.

The Ombudsman's opinion is available [here](#).

The Ombudsman applied to the ENOC institutions for providing information on the procedure applied in other countries for regulation of work with children in case of persons with previous conviction. 13 countries in total replied to the Ombudsman's request. The summary is available [here](#).

## PROPERTY RIGHTS OF A CHILD

### Introduction

A child has the right to property like any other person. Depending on age, children have the right to make transactions and exercise the rights related to their property either in person or with mediation of their parents (other legal representatives). The number of applications concerning the rights of a child to property is not high (13), yet they highlight systemic problems.

## Initiatives

### *Regarding the opening of bank account for a child*

Having heard an application concerning the opening of a savings account for a child placed in institutional care due to his/her health condition on the grounds of parents' application, the Ombudsman established that preconditions established by the credit institution for opening of a savings account in the name of the child do not conform with regulatory acts. Study of the practice of numerous credit institutions showed different, occasionally unclear approach. For example, a six years old child has to appear in person to the bank together with his/her representative to sign agreement on the opening of savings account prepared by the bank.

The Ombudsman activated the identified issues in cooperation with the Latvian Association of Finance Industry and informed also the Ministry of Welfare and the Ministry of Justice. A meeting was organized by the Ministry of Welfare where credit institutions presented their position and potential solutions were discussed for ensuring property rights of a child, along with the procedure established by credit institution to ensure security of their services.

The Ombudsman appreciates involvement of the Latvian Association of Finance Industry and the support provided by them in the exercising of property rights of children and provision of uniform understanding of legal acts. Informational material "Peculiarities in provision of financial services by banks for minor persons" provides detailed clarification for legal representatives of children and specialists in the field of protection of the rights of children regarding the moments to be taken into consideration in handling financial assets of a child.

The Ombudsman shares the position of the association that turnover of information and documents should be improved to enable personnel of the bank to verify in a reliable, expedient and convenient manner that the person in question is authorized to deal with the property of a child left without parental care, by means of entering information in a register kept by the state, for example.

### *A child – an undesired client for banks*

The Ombudsman received an application from manager of a child care institution concerning refusal by the bank to open a savings account with the institution for a child left without parental care and placed in institutional care for payment of survivor's pension. The credit institution had closed the child's account and stated that they do not want the child as their client because unlawful transactions had taken place on the child's account. The legal representative of the child is not informed on the circumstances that have made the child an undesired client for the bank. Other banks have also refused the opening of account. Information provided by the child care institution indicates to possible use of children for unlawful transactions with banks by persons who pursue unfair and criminal purposes.

The Ombudsman forwarded the application according to the competence jurisdiction to the Finance and Capital Market Commission and called upon verification whether or not the bank had informed the State Police on unlawful transactions with the child's account; he asked to provide information on security measures available for banks to prevent similar situations.

It can be concluded from the [reply received](#) from the Finance and Capital Market Commission that inadequate protection was provided to the rights and interests of children in their relations with credit institutions where information is obtained on unlawful transactions on the child's bank account. Regulatory acts of the finance industry do not provide for division of clients into minor persons and adults where a client becomes undesirable for a credit institution. Relations with a child are terminated by the bank whenever it is established that either the account is not used by the child in person or that the funds on the child's bank account are of inappropriate origin, or that inappropriate transactions are made in respect of the funds. Therefore, unfavorable consequences follow in respect to the child, while unlawful actions in respect of the child cannot be identified and prevented in case of failure to notify the State Police.

The ombudsman has applied to the Ministry of Finance calling upon seeking solutions in cooperation with the concerned institutions to balance the obligations of credit institutions and their supervisory authorities in the preventing of money laundering and adherence to the principle of priority of the rights of children. The Ministry was called for addressing protection of the rights of children in the situations where risks to or unlawful transactions with bank accounts or funds owned by a child exist to ensure proper investigation of any such occasions and calling of the culprits to account, instead of punishing a child as an undesirable client for the bank.

The Ombudsman's letter is available [here](#).

## Implementation of Recommendations

### *Regarding compensation to the child for financial damage*

Having reviewed an application, the Ombudsman established infringement of property rights of a child placed in institutional care: the child was not eligible to survivor's pension after death of the father. Municipal authorities of Talsi County, namely, custodian court, social service and orphanage, had caused financial damage to two children.

The Ombudsman applied to Talsi County Council calling for indemnification against financial damage caused to the children and to transfer the overdue survivor's pension into the bank account of each child in the amount of 2 166.17 euro for each of them.

Talsi County Council eliminated the breach identified by the Ombudsman within one month. The Council also established that no recourse of the incurred financial damage was available because no intentional infringement of property rights of the children was identified on part of custodian court officials. Chairperson of the custodian court was instructed to assess the liability of member of the custodian court and eventual breaches of the norms of ethics. The custodian court has upgraded since then the system for control and supervision of property rights of children.

### *Regarding the period for granting survivor's pension by the state to a surviving child*

A child who survives one or both parents (breadwinners) is eligible to state allowance to survivor. The allowance is provided in the form of periodic payments made to the child – the survivor's pension or allowance for loss of the breadwinner, or to state social security allowance in the amount at least equal to the minimum amount fixed by the Cabinet. Decision on granting of support is adopted by the State Social Insurance Agency.

In case of a breadwinner employed not only in Latvia but also abroad, information required for adopting of decision is requested from competent authorities of the foreign country. Obtaining of such information from a foreign institution can be delayed, and therefore the period for adopting decision may be extended to three years<sup>8</sup>. Throughout that period, that is, until adopting of the final decision the child is prevented from access to funds in the minimum amount fixed by the state.

In the Ombudsman's opinion, it is impermissible that in the situation where adopting of decision is postponed for three years the child is prevented from access to funds in the minimum amount fixed by the state. The situation where a child is left without the minimum means of subsistence for such a long time infringes the right of a child to social security and increases exposure of the family to poverty risk.

The Ombudsman has issued recommendations for the Ministry of Welfare for improvement of the legal norms to avoid similar situations. The Ministry of Welfare replied, however, that no amendments were required to the legal norms because no recovery of overpaid funds would be possible.

### *On imposing penalty on a child*

The Office of Citizenship and Migration Department imposed penalty on a 16 years old minor for the breach – failure to have a valid identification document. The Ombudsman has presented his opinion before that compulsory measures of educational nature should be applied as priority rather than administrative penalty in case of 14 to 18 years old children. The opinion is available [here](#).

<sup>8</sup> Section 27, Part Three of State Social Insurance Law

Imposing of administrative penalty is not effective in combating juvenile offences; it is a part of penal system not aimed at identification of the cause of commitment of an offence, protection of the child's interests and right to development, and to fostering prevention. The best interests of a child require minimization of contact to the penal system and giving preference to alternative measures in the combating of offences.

Formal approach is impermissible in case of children because effective reaction on part of authorities and officials to a committed offence largely determines whether or not legal consciousness is instilled in a child. The Ombudsman has applied to the Office of Citizenship and Migration Affairs calling upon adherence to the law in terms of punishing children and to apply compulsory measures of educational nature as a priority in future.

### *On application of compulsory enforcement to a child*

An application was received by the Ombudsman concerning compulsory enforcement in relation to administrative payment overdue from a minor person. According to Section 269, Part Three of the Administrative Liability Law, no compulsory enforcement shall be applied to a minor person. The Ombudsman applied to the Council of Certified Enforcement Officials for activation of the regulation on compulsory enforcement in case of penalty imposed on a child and for the issuing of methodic guidelines for enforcement officials on the application of Section 269, Part Three of the Administrative Liability Law.

The Council had notified all certified enforcement officials on 7 December 2020 of compulsory enforcement in case of penalty imposed on a minor person by distributing information to the e-mail address of each certified enforcement official and by publishing the relevant information on website of the Council of Certified Enforcement Officials of Latvia. Taking into consideration the above-stated, no more situations should occur in future where recovery of penalty is unlawfully applied to minor persons.

## THE RIGHT OF A CHILD TO INVOLABILITY OF PRIVACY AND CORRESPONDENCE

### Introduction

Activities of certain public organizations at municipal institutions – video recording and interviews with officials of municipal authorities or online transmission of proceedings at meetings of custodian court – activated the protection of the right of a child to protection of personal data. 24 applications have been received concerning that issue. Application concerning a breach of correspondence secrecy of a child was filed for the first time.

### Initiatives

Application of legal norms on protection of personal data of children was discussed with the Data State Inspectorate to ensure protection of the child's right to privacy within the competence of the Inspectorate in the investigation of breaches in case of unlawful handling of personal data of a child or any information that eventually harms a child. The Data State Inspectorate is not competent to assess whether or not the rights of a child are infringed upon distribution of information on the child or his/her family.

The matters to be addressed whenever authorities become aware of distribution of any information that can eventually harm a child were discussed with the Data State Inspectorate and the State Inspectorate for Protection of the Rights of Children with the view to facilitate uniform understanding. Application to the State Police for assessment whether or not distribution of such information can be qualified as an administrative offence – emotional violence towards a child was proposed as possible solution in similar situations. There is risk, however, that officers of the State Police may be unable to identify such situations as potential emotional violence towards a child, taking into consideration the definition of emotional violence contained in Section 1, Para 12 of the Law on Protection of the Rights of Children.

A discussion was arranged with the Data State Inspectorate, the State Inspectorate for Protection of the Rights of Children to find solutions in relation to the liability for unauthorized distribution of information stipulated in Section 71, Part Five of the Law on Protection of the Rights of Children, and the Ministry of Justice was asked to provide information on elimination of shortcomings in the regulatory norms.

In the opinion of the Ministry of Justice, overall regulation of liability should apply (a representative of the State Police confirmed at the meeting that police staff was also prepared to apply administrative liability), depending on circumstances of each individual case, along with preventive clarification of the adverse consequences of publishing a child-related information to the parents.

In the Ombudsman's opinion, certain shortcomings can be identified in the legal norms governing liability for distribution of information harmful for a child. Notwithstanding that Section 71, Part Five of the Law on Protection of the Rights of Children stipulates that the persons responsible for unauthorized distribution of children are subject to liability, in fact no such liability is stipulated in regulatory acts.

## Case Analysis

### *Regarding inspection visits to residence of a person*

A person informed the Ombudsman in the reporting period about feeling humiliated and insulted because officers of the Municipal Police were arriving at her place of residence without notice at 10PM every night to check her living conditions and her possible alcohol intoxication, instructing her to breathe into alcometer. Visits by the police staff are disturbing the sleep of her two infants, the children wake up and cry. Alcohol intoxication of the parent was not proven even on a single occasion at such visits; children were always properly taken care of, and conditions at their home was always tidy and safe.

Social Service of Inčukalns County applied to police for increased supervision of the family by inspecting their place of residence every day during a month to establish whether or not the parent was using alcohol and capable of providing care and supervision of children. The Social Service was notified of the need to inspect place of residence of the family by custodian court of Inčukalns County.

The Ombudsman established infringement of the right of parent and the children to private and family life and breach of the principle of good governance in the work of involved authorities. Actions of the Municipal Police were neither substantiated nor legitimate because the inspections were not based on a call or receipt of any information that would require immediate action to prevent infringement of the children's rights at their place of residence.

Custodian court is responsible for inspecting place of residence of children to ensure whether or not care and supervision is provided in their family. According to the regulatory acts, use of alcohol by a parent may only be checked if the results of inspection showed that a parent was neglecting care of the children that would constitute an administrative offence and if there were reasonable grounds to suspect that the parent was under alcohol intoxication. The Social Service is responsible for social work with the family whenever custodian court establishes that a parent is neglecting care of children and that living conditions of the family have unfavorable effect on development and safety of the children. The Social Service is responsible for providing support and aid to a family, rather than for controlling functions.

The Ombudsman's recommendations were issued for the Custodian Court, the Social Service and the Municipal Police. Municipalities should be instructed to see that similar practice does not take place.

### *Regarding breach of secrecy of a child's correspondence*

An application was filed with the Ombudsman Office concerning infringement of a child's right to secrecy of correspondence at municipal establishment "Sprīdītis" of Jūrmala City. A registered letter addressed to the child was not issued to him in a closed envelope. The envelope had been opened without notifying the child and without his presence or consent, and several employees were familiarized with content of the correspondence in breach of the right to inviolability of correspondence enshrined in Section 96 of the Constitution.

The Ombudsman applied to the State Police for institution of criminal proceedings regarding intentional breach of the secrecy of correspondence. The police adopted decision on refusal to institute criminal proceedings, and the decision was appealed against to the prosecutor's office of Jūrmala City; the decision was repealed, and criminal proceedings were instituted regarding intentional breach of the secrecy of correspondence addressed to a child. The State Police, however, decided again to dismiss the criminal proceedings, and the Ombudsman appealed against the decision in late 2020 to the prosecutor's office of Jūrmala City.

It was established that earlier the head of orphanage had also been opening mail addressed to the child without his presence and consent. Her argument that a child was responsible for applying to her if the child wanted to have the mail addressed to him opened exclusively in his presence indicates to periodic infringements of the child's right to inviolability of correspondence and disrespect to fundamental rights of the child.

### *Regarding publishing of address*

The Ombudsman has reviewed the investigation case No. 2020-18-5D concerning infringement of the right to inviolability of private and family life of person A. The opinion is available [here](#).

Family of A acquired a house at address B. They found out later than shortly before that a home birth had occurred there resulting in death of the mother and the newborn child because no medical aid was provided; members of parish D were involved in that tragedy because they denied the need for medical aid because of their religious beliefs and allowed the mother and the child to die. Numerous publications and media stories followed the above-described event. Property owned by the person was recorded in video plots and photographs, and address of the property was published.

The family with a minor child does not feel safe at their property because of aggressive comments posted on social network. The applicant experienced reluctance on part of community and neighbors because her family was associated with the parish and their lifestyle and communication peculiarities.

The person has asked to remove the photographs and address of the residential house from media archives because her family is not related either to the developments reflected on media nor to the parish. The family of A has been subjected to inspections by authorities of Jelgava City Council at the initiative of the State Police.

The following was established upon completion of the investigation case:

1. Infringement of the rights of A and her family to privacy by actions of SIA "All Media Latvia", SIA "Izdevniecība Rīgas Viļņi" magazine "Ir";
2. Infringement of the rights of A and her family to privacy and inviolability of their residence by Social Affairs Department, Custodian Court and Education Department of Jelgava City, as well as breach of the principle of good governance;
3. Breach of the principle of good governance by actions of the State Police.

Taking into consideration the independence of professional journalism, the Ombudsman applied to SIA "All Media Latvia", SIA "Izdevniecība Rīgas Viļņi" and magazine "Ir" calling upon removal of publications and TV plots concerning the property owned by family A (including photographs of the family house) from their archives and to make written apologies to A for the committed breaches of journalist ethics. Further, recommendations were issued to Jelgava City Council, Social Affairs Department, Custodian Court and Education Department of Jelgava City for improvement of their work and adherence to the principle of good governance. The State Police was called upon seeking more effective solutions for communication and cooperation with custodian courts and the State Inspectorate for Protection of the Rights of Children whenever risk of infringement of the rights of children are established.

## RIGHT OF A CHILD TO HEALTH PROTECTION

### Initiatives

#### *Safety requirements in use of technologies*

The issue of extensive use of technologies by children was activated during the state of emergency with distance education, and also in context with the project “Competence-based approach to content of education” (School2030) launched by the National Center for Education Content with high emphasis on technologies and digital skills in education process. The health risks related to the use of such technologies are therefore increasing, like vision disorders, excessive load on certain parts of support and movement structures.

Regulatory norms that govern safety requirements in work with technologies (electronic means of communications, displays) lead to conclusion that labor safety requirements are in place for adults who work with displays and time limit for use of electronic means of communication is fixed in respect of preschool educational establishments. On the other hand, no safety requirements for use of technologies, organization of work or duration of use are established for the institutions that provide elementary and secondary education programs.

The Ombudsman applied to the Ministry of Health for adopting of the relevant supplements or development of new regulatory norms to define safety requirements applicable to work with technologies at elementary and secondary educational establishments. In the opinion of the Ministry of Welfare, development of regulatory norms would not be efficient and recommendations for use of modern technologies in education process are required instead. Development of such recommendations is included as a separate item in the project “Framework public health concepts for 2021 – 2027” to be developed in cooperation with the Disease Prevention and Control Center and the Health Inspectorate, eventually attracting specialists from other fields.

Reply issued by the Ministry of Health is available [here](#).

### Case Analysis

#### *Regarding continues presence of a parent with an inpatient child*

An application was received by the Ombudsman regarding the situation where a parent was prevented from being continuously present (including in night time) with an inpatient child at intensive therapy department of the VSIA “Bērnu klīniskā universitātes slimnīca” (hereinafter referred to as the Hospital). Consequently, the child with impaired mental development, being unconscious of his actions, had disconnected the device inserted in the child’s body under general anesthesia.

It was established that [internal regulations](#) of the Hospital for patients, parents and visitors prescribed, among other things, that the hospitality could provide continuous presence with a child, including night time stay, for one parent/legal guardian, either at the ward or at the parental home. The Hospital explained that the said regulations were applicable to all departments of the inpatient hospital including intensive therapy department.

Information provided by the Hospital contradicted with that provided by the parent, moreover the fact that no possibility was ensured in practice for a parent to stay overnight with a child at intensive therapy department was also supported by interview of a mother broadcasted on 26 December 2019 at the program “[Panorāma](#)”. The Ombudsman concluded that procedure established by the Hospital for ensuring continuous presence of an accompanying person with the child did not conform with the actual conditions.

Recommendations were issued for the Hospital to see that adherence to the internal regulations whereby legal representative of a child is authorized, among other things, to be continuously present with a child in the course of intensive therapy, is provided in future.

### *Regarding presence of parents during the process of treatment*

The Ombudsman paid attention to the occasions where a child's arm was injured during birth at Daugavpils Regional Hospital and a closed reposition was required. Mother of the newborn child was allowed to be present during examination, the process of anesthesia and rehabilitation, except during the surgical manipulation. The mother asked to investigate behavior of the surgeon in relation to the prohibition to stay with the child during surgical manipulation.

Presence of a parent in course of treatment process is essential not only for obtaining informed consent but also for providing emotional support to the child. In case of newborn children, parents are the persons who feel the child's condition, and therefore medicine professionals should take into consideration the expressions of stress, discomfort or pain observed by the parent.

In the Ombudsman's opinion, a parent should be allowed to stay with the child for emotional support, also at the premises where surgical operations or manipulations are performed unless these are complicated. In case of complicated surgery normally performed under general anesthesia, presence of a parent for emotional support should be provided before the child falls asleep and as soon as the child wakes up. Prohibition to stay with a child is substantiated if the parent's behavior is inadequate or presents material risks to qualitative treatment of the child<sup>9</sup>.

The Ombudsman issued recommendations for the hospital calling for development of internal regulations available for parents (legal representatives) to facilitate their awareness of the possibility to stay with a child during medicinal procedures and to ensure that rights of a child are observed at hospital.

### *Regarding the right of parents to be informed on health condition and treatment process of the child*

The Ombudsman received an application from mother of a child stating that attending physician of the child who was the child's paternal grandmother refused to inform her about the child's health condition during a scheduled visit and also to review the child's medicinal card on the grounds that such information had already been provided to father of the child. The child lived with the father who provided no information on their daughter's health condition to mother of the child.

Communication of parents with the attending physician is not considered medicinal treatment within the meaning of the Medicinal Treatment Law, and therefore such action of attending physician is not subject to control by the Health Inspectorate. The Health Inspectorate informed mother of the child that medicine professional had no duty to provide information on treatment of the child to both parents.

In case of a child under 14 years, refusal to provide information on health condition of a minor patient is only permissible where it would be detrimental to the best interests of the child.<sup>10</sup>

In the Ombudsman's opinion, refusal by a medicine professional to provide information on the child's health and treatment process to a parent solely because such information has already been provided to another parent not only limits the parent's right to represent the child and the right to be informed in accordance with Section 10, Part Six of the Law on the Rights of Patients but also prevents the other parent from efficient provision of care for the child. Such behavior on part of a medicine professional does not serve the best interests of the child because both parents equally share responsibility for their child.<sup>11</sup> The principle of priority of rights and interests of the child should be adhered to by a medicine professional also in communication with parents of the child.

The Ombudsman issued recommendations for the attending physician to ensure in future that information on the child's health condition and treatment is provided to both parents upon their request, and applied to the Ministry of Health and the Health Inspectorate for fostering better understanding on part of medicine professionals as subjects of protection of the rights of a child regarding the right and obligation of both parents to involvement in the provision of health care of their child.

<sup>9</sup> Section 5, Part Seven of the Law on the Rights of Patients

<sup>10</sup> Ibid, Section 10, Part Six

<sup>11</sup> The UN Convention on the Rights of a Child, Article 18, Part One; Section 24, Part Three of the Law on Protection of the Rights of Children; Section 177 of the Civil Law

### *Regarding the availability of dentistry in Latvia*

The Ombudsman continued to receive applications in the reporting period regarding the critical situation in Liepāja in terms of non-availability of state-funded dentistry services for children. The appointment list for children there extended from half a year to nearly two years.

In the Ombudsman's opinion, the Government should seek immediate ways for resolution of the critical situation. The municipality should also take active part in facilitating the access to health care by population of their administrative territory.

In 2019 already, the Ombudsman proposed a potential solution for the Ministry of Health to develop a mechanism for full funding by the state of visits to dentistry specialists who provide no state-funded services for children. Replies received from the Ministry of Health to justify non-application of immediate solution referred to lack of funding and to complicated administrative procedure. No improvements, however, can be observed in terms of this situation in Liepāja until present. Therefore, the Ombudsman applied to the Prime Minister and to the Subcommittee for Health of the Parliamentary Commission for Social and Employment Affairs in that respect.

It should be noted that situation in Liepāja has improved from October 2020 because a new state-funded dentistry office has been opened and provision of a mobile dentistry office, yet the appointment list still extends to one year.

## THE RIGHT OF A CHILD TO PRESCHOOL EDUCATION

### Recommendations

Having reviewed an application, the Ombudsman established that no procedure was put in place by Pāvilosta County Council for admission of children to educational institutions of that county. The Ombudsman applied to Pāvilosta County Council for elimination of such shortcoming.

Pāvilosta County Council followed the Ombudsman's recommendations and eliminated the identified shortcomings by approval of the binding regulations No. 10 "On the procedure for admission and discharge of children to and from municipal educational establishments of Pāvilosta County providing preschool education programs". Regulations for all establishments were gradually published on the county website; the responsible municipal official is entrusted with periodic updating of all information to be published in accordance with regulatory acts.

### *Regarding transport for delivery of children to preschool education establishment*

According to the information received by the Ombudsman, children who live in Tinģere at Talsi County experienced problems in getting to and from a PEE in Valdemārpils at Talsi County. The public transport schedule enabled parents to take their children to the PEE, yet the only return route was at 15:55. Given the age of the children (under 7 years), the possibility of accompanied use of public transport by children was limited<sup>12</sup>.

Parents had to stay in Valdemārpils to take their children back home from the PEE. Therefore, parents were taking children to and from the PEE on their personal car, and therefore the family incurred additional costs. Obligation of the municipality to provide transport for getting to and from the PEE only applies to the children who have reached the age of mandatory preschool education.<sup>13</sup> Parents are responsible for transport costs incurred for delivery of children to and from the PEE unless the children have reached the age of mandatory preschool education.

Recommendations were made to the Municipality for developing binding regulations to provide compensation for the transport costs incurred for delivery of children who have reached the age of mandatory preschool education to and from the educational establishment. The municipality was also called upon the need to provide for transportation of children at preschool age to and from the PEE.

<sup>12</sup> Section 24, Part Six of the Law on Protection of the Rights of Children.

<sup>13</sup> Section 17, Parts One and Three, and Section 14 of the Education Law.

Municipality of Talsi County informed of their commitment to provide an accompanying person for children at preschool age in the mornings and afternoons for getting to the educational establishment on public transport at the route Valdemārpils – Tiņģere – Valdemārpils.

### *Regarding co-funding for private PEE*

A private PEE has applied to the Ombudsman concerning non-eligibility for grant from the state budget for payment of salaries to preschool pedagogues. The establishment has not provided in due time the information required for eligibility to grant from the state budget, and therefore it has received no grant for education of children who have reached the age of mandatory education. Management of the establishment has not had clear information on the purpose of such information, and it has understood the e-mail letter issued by official of the Ministry of Education and Science.

Given that educational establishments are not eligible for funding from the state budget unless the requirements prescribed by regulatory acts are met, the Ombudsman has applied to the Ministry of Education and Science recommending to develop methodic guidelines on the procedure for receipt of funding from the state budget by educational establishments. Individual replies issued by the Ministry to enquires received from employees of educational establishments would prevent eventual misunderstandings. The methodic guidelines should be clear and readily available for educational establishments at any time.

## Opinion for the Constitutional Court

The Ombudsman issued his opinion for the Constitutional Court on case No. 2019-20-03 “On compliance of Annex 2, Para 9, and Annex 4, Para 9 of the Cabinet Regulations No. 716 of 21 November 2018 “Concerning the guidelines on state preschool education and template preschool curricula” with Section 64, Section 91, the first sentence of Section 112, and Section 114 of the Constitution.

Gradual increase of use of the official language in education process, starting from preschool education level, is a logical step towards provision of qualitative education aimed at development and welfare of a child, and it can be also considered a long-term investment in the right of children to skills-appropriate education because long-term support is provided for a child in continued education at primary school in the official language.

The opinion is available [here](#).

## THE RIGHT TO EDUCATION (ELEMENTARY EDUCATION)

### Introduction

51 applications have been received in the reporting period concerning the right of children to elementary education. The number of applications in previous period was 68. Most frequent issues complained on include admission rules for grade 1, transport to school, uniforms as a mandatory requirement (2) and co-funding for private schools (2).

## Initiatives

### *Regarding individual teaching aids*

After a long time, attention of the Ombudsman was drawn again to the issue of funding of teaching aids: a request for assessing conformity of the list of teaching aids issued to the parents with the right to free education. No textbooks or workbooks were contained in the list, however not items to be provided by parents were individual teaching aids.

The school asked for opinion of the controlling institution – the Education Quality State Center.

Representative of the Ombudsman participated at a meeting organized by the Education Quality State Center where agreement was reached with representatives of the Ministry of Education and Science and of the Education Quality State Center on common opinion and recommendations regarding the provision of individual teaching aids.

In February 2020, the opinion was distributed to municipal educational establishments and education specialists for communication to educational establishments calling them for reviewing the practice established for the provision of individual teaching aids.

### *Regarding computer and internet connection as teaching aids*

In general, the concept of having a computer (or auxiliary device) and internet connection is an inseparable part of education process is appropriate and corresponds with the education and development trends in second decade of the 21 st century. It keeps in step with the concept of competence-based education. It has to be admitted, however, that there are still numerous uncertainties that give raise to concern whether or not, and to what extent implementation of the concept would affect the right to free education guaranteed by the Constitution.

In the Ombudsman's opinion, practical implementation of the proposed changes should be discussed and agreed upon by professional taking into consideration also the position of parents and school children. The Ombudsman's comment is available [here](#).

The Ombudsman issued [recommendations](#) for a specific educational establishment pursuant to a person's application concerning the right of a child to education during the period of distance learning.

### *Regarding the procedure for admission of children to the 1 st grade of educational establishments in Ventspils City*

Applications for admission to certain educational establishments exceeds in practice the available supply, and therefore the municipality is free to establish the procedure for providing fair distribution of trainees among several applicants in the circumstances of competition and for providing access to the public service. Having reviewed an application, the Ombudsman established multiple shortcomings in binding regulations of Ventspils City Council No. 7 of 9 October 2015 "On the procedure for registration of applications for admission of a child to the 1 st grade at municipal educational establishments of Ventspils City".

[The Ombudsman recommended](#) that the municipality should assess objective need for the criterion that enables admission of children of other employees (apart from pedagogues) of the educational establishment to the 1 st grade on priority basis as well as conformity with such criterion with the best interests of municipal community. It was also recommended to specify the norm regarding the period for declaration at the specific residence that enables admission of children on priority basis (with the view to support the persons continuously declared as residents of the administrative territory of Ventspils municipality). The Ombudsman proposed that the municipality should assess the possibility to stipulate in the binding regulations that priority in admission to the 1 st grade should also be available to the children who have their residence declared in geographic vicinity to the educational establishment in question to ensure compliance with the provisions of Section 17, Part One of the Education Law.

In addition, recommendations were issued for Education Department of Ventspils City to activate the obligation of educational establishments to ensure compliance with requirements of the Administrative Procedure Law regarding the execution and components of an administrative act because a decision on admission or refusal to admit a child to the 1 st grade is an administrative act.

## Case Analysis

The Ombudsman reviewed an application concerning the requirement to wear school uniforms at Ķegums commercial secondary school.

The right of educational establishments to limit the discretion of children and parents as in terms of dress code at the educational establishment is provided for in Section 54, Para 8 of the Education Law stipulating that a student has the duty “in a dress that conforms with internal regulatory acts of the educational establishment including internal regulations”. Where a school wants to determine dress code for students, it has to stipulate such requirement in an internal regulatory act.

The school has discretion in development of internal regulatory acts including dress code requirements: it is free to determine that uniforms have to be worn at school, or to formulate description of the dress to worn by students at school and of the dress that is not permissible at school.

On the other hand, lack of school uniform must not prevent or limit the child’s right to education: even the children who have no school uniforms are entitled to attend lessons on equal grounds with other children. The school has to provide for exemptions if the parents object to the wearing of school uniforms because of their religious or other beliefs, provided that the objectives of education can be achieved by other means.

[The Ombudsman applied](#) to the school for improvement of the internal regulatory act in terms of requirement for school uniform. The recommendation was taken into consideration in respect of the applicant, however no amendments to the regulation followed.

## Implementation of Recommendations

### *Regarding the provision of transport to school*

The Ombudsman reviewed an opinion concerning the actions by municipality of Pārgauja County because no transport was provided for children to get to and from educational establishment in the situation where distance from their home to public transport stop was 5.2 km. In the Ombudsman’s opinion, the distance is too long to believe that children could use public transport. The municipality therefore has the duty to provide transport for the children to get to and from educational establishment.

Pursuant to the recommendation, the Municipality applied for changes in public transport route so that the route was extended to the stop and a U-turn near the family’s place of residence. The transport schedule was adjusted to school hours of the educational establishment.

### *Regarding equal municipal co-funding for private educational establishments*

The Ombudsman reviewed an opinion concerning unequal treatment of children by Ogre County Council in terms of co-funding of private educational establishments.

On 20 February 2020, the municipal council adopted decision “On participation at funding of private educational establishments for the provision of mandatory elementary education (protocol No. 3;19. §) on participation on the grounds of mutual agreements in co-funding of private educational establishments providing the service of mandatory elementary education for the children declared in administrative territory of the municipality. Paragraph 2 of the decision stipulates that the amount of co-funding per one student of private educational establishments for the provision of full-time mandatory educational program corresponds with the average costs at municipal educational establishments. No amount of co-funding was fixed in respect of other forms of education.

According to Section 8, Part Two of the Education Law, educational establishments are entitled to organize the provision of elementary education program in the form of full-time, extramural or distance education. If the municipality allocates co-funding of tuition fee at private educational establishments for the provision of mandatory elementary education to serve the best interests of community, no legal grounds exist for providing support only to one form of education – full-time education available along with other forms of education.

The municipality should provide equal treatment of all students regardless of the form of their education. [The Ombudsman recommended](#) to delete the words “full-time” and therefore to provide equal treatment of all students. The Ombudsman’s recommendation was taken into consideration by the municipal council of Ogre County.

### *Regarding equal access to the content of “Tava klase”*

The Ombudsman received an application concerning potential discrimination of students engaged in educational programs for national minorities in terms of online distance learning programs used in the state emergency, in particular concerning conformity of language used in the education content and material available on the platform “Tava klase” with the provisions of regulatory acts.

The Ombudsman repeatedly applied to the Ministry of Education and Science in the course of reviewing of the application in relation to various issues. The Ministry of Education of Science, however, failed to provide definite replies based on data. For example, in reply to the question about disciplines provided for students representing national minorities on the level of primary school (grades 1-4) via the platform “Tava klase” the Ministry informed that video material was provided in various disciplines for grades 1-4 including “Latvian language for national minorities” without specifying either the scope of level of education.

No answer was received to the question about the scope of material in their national – Russian language for students representing national minorities available on the platform “Tava klase” with division by education levels: primary school, elementary school and secondary school.

Given that the Ministry of Education and Science abstained from providing definite answers about whether or not children with Russian as their native tongue could learn it via the platform “Tava klase”, the Ombudsman cannot be sure that learning of Russian language would be provided, moreover given the objective of the platform “Tava klase” to facilitate the distance learning process and to make the developed material available to everyone in a practicable manner.

The Ombudsman has identified indications to unequal treatment in availability of the content provided on the platform “Tava klase” for students in education programs for national minorities without specifying such minorities because no such data are in possession of the Ombudsman.

The Ombudsman applied to the Ministry of Education and Science for ensuring equal availability of content on the platform “Tava klase” for all students regardless of their education program.

### *Regarding drug checks at schools*

The Ombudsman reviewed in 2020 an application concerning the check carried out by the State Police at Druva Secondary School of Saldus County in relation to the use, sale or storage of drugs, psychoactive or intoxicating substances. The applicant informed on the situation with her daughters who were also referred to medicinal examination by experts. The applicant was concerned by teachers’ attitude on the date of check and also by treatment of the two girls by other teachers, school personnel and other students in subsequent days. In the applicant’s opinion, such treatment could be considered as non-pedagogic action and emotional violence.

In the Ombudsman’s opinion, initiative of the educational establishment to carry out such checks deserves appreciation from the view of combating the use and distribution of prohibited substances at school. On the other hand, in the Ombudsman’s opinion, preventive work with students, teachers and support personal as well as parents of students is also crucial. In particular, they should be not only aware of the hazard presented by the prohibited substances and impermissibility of their distribution among students but also of the conducting and procedure of such checks and the behavior expected from students, teachers and staff as well as from parents both during and after the check.

## RIGHTS OF CHILDREN IN SPORTS

### *Transfer of minor players to other clubs*

In 2020, the Ombudsman has been reviewing a number of applications regarding decisions of sports federations on non-approval of the transfer of minor players to other clubs so that the young athletes were prevented from participation at competitions including championships. Decisions of the federations are substantiated by overdue financial liabilities towards the previous club: compensations for transfer of players and other due payments.

Disputes between a club and legal representatives of a minor player are subject to resolution in accordance with the civil legal procedure. On the other hand, legally accurate contracts have to be in place and subject to no interpretation so that the terms are equally clear to all contracting parties, in particular regarding financial liabilities, duration and the right to unilaterally repudiate the contract without payment of transfer fee and compensation.

In the Ombudsman's opinion, any claims of financial nature arising from mutual relations of clubs and from federation documents should be handled by the respective clubs independently or with mediation of the federation separately from legal executing of transfer of a child to another club. The right of a child to participate at practice at the new club and competitions of all kinds must be guaranteed throughout the period of dispute resolution between clubs. [The Ombudsman called](#) the federations to always provide the interests of a minor player as a priority.

Whenever working on new transfer provisions and template contracts, the federations should precisely define the components of compensation for transfer and their total amount. The compensations currently in place can be rather considered as incomprehensible "damages" for previous club of the player. The Latvian Council of Sports Federation has been asked to identify the provisions of sports federations governing transfer of players between clubs and to report to the Ombudsman on the situation in different sports.

The Latvian Football Federation informed of the intention to review the respective documents taking into consideration the Ombudsman's recommendations. The Latvian Ice Hockey Federation has also informed of the intention to consider and implement the recommendations issued by the Ombudsman Office as far as practicable, and they expect to develop template contracts for players of the federation till 31 May 2021.

## RIGHTS OF CHILDREN LEFT WITHOUT PARENTAL CARE

### Initiatives

### *Improvement of regulation for host families*

A host family provides temporary accommodation for or contacts with a child placed in institutional care. A host family therefore provides supports for a child placed in institutional care.

The Ombudsman has identified multiple occasions where the status of a host family is used in contradiction with the purpose established by the legislator. In 2018, for example, it was established that most of the children accommodated in an establishment were placed for care in a host family for continuous period (a year). In autumn 2019 an agreement was identified between the institution and a private individual on accommodation of a child in a host family for several months. In the Ombudsman's opinion, it is an impermissible practice where a long-term social care and rehabilitation institution places children in host families for continuous period of time, namely, for several months. Therefore, in January 2020 the Ombudsman [applied to the Ministry of Welfare for improvement of legal regulation regarding the institution of host families](#) to ensure that rights of children are duly respected.

On 17 June 2020, the Ministry of Welfare arranged a discussion on host families-related matters. Representatives of care institutions shared their experience in relation to host families and presented different opinions on the need for improvement of legal regulation. The Ministry of Welfare intends to hold further discussions with specialists of the industry for assessment of the legal regulation that governs the host families and for agreement on the best possible solution for accommodation of children placed in institutional care in host families.

### *Regarding authorizations issued by custodian court*

The Ombudsman has identified shortcomings in the legal acts that govern the issuing of authorization by custodian court for a foster family or another person to take certain actions for the protection of personal and property rights of a child placed in a foster family.

[The Ministry of Welfare was applied to for elimination of shortcomings in the legal norm](#) and assess whether or not the provision contained in regulatory acts that custodian court was acting as legal representative of a child placed in a foster family could be qualified as a formality once on most occasions custodian courts delegates the performance of their functions to foster families including the authority to represent the child even in criminal proceedings. The Ministry was called upon assessing the need for amendments to regulatory acts concerning distribution of the duties of custodian court and a foster family, respectively, to ensure protection of the rights and interests of a child placed in a foster family.

On 28 May 2020, the Ministry of Welfare arranged a discussion of the form of authorization issued by custodian courts to foster families and the rights of foster families arising from such authorization. The State Inspectorate for Protection of the Rights of Children supplemented after the meeting the [Custodian Courts Manual](#) with Chapter Three "Methodic recommendations regarding authority granted to foster families" to ensure uniform operation of custodian courts and compliance of their actions with the requirements of regulatory acts.

The Ombudsman is critical about the position of the Ministry of Welfare that at present there is no need for amendments to regulatory acts. Issuing of authorization in the form of decision of a custodian court is a short-term solution because the identified shortcomings in legal norms are not therefore eliminated.

### *Regarding amendments to the legal norms on custodian courts*

The Ombudsman established that certain legal norms contained in the Cabinet Regulations No. 1037 of 19 December 2006 "Regulations on operation of custodian courts" contradict with the applicable superior legal acts.

Improvement of the legal norms that govern the operation of custodian courts is required to improve adherence to the principle of good governance in the work of custodian courts. The Ombudsman activated the above-mentioned issues in 2016 and 2018 already calling upon the Ministry of Welfare for the need to improve legal norms. The Ombudsman presented specific proposals for amendments to the Cabinet Regulations No. 1037.

The Ministry of Welfare has partially taken the presented proposals into considerations in drafting the Cabinet Regulations No. 592 of 22 September 2020 "Amendments to the Cabinet Regulations No. 1037 of 19 December 2006 "Regulations on operation of custodian courts"".

### *Regarding the competence of assistant member of custodian court*

Having reviewed a person's application, the Ombudsman established that assistant member of the custodian court in question was conducting home study and interviews with adults and children. The duties contained in job description of assistant members of custodian courts include conducting of home study and documenting of the identified circumstances.

Assistant chairperson and assistant members of custodian court are the officials providing the function of custodian court in accordance with the provisions of regulatory acts. Neither the competence nor the duties of requirements regarding special knowledge of assistant chairperson or assistant member of custodian court in the field of protection of the right of children is prescribed by the Custodian Courts Law. The identified shortcoming in regulatory acts enable different interpretation including unjustified extension of the rights and duties of assistant members of custodian court. Therefore, adherence to the principle of protection of the rights and legal interests of a child or a person subject to guardianship as a key principle of operation of custodian court is not ensured.

The Ombudsman presented his conclusions to the Ministry of Welfare, the Ministry of Justice and the State Inspectorate for Protection of the Rights of Children. The Ministry of Justice informed about proposal made to the Ministry of Welfare to supplement the draft law "Amendment to the Custodian Courts Law" (VSS-815) and to specify the competence of assistant chairperson and assistant member of custodian court, their key job duties, rights and requirements regarding special knowledge in the field of protection of the rights of children.

### *Regarding payment to a child birth allowance to foster family*

A one-off child birth allowance is paid for each child to support the families with newborn children. The allowance is paid to one parent or guardian for a child under one year. The amount of birth allowance is 421.17 euro for each child. No child birth allowance is paid to a foster family or specialized foster family upon placement of a child under one year. The state social allowance can be provided by special decision of custodian court to any person who is actually parenting the child where appropriate for the protection of personal interests of the child.

Custodian courts used to apply the above legal norm to provide child birth allowance for foster families, however the provision of allowance was discontinued pursuant to the methodic recommendations of the State Inspectorate for Protection of the Rights of Children that foster families were not eligible to child birth allowance because they have the right to support from municipality for procurement of clothes or soft staff.

The Ombudsman is critical about the opinion expressed by the State Inspectorate for Protection of the Rights of Children because municipalities are not bound by providing support for procurement of clothes or soft staff in the amount equal to that of child birth allowance. In addition, municipalities provide the said allowance for each child placed in a foster family regardless of the child's age. Municipalities can exercise discretion in determining the amount and payment procedure of the allowance.

In practice, payment of allowance differs from one municipality to another: 1) a one-off allowance upon placement of a child in foster family; 2) annual allowance; 3) monthly allowance. The amount of allowance therefore differs notably, yet it does not reach the amount of child birth allowance fixed in our country. The Ombudsman intends to issue recommendations for the Ministry of Welfare in 2021.

### *Regarding notification of change of institutional placement of a child in case of parents with suspended custody rights*

The Ombudsman has received three applications concerning the situations where custodian courts decide on change of institutional care for children and fail to notify the parents with suspended custody rights of such change. On one occasion, a guardian was appointed for a child placed in institutional care. On some other occasion, a guardian was appointed for a child placed in a foster family.

The Ombudsman asked the State Inspectorate for Protection of the Rights of Children to issue their opinion on the role of a parent with suspended custody rights in administrative proceedings where custodian court decides on determining or change of institutional care for a child: *whether or not the custodian court would be responsible on such occasion to establish the position of parent before adopting the decision; whether or not the custodian court should apply the status of a third party to such parent at their own initiative; whether or not the custodian court should forward the adopted decision to the parent.*

Once the requested information is received, the Ombudsman will decide whether or not any shortcomings can be identified in legal acts or their application and issue his recommendations.

## Case Analysis

### *The right of a child to grow up in family*

An application was filed with the Ombudsman by a citizen of the Russian Federation in respect of whom the Office of Citizenship and Migration Affairs had adopted a decision on forced extradition from the territory of Member States of the European Union to the Russian Federation and impose a prohibition to enter the Republic of Latvia and the Schengen territory for three years. The applicant had served imprisonment in Latvia, she had two children who are both citizens of Latvia and placed in a foster family since 2015.

Having served the sentence, the mother applied to the custodian court for renewal of her suspended custody rights. According to the existing cooperation agreement between the mother and the social service, a support program was provided for her to ensure that the situation is improved and the children are returned into their mother's care. Objectives of the social rehabilitation plan included the duty to engage in paid employment so that appropriate living conditions could be provided for the children.

The applicant noted that, given the decision adopted by the Office of Citizenship and Migration Affairs on her extradition from the Republic of Latvia and the related decisions on extension of the period for hearing of her case, she was prevented from employment on the territory of Latvia. Therefore, she was unable to meet the objectives of the social rehabilitation plan in terms of employment and consequently prevented from renewal of her suspended custody rights.

According to Section 179 of the Civil Law, parents, commensurate to their abilities and financial state, have a duty to maintain the child. The duty to provide for the maintenance of the child shall not terminate if the child is separated from the family. In case of children placed in institutional care, parents have the duty to pay for institutional placement services.

In the Ombudsman's opinion, the above-quoted legal norm does not enable a parent to meet the duty to maintain a child where decision is adopted on extradition of the parent from the state, the period for hearing of the case is extended, and consequently the parent is deprived of the right to employment throughout that period.

The Ombudsman repeatedly applied to the Ministry of Interior for considering specification of procedure regarding how could a parent meet the statutory duty of maintaining their children where the person is subject to extradition from the country and has no valid legal status in the Republic of Latvia, and who is therefore prevented from exercising the right to employment.

The Ministry of Interior pointed out that, in their opinion, circumstances of the given case were particular and the exception provided for in the regulatory acts that govern the matters of immigration should be applied because of human considerations, namely, the applicant should be permitted to file documents for employment-related long-term visa. Therefore, in the Ministry's opinion, the legal norms are adequate and no additional exceptions are required in respect of granting the right to employment in case of parents - foreign nationals who are subject to extradition from the state and have no valid legal status in the Republic of Latvia.

Regarding the extradition case in general, the Office of Citizenship and Migration Affairs noted that the period for extension of hearing of the case concerning extradition of the applicant from the territory of Member States of the European Union has been determined with due regard to the Ombudsman's recommendations regarding the aspects of compliance with the international legal norms and case law in terms of adherence to the principle of the best interests of the child in the context of extradition of the parents and the right of a child to inviolability of family life.

Along with that, the Ministry of Interior pointed out that decision adopted by custodian court on renewal of the applicant's custody rights is essential for adoption of the final decision on forced extradition. Consequently, the Ombudsman applied to the concerned custodian court and the social service for providing the required support to the applicant in filing the required documents with the Office of Citizenship and Migration Affairs for the granting of employment-related long-term visa.

## THE RIGHTS OF CHILDREN WITH DISABILITIES

### Initiatives

#### *Regarding the right of children to new auxiliary technical device*

Medicine professionals had recommended that a child with disabilities should promptly have his power-driven wheelchair replaced by another device appropriate to the changing body of the child. Provision of a new technical device for a child was refused because the period of use of the technical device prescribed by regulatory acts, namely 6 years had not expired yet.

The Ombudsman established that, according to the Cabinet Regulations No. 1474 of 15 December 2009 “Regulations concerning auxiliary technical devices”, in a situation where a technical device is provided for use to a person by the VSIA “Nacionālais rehabilitācijas centrs “Vaivari””, the person can be repeatedly registered for another technical device if anthropometric parameters of the person have changed and consequently the provided technical device is not suitable for further use. On the other hand, if the compensation is used for provision of a technical device, right of the person to a new auxiliary technical device because anthropometric parameters of the person have changed can be limited to the scheduled period of use of the previous technical device.

No auxiliary technical device can be used unless it is adjusted according to individual needs of the person. In the Ombudsman’s opinion, excessively long period of use of the provided auxiliary device is improper in case of children because children continuously grow and experience physical changes impossible to predict. The Ombudsman sent his [recommendations](#) to the Ministry of Welfare requesting the Ministry to amend the legal norms accordingly.

The Ministry agreed that the established compensation mechanism for provision of auxiliary technical devices for children was not adequate and therefore they have started drafting the appropriate amendments.

Situation of the child in question was resolved by registration of the child for provision of a new auxiliary technical device.

### Opinions for Constitutional Court

The Ombudsman issued his opinion on the Constitutional Court Case No. 2020-13-01 “Concerning compliance of Section 10.4, Part Four, Para 2 of the Law on Maternity and Disease Insurance” and Section 7, Part 1.<sup>1</sup> of the Law on State Social Allowance with the first sentence of Section 91 and Section 110 of Constitution of the Republic of Latvia”. The allowance stipulated in the contested norms is not paid for a period of time measurable in days or weeks, and payment of allowance is discontinued when the child reaches certain age. In case of prematurely born children, special parental care is objectively required for a long period after birth, and this fact has not been taken into consideration by the legislator when determining the period of eligibility to support. The contested norms prevent from provision of the best available care in case of prematurely born children, and therefore, in the Ombudsman’s opinion, they do not serve with the interests of certain group of children and do not comply with the first sentence of Section 91 and Section 110 of the Constitution. The opinion is available [here](#).

The Ombudsman issued his opinion on the Constitutional Court Case No. 2019-33-01 "Concerning compliance of Section 155, Part One of the Labor Law with the first sentence of Section 110 of the Constitution". The contested norm prevents any person other than father of the child entered in the register of births from the use of 10 days' leave upon birth of a child. The purpose of the contested norm is to foster involvement of father in care of a newborn child and therefore to ensure care of the child by both parents. No paternity of child is established on 3-4% occasions every year. The contested norm does not provide equal opportunities to ensure care by father or another person of all newborn children in addition to care by mother of the child if involvement by father in care of a newborn child is not available. The contested norm does not comply with the first sentence of Section 110 of the Constitution insofar it does not provide for the right to leave upon birth of a child for any person other than father of the child if the father cannot exercise such right for objective reasons. The opinion is available [here](#).

It should be noted that on 12 November 2020 the Constitutional Court announced their award in case No. 2019-33-01. The court adjudged the following: 1) Section 155, Part One of the Labor Law shall be considered non-compliant with the first sentence of Section 110 of the Law insofar no protection and support is provided for partner of the mother upon birth of a child, and therefore null and void as from 1 June 2022; 2) Section 155, Part One of the Labor Law shall be considered non-compliant with the first sentence of Section 110 of the Law insofar no protection and support is provided for partner of the mother upon birth of a child in respect of person C and therefore null and void as from the moment of infringement of the fundamental rights.



# THE RIGHTS OF PERSONS WITH DISABILITIES

# THE RIGHTS OF PERSONS WITH DISABILITIES

## Introduction

For six years already the Ombudsman in cooperation with the Latvian National Library and the "Apeiron" Organization for People with Disabilities and their Friends is holding the contest "Annual award for support of persons with disabilities" for the purpose to highlight and appreciate individual achievements and operation of the NGOs providing support to people with disabilities and seeking to improve the quality of their life on daily basis thus fostering public understanding and involvement in improving the situation of persons with disabilities. Further information on the annual contest is available [here](#).

Having assessed the nature of complaints filed with the Ombudsman Office, it should be noted that on most occasion persons with disabilities complain on inadequate social support, low allowances and pensions, improperly determined group of disability, enabling environment, and housing adjustment. It should be further noted that the Ombudsman is not competent to review the group of disability determined by medicinal commission, and only the establishment in question or the court is competent to undertake such reviewing as a part of administrative procedure.

As regards persons with mental impairments, the Ombudsman is always accentuating the need for the competent authorities to draw more attention to the matters of guardianship, to the right of each individual to live in society through targeted minimization of institutional care and fostering the versatility and development of community-based services.

## Initiatives

### *Custodian courts reform and guardianship matters*

Given that custodian courts reform had been launched in 2019, the Ombudsman [applied](#) to the Ministry of Justice in early 2020 recommending that not only to the matters related to adjustment of the system established for protection of the rights of children deserved considering as part of the reform but also the guardianship-related matters with the view to ensure protection of the rights and interests of persons with limited legal capacity. The Ombudsman pointed out in his letter to certain issues like continuous lack of support from the state to guardians; inadequate provision of methodic and supervisory function in guardianship matters.

### *Deinstitutionalization process*

10 years had passed in 2020 since enactment of the Law on Convention for the Rights of Persons with Disabilities in the Republic of Latvia, and 5 years had passed since the Ministry of Welfare was implementing a project co-funded from structural funds of the European Union in the field of deinstitutionalization.

The Ombudsman has been continuously drawing attention of the competent authorities to the fact that the existing provision of social services was not appropriate to the needs of persons with mental impairments, the scope of community-based alternative services was inadequate, and consequently persons with mental impairments often have to prefer accommodation at continuous social care and social rehabilitation institutions. Numerous clients of state social care centers would be able to live in community if the required support was available at their place of residence.

Observations made by representatives of the Ombudsman Office during regular visits to social care and social rehabilitation institutions show that most of the state social care centers have been expanded and voluminous funds are invested there from the state budget thus strengthening institutional care in contradiction with the purpose and essence of deinstitutionalization.

The Ombudsman hosted a [press conference](#) on 13 October 2020 to activate relevance of the situation and to promote the provision of the rights of persons with disabilities, and also sent a letter to the Prime Minister “Regarding the implementation of deinstitutionalization project and the situation at state social care centers” calling for ensuring of wide range of community-based services across the country including services of support persons with funding allocated from the state budget. The Ombudsman also proposed that placement of new clients at state social care centers should be discontinued by 1 January 2024 and that appropriate community-based social services are made available for all persons with disabilities.

Reply issued by the Cabinet is available [here](#).

### *The right of municipalities to let out social apartments to persons with disabilities*

Amendments to the Law on Social Apartments and Social Residential Houses enacted on 1 January 2019 provide for the right to let out social apartments to persons with disabilities as well as to care persons of children with disabilities or persons with disabilities at the age of majority without regard to financial resources of such persons. The Ministry of Welfare noted that the purpose of that legal norm was to enable associations and establishments to lawfully let out the apartments owned by them as social apartments to persons with disabilities; the respective section of the law is applicable in correlation with other amendments made to that law.

The Ombudsman, however, having surveyed the opinion of municipalities on practical application of the above provision, concluded that the legal norm was completely clear neither for those applying it nor for the intended recipients and that the application of that norm differed among municipalities, both in relation to apartments owned by associations and establishments, or in general. The Ombudsman applied to the Parliament for specification of the non-transparent legal norm; the Parliament Deputies pointed out, however, to the intended wide application of the said legal norm and intended to apply to the Ministry of Welfare for the issuing of unequivocal clarification of the legal norm for those responsible for its application.

The Ombudsman’s opinion is available [here](#).

### *Provision of environmental accessibility at multi-residential houses*

The Ombudsman has established that norms of the Housing Law may become discriminating in respect of persons with disabilities where arrangement of an access ramp or lift has to be provided in a multi-residential house yet the general meeting of apartment owners votes against such initiative. Therefore, a tenant of such house and his or her free movement depends on favor of the neighbors. The given situation contradicts not only with Sections 91 and 97 of the Constitution but also with the UN Convention on the Rights of Persons with Disabilities. The Ombudsman has therefore applied to the Parliament calling for appropriate amendments to the Housing Law to ensure that fundamental rights of persons with disabilities are duly respected.

The Ombudsman’s opinion is available [here](#).

*Information on discriminating treatment of the recipients of disability pension in access to downtime allowance is presented in section “Human rights in relation to the spread of Covid-19 infection in our country” of this Report.*

*Information on state social insurance allowance is presented in section “The right to social security” of this Report.*

## Case Analysis

### *Reflection of information in mass media*

In response to the publicly available information on the situation of a former lodger of orphanage, the Ombudsman found it appropriate to remind to the media their responsibility enshrined in the law for respecting also the right of vulnerable persons, that is, prohibition to publish information on health condition of a person; to focus as part of activation of any issues of public relevance on persons with mental impairments including on the progress of deinstitutionalization process; he called for paying particular attention on the form of presenting sensitive information to avoid activation of the common stereotypes and intolerance towards that vulnerable group of persons.

### *Replacement of institutional care by community-based services*

The Ombudsman established in the reporting period that on a certain situation where decision was adopted on discontinuation of institutional care service for a person who had lived the whole life in institutional care, no notification was made to the municipality where the person started unassisted living. Also no confidence was obtained in ability of the given municipality to provide and make available the social services appropriate to the interests and needs of the person in question.

The person had been joined to the deinstitutionalization project in 2016, however protection of the person's rights and interests was not provided according to the concept and purpose of the project. Inadequate cooperation on part of the involved public and municipal authorities was also established.

Though the involved authorities were attempting to find various solutions in the given situation as appropriate to the interests and needs of the person, in the Ombudsman's opinion such attempts were late]. The initially inconsiderate actions and adopted decisions, moreover during the state of emergency in our country, contributed to return of the person to institutional care. In the Ombudsman's opinion, similar situations can distort the perception of the transfer from institutional care to community-based life by other persons in institutional care.

### *Issues in appointing guardians*

A chairperson of custodian court applied to the Ombudsman activating the issue experienced for years by numerous custodian courts in Latvia: appointment of guardians for persons at minor age with limited legal capacity, in particular persons placed in institutional care.

The Ombudsman pointed out to possible solutions available at the municipality in question, however he acknowledged that action was required on part of the state to address the issue. The Ombudsman has been earlier calling upon the competent authorities for focusing on that issue, however no specific action plan has been developed on national level for solution of similar situations.

### *Access to court by persons with limited legal competence represented by a guardian*

The issues discussed as part of investigation case No. 2020-24-4C included those concerning access to court by persons with limited legal competence where application for recovery of damage is filed by guardian on behalf of the person. The guardian had established eventual misuse of the person's health condition in making of civil legal transactions and filed application with the court for recovery of damage. Notwithstanding that the guardian had enclosed all documents required to confirm his right to act as representative in the given situation and to represent the rights of person with limited legal capacity in relation to financial matters, the court refused to accept application of the guardian.

The Ombudsman [established in his opinion](#) that the first instance court has unreasonably restricted the right of representative of a vulnerable person to apply to court on behalf of the potential victim for resolution of financial matters through refusal to accept the application and preventing from contesting of their decision.

*Information on handling of an application concerning restriction of legal capacity during the state of emergency in our country and on respecting of the rights of a vulnerable person in pretrial proceedings is presented in section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report.*

### *Environment accessibility at a newly built public building*

The Ombudsman established as a part of investigation case the failure on part of Smiltene City Council to meet the requirements of regulatory norms in the provision of accessible environment at the dormitory of Smiltene Secondary School through improper interpretation of the status of public building. In particular, no lift or other facility for unassisted access by persons with disabilities to the second and third level of the building is provided at the three-level building. The Ombudsman also established the failure on part of Smiltene City Council to adhere to the principle of good governance.

Realizing the financial impact of construction of a lift on the municipal budget, the Ombudsman recommended that Smiltene City Council should obtain opinion of an industry expert to assess whether or not alternative solution appropriate for unassisted access by persons with disabilities to the dormitory is available.

The Ombudsman also applied to the Ministry of Welfare and the Ministry of Economics for development of uniform methodology for assessment of the deviation principle "incommensurate burden" on each individual occasion in terms of provision of environment accessibility for each building.

The Ombudsman's opinion is available [here](#).

### *Breach of the principle of good governance upon adjustment of apartment for a person with disability*

Municipality of Madona County adjusted an apartment for a person with movement disorders – built an access ramp and equipped the apartment with services and facilities. Whilst appreciating involvement of the municipality in provision of the rights of person with disabilities, the Ombudsman pointed out, however, to non-conformity of actions of the municipality with legal norms and the principle of good governance.

In particular, the person was not informed about how would the apartment adjustment process take place, when would the municipality decide on it, and whether or not any financial participation would be required from the person, since the municipality intended to decide on allowance for adjustment of apartment only because completion of the adjustment works. The municipality was encouraged to ensure compliance with the administrative procedure in deciding on the granting of allowance.

The Ombudsman's opinion is available [here](#).

## Opinions and Applications to Court

### *Regarding the minimum disability pensions*

The Ombudsman applied to the legislator in 2019 already regarding non-compliance of the minimum amount of disability pension stipulated in the Law on State Pensions with the Constitution. The minimum amounts of disability pensions had not been reviewed for years, moreover they are inadequate to ensure the essentials in terms of the law including food, clothes, housing, health care, mandatory education. It was also noted that in case of persons with disabilities essentials also include the needs related to particular health condition of such persons. It was also noted in relation to the social security system in general that social support provided by the state and municipalities is inadequate to ensure the essentials of persons with disabilities.

The minimum amount of disability pension was in the amount of 80 to 128 euro/month from 1 January 2020 (i.e., 2.67 to 4.27 euro/day), and in the amount of 122.69 to 196.30 (i.e., e.09 to 6.54 euro/day) for persons with disabilities from childhood. According to the data of the Social Insurance State Agency, the number of recipients of the minimum disability pension as of January 2020 made 33 001.

Regardless of increase, the Ombudsman pointed out that the increased amount was still adequate to ensure the essentials of persons with disabilities, and therefore the right to decent living was not provided for persons with disabilities. Taking into consideration the above-stated, the Ombudsman filed an [application with the Constitutional Court](#), and case No. 2020-19-0103 was instituted in this respect.

### *Regarding social insurance of employees with disabilities of I or II group*

The Ombudsman concluded in his [opinion issued for the Constitution Court on case No. 2019-36-01](#) concerning the compliance of legal norms with Sections 91 and 109 of the Constitution, insofar such norms prevent the employees with disabilities of I or II group from disability insurance (in the version effective from 1 January 1998 to 31 December 2002) that the contested norm complied neither with Sections 91 and 109 of the Constitution nor or Article 2, Para 2, and Article 9 of the UN International Treaty on Economic, Social and Culture Rights.

The Constitutional Court also considered the contested norm as non-compliant with Sections 91 and 109 of the Constitution.

## Implementation of Recommendations

### *Regarding Application of Compulsory Measures of Medical Nature*

The Ombudsman pointed out in the Report on 2019 already to the need for amendments to Section 608 of the Criminal Procedure Law to prevent the situations where human rights of a person were subjected to significant limitations, namely the right to liberty (placement in a psycho-neurological hospital) and/or the right to privacy (coercive care). Amendments to the law have come into effect during the reporting period, and therefore the issues identified in the investigation case No. 2017-19-3F have been eliminated.

### *On disclosure of limitations of legal capacity*

In case of limitations imposed on legal capacity, information on the limitations imposed on legal capacity of a person is published in the official bulletin "Latvijas Vēstnesis" (including the name, surname and personal number). Such information is available to everyone (without authentication or limitations).

The Ombudsman had noted earlier that the existing situation related to publishing in "Latvijas Vēstnesis" should be considered as a disproportionate infringement of privacy. Pursuant to the Ombudsman's indications, the Ministry of Justice proposed to the Parliament amendments to the Civil Procedure Law, namely, denouncing of the requirement for publishing limitations imposed on legal capacity of a person in "Latvijas Vēstnesis" because alternative source was available for that purpose (proposals for draft law No. 599/Lp13 "Amendments to the Civil Procedure Law"). This can be arranged on the portal Latvija.lv (free of charge). Authentication of person is required for that purpose and also personal number of the person to whom the procedure concerns. The amendments were seconded in late 2020 by Legal Committee of the Parliament, and decision was adopted on presenting the second version of the draft law to the Parliament meeting.

### *Regarding assistant services*

In 2015, the Ombudsman reviewed an investigation case concerning adherence to the principle of good governance through the provision of assistant services by [municipality](#) and concerning adherence to the principle of equality through allocating allowance for remuneration of assistant by persons with vision disabilities (Opinion PL 2015-34-26K). Period complaints are also filed with the Ombudsman concerning the provision of assistant services by municipalities, basically concerning the burdening reporting procedure disproportional to the law remuneration payable to assistant.

Subsequent to several years of work, amendments have been made to the Disability Law stipulating changes in the provision of assistant services from 1 July 2021. The municipal assistant services are improved, including by means of introducing simplified reporting procedure and increasing the remuneration payable to assistant. Unfortunately, no amendments are made to the regulation concerning the use of assistant by persons with vision disabilities.



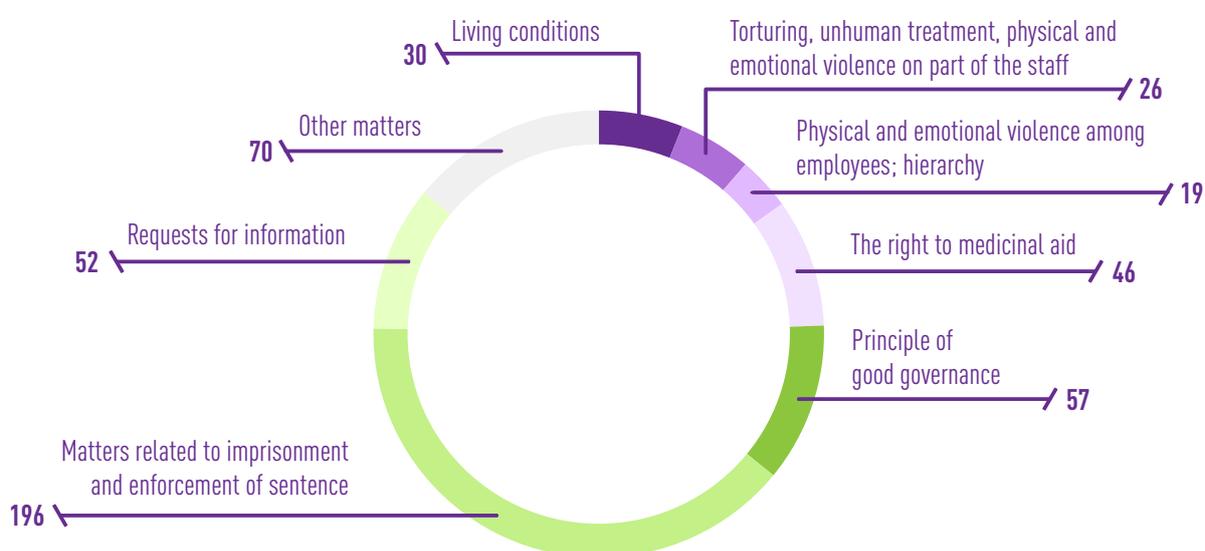
# THE RIGHTS OF IMPRISONED PERSONS

# THE RIGHTS OF IMPRISONED PERSONS

## Introduction

Imprisoned persons are in absolute subordinated position and therefore also to protection by the state. Regardless of the reason of imprisonment, the state is responsible for ensuring that conditions of and treatment at imprisonment entail no extra difficulties and limitations that may not exceed the distress threshold inevitably related to the fact of imprisonment. Particular attention of the Ombudsman is therefore focused on the protection of such persons.

### ABOUT 500 APPLICATIONS HAVE BEEN RECEIVED FROM PRISON FACILITIES IN 2020



It is important to note that most of the applications originate from the largest prison facilities of Latvia: Daugavgrīva Prison and Riga Central Prison, and most of them are related to domestic matters. This certainly demonstrates that prison infrastructure remains inappropriate for ensuring enforcement of sentence/imprisonment in the conditions appropriate to human dignity, and the Ombudsman has activated this issue also to the government.

Applications were also filed regarding breaches of the principle of good governance; actions of the staff eventually incompatible with their job duties; threat of reckoning with, or imposing requirements that are infringing to human esteem and dignity, such as complete undressing for search of a person. A few applications were filed regarding the right of citizens of Latvia convicted abroad to serve the prison sentence in Latvia.

The matters activated in the reporting year included those related to the right to privacy: for example, applications referred to the number and duration of telephone calls; to sound insulation in video conference rooms; to eventual disclosure of information related to personal data and private aspects to third parties.

Topicality of the protection of privacy of prisoners was also confirmed in the reporting year by the awards rendered by the Constitutional Court in proceedings concerning the possibility for sentenced persons to short-term leave to attend funeral of a family member and the prohibition to contact other prisoners; the Ombudsman's opinion issued on such matters corresponded to the conclusions drawn by the Constitutional Court.

Eight inspection visits were made in 2020 to prison facilities for adults: three visits to Riga Central Prison, one to Daugavgrīva Prison, two visits to the Addicts Center of Olaine Prison, one visit to Valmiera Prison and one to Jelgava Prison.

## Initiatives

### *Regarding improvement of regulatory norms on requirements to the transport vehicles intended for transportation of prisoners*

The Ombudsman applied to the Ministry of Justice calling for improvement of regulatory norms that govern the requirements to the transport vehicles intended for transportation of imprisoned persons. The concerned persons have noted that conditions in such transport vehicles do not meet the road traffic safety requirements. The Ombudsman activated that issue in 2018 already, however no appropriate actions followed and therefore the [issue was repeatedly activated in 2020](#).

Consequently, in the Ministry of Justice has undertaken to supplement the Cabinet Regulations No. 497 of 25 August 2015 "Procedure for transportation of a sentenced or imprisoned person and procedure for guarding during the provision of health care services at medicinal institutions outside the prison facility) in 2020.

### *Regarding the letter addressed to the Prime Minister concerning financial support to the strengthening of prison facilities system*

[The Ombudsman also applied to the Prime Minister](#) in relation to the information contained in the informational report of the Ministry of Justice "Regarding future actions concerning the award rendered by the Constitutional Court on 7 November 2019 in case No. 2018-25-01 "On compliance of Section 50.4 of the Sentence Enforcement Law of Latvia with Section 91 of Constitution of the Republic of Latvia" calling for the provision of financial support to the strengthening of prison facilities system.

## Case Analysis

### *Regarding accommodation conditions at Jelgava Prison*

Subsequent to the visit to Jelgava Prison [the Ombudsman drew attention](#) to insufficient natural and artificial lighting, ventilation, overpopulation (in one dwelling area) and called for reviewing the duration of walks (more than hour a day).

The prisoners sentenced to life imprisonment are kept in complete isolation before the judgment comes into effect, and such persons are prevented from any contact to other prisoners.

### *Regarding opinion on investigation case No. 2020-1-26K concerning the involvement of prisoners in education process and paid employment*

The Ombudsman initiated an investigation case and issued his [opinion](#) on equality in the involvement of prisoners in education process and paid employment. No breach of Section 91 of the Constitution was established upon reviewing of the matters related to employment of prisoners. On the other hand, unequal treatment of prisoners sentenced to life imprisonment before the judgment comes into effect in terms of availability of education process was established in Jelgava Prison. The Ministry of Justice and the Prison Administration informed that remote general and professional education programs could be made available to prisoners in a specially arranged area.

### *Regarding the scope of information available at information stands*

Another issue activated in 2020 was supplementing of information stands at prison facilities. 17 national websites were available there. The Prison Administration supplemented the internet sites available at information stands with the Ombudsman website and the website of the Official Bulletin of European Union.

The Ombudsman also called for reviewing the availability of websites of other institutions at information stands to reflect the current topicalities.

### *Regarding the confidentiality of correspondence with public and municipal institutions*

The issue of confidentiality of correspondence with public or municipal authorities was activated in respect of prisoners who are financially unable to pay for it and the administrative act issued by or actions of the concerned institution are contested, or an application has to be filed for the provision of state-funded legal aid. Regulatory norms prevent administration of the prison facility to check the content of such applications given that correspondence with public and municipal institutions is subject to no checks.

Explanation issued by the Prison Administration did not provide reliance on availability to protection of infringed rights and application to authorities, subject to confidentiality of correspondence in case of prisoners without personal financial means available to them.

Representatives of the Ombudsman Office established different practice pursued by prisons during their visits to prison facilities. In a few number of prison facilities, like Valmiera Prison, all correspondence with public and municipal institutions was dispatched without mandatory check of compliance with certain preconditions thus respecting the rights of prisoners.

### *Regarding support in housing matters to persons released from imprisonment*

The Ombudsman pointed out in 2019 already that the municipality of Madona County had unreasonably withheld support in housing matters (initial registration for housing) to a person released from imprisonment because the most recent residence of the person officially registered in 1985 (registered address) had been in Madona County (previously Madona Region). The person currently has no declared residence. The Ombudsman applied to the Prosecutor Office in 2020 for undertaking inspection by prosecutor. The Prosecutor Office established no breaches in actions of the municipality and stated that there were no grounds for application of prosecution measures specified in the Prosecutor Law because the person could have applied to court for the protection of their rights and interests.

The Ombudsman applied repeatedly to the municipality of Madona County and obtained a confirmation that a municipality-owned dwelling would be provided for the person and a lease agreement would be entered into upon release of the person from imprisonment.

*Information on the observation of epidemiological safety measures and restriction of rights is presented in Section "Human rights in relation to the spread of Covid-19 infection in our country" of this Report.*

## Opinions and Applications to Court

### *Regarding the possibility of short-term absence from prison facility to attend funeral of a close relative*

The Ombudsman issued his [opinion on case No. 2019-32-01](#) "Regarding the compliance of Section 49.2, Part One of the Sentence Enforcement Law of Latvia with the first sentence of Section 91 and Section 96 of the Constitution". It was concluded that the restriction that provides for certain group the possibility to apply for short-term absence from prison facility to attend funeral of a close relative is disproportionate and that threat to public security could be prevented by less restrictive means upon individual assessment. The Ombudsman pointed out to breach of the prohibition of discrimination set forth in Section 96 and the first sentence of Section 91 of the Constitution.

### *Regarding the opinion issued to the Constitutional Court concerning the prohibition to contact other prisoners*

The Ombudsman issued his [opinion on case No. 2020-21-01](#) "Concerning compliance of the first sentence of Section 45, Part Five of the Sentence Enforcement Law of Latvia with Section 96 of Constitution of the Republic of Latvia". The contested norm prescribes prohibition for sentenced persons to contact detained persons and persons who serve their sentence at other prison facilities.

Still before issuing of the above-mentioned opinion the Ombudsman applied to the legislator pointing out to disproportionality of absolute contact prohibition contained in that norm.

## Implementation of Recommendations

A post-inspection visit was made to Jelgava Prison to check implementation of the Ombudsman's recommendations issued in 2019. It was concluded that the Ombudsman's recommendations in general were taken into consideration.

The opinion is available [here](#).



# TRAFFICKING IN HUMAN BEINGS

# TRAFFICKING IN HUMAN BEINGS

## Introduction

The year 2020 passed in active, multifaceted work to improve and strengthen the knowledge and understanding by the officials involved in prevention of trafficking in human beings in relation to the phenomenon of trafficking in human beings, its forms, causes, identification and protection of the victims. Comprehensive communications and proposals were issued in the reporting period concerning the required measures in preventing and eradication of trafficking in human beings, as well as [information](#) for community on the situations to be aware of to avoid becoming a victim of trafficking in human beings during the period of Covid-19 pandemics.

The Ombudsman presented his initiatives in relation to the required upgrades and amendments to regulatory norms concerning the prevention of trafficking in human beings and minimization of prostitution.

As a part of the Project "Implementation of effective monitoring and extradition process (Stage 1) (No. TSB/PMIF/2018/1) where improvement of the procedure for identification of victims of trafficking is among the key activities, experts of the Ombudsman Office pursued the project launched in 2019 in cooperation with the State Border Guard. Experts of the Ombudsman Office arranged multiple meetings during the reporting period with the officials of the State Border Guard College and representatives of non-governmental organizations, conducted numerous studies of foreign legal regulations and collected information on the practice and experience of Estonia and the Netherlands in the identification of victims of trafficking in the extradition procedure.

The project resulted in a [teaching aid](#) developed for identification of the victims of trafficking in human beings in the extradition procedure, and two training seminars were organized on the basis thereof to facilitate the identification of potential victims of trafficking in human beings in forced extradition procedure and to strengthen cooperation of the involved institutions. The two seminars were attended by 42 persons from public and municipal institutions as well as from the non-governmental sector.

Results of the project also included supplemented polling list regarding observation of a forced extradition procedure as well as guidelines for implementation of supervisory mechanism in respect of the subjects of forced extradition including information and questions related to the trafficking in human beings.

Comprehensive information on the measures taken as a part of the project and the results of implementation is available on the [Ombudsman's website](#).

## Initiatives

### *Regarding improvement of regulatory norms in the field of prevention of trafficking in human beings*

The Ombudsman has been continuously focusing on the lack of cooperation and coordination of the institutions involved in prevention of trafficking in human beings in terms of identification of the victims and their referral to the providers of social services.

In the Ombudsman's opinion, no comprehensible action model clear for all stakeholders is currently in place for identification of the victims of trafficking in human beings and no effective mechanism for sharing and exchange of information between public authorities and the providers of social services. Therefore, there is a risk that victims of trafficking in human beings are not identify and receive no support from the state in recovery from consequences of the experience.

The Ombudsman therefore believes in the need for improved regulatory norms in the field of prevention of trafficking in human beings to specify who have to cooperate and how, including enshrined key principles and notions as well as criteria to be considered whenever potential trafficking in human beings is concerned.

Full opinion of the Ombudsman is available at the [Ombudsman's website](#).

### *Regarding the draft Law on Minimization of Prostitution*

The draft Law on Minimization of Prostitution was presented for discussion to the Cabinet in the reporting period. The Ombudsman issued his proposals and objections to the draft law within the scope of his competence assessing the updated version.

In the Ombudsman's opinion, the selected regulation where the person engaged in prostitution is also accountable for breaches of prostitution limitations does not conform with the principle of a socially responsible state and does not serve to protect the dignity of such persons. As a result of such regulation, the persons held administratively liable for breach of certain provisions of prostitution limitation because of their vulnerability or helplessness are repeatedly victimized and considered culprits rather than victims.

In the Ombudsman's opinion, liability for abuse of the persons engaged in prostitution should lie on those abusing prostitution. The regulation concerning prostitution should be therefore amended to prohibit abuse of prostitution so that those abusing the persons engaged in prostitution are held liable for breach of the prohibition.

Full opinion of the Ombudsman is available at the [Ombudsman's website](#).

## Case Analysis

A person applied to the Ombudsman Office in the reporting period concerning potential gross breaches of the labor law. Potential signs of trafficking in human beings (forced work) were observed in the course of advising, and so the Ombudsman applied to the State Police and also to the provider of social rehabilitation services to ensure that social rehabilitation services are available to the potential victim.

Since institution of criminal proceedings was refused, the Ombudsman applied to the Prosecutor Office for assessment whether or not the State Police has exercised due diligence in the conducted check of circumstances. Regardless that the person was considered as a victim of trafficking in human beings by the commission of specialists in service provision, the Prosecutor Office established no breach and approved the decision of the State Police.

## Implementation of Recommendations

Pursuant to conclusion regarding the need for improvement of regulatory norms in the field of trafficking in human beings the Ombudsman applied to the Prime Minister on 30 April 2020 for ensuring that appropriate actions are taken for improvement of regulatory norms in the field of trafficking in human beings including for considering of development of a new, comprehensive "umbrella" law.

The Ombudsman was informed in the letter issued by the [Prime Minister](#) on 25 August 2020 that development of the relevant regulatory norms is scheduled to start soon with the view to improve the national cooperation and coordination mechanism for prevention of trafficking in human beings.

The Ombudsman's recommendations concerning amendments to regulations in the field of prostitution limitations received no support from the Ministry of Interior. Moreover, the Cabinet was [unable to reach conceptual agreement on 25 February 2020](#) on the form of legal regulation of prostitution and its place in the legal space of Latvia, and therefore discussion of the draft law was postponed instead of presenting for discussion to the Parliament.



RIGHTS OF FOREIGN NATIONALS AND  
PERSONS WITHOUT LEGAL STATUS;  
NATURALIZATION AND DEPRIVAL OF CITIZENSHIP

## RIGHTS OF FOREIGN NATIONALS AND PERSONS WITHOUT LEGAL STATUS; NATURALIZATION AND DEPRIVAL OF CITIZENSHIP

### Introduction

The number of applications filed with the Ombudsman Office concerning the granting/deprivation of legal status or the rights of foreign nationals has not increased in 2020. Increase of the number of complaints by foreign nationals concerning extradition for national security reasons against the total number of reviewed applications should be noted, however. [Award in case No. 2019-35-01](#) rendered by the Constitutional Court on 25 September 2020 should be noted in context with the above topic because the Ombudsman was requested to issue his opinion on the case.

The Ombudsman continued addressing in the reporting period the issue of ensuring the essentials and state support for the foreign nationals who were subjects of international protection, basically for [replaced families with children from Syria](#) returned to our country after secondary movement.

Topic	2017	2018	2019	2020
Legal status of person				
Naturalization/deprivation of citizenship	1	1	17	4
Legalization/deprivation of the status of non-citizen	1	-	-	1
Rights of foreign nationals	8	8	13	10
Rights of stateless persons	1	1	4	0
Status of refugees/asylum-seekers	-	-	4	2
Legalization of persons with no legal status	-	3	4	0
Rights of asylum-seekers and persons with granted right of asylum	-	2	12	2

### Initiatives

#### *Regarding protection of the returned persons who are subjects of international protection*

On 25 February 2020, the Ombudsman sent a [letter](#) to the Prime Minister concerning protection of the families who were subjects of international protection in the Republic of Latvia, activating the lack of action plan on national level in relation to the persons who are subjects of international protection and return to Latvia as a result of secondary movement.

The Ombudsman pointed out among issues of human rights the following aspects: 1) housing issue and possibility to have a declared residence; 2) access to social aid and services; 3) amount of support for a refugee and a holder of alternative status.

### *Regarding potential solution of housing issues for refugees and holders of alternative status*

Representatives of the Ombudsman Office arranged a meeting with non-governmental organizations – the associations “Patvērums “Droša māja””, “The Latvian Red Cross” and “Gribu palīdzēt bēgļiem” to discuss the experience of each organization in handling the housing issues in relation to the persons to whom international protection was granted in Latvia.

### *Regarding amendments to the Law on Social Services and Social Aid*

The Ombudsman prepared and forwarded to the Parliament on 28 October 2020 [proposals on amendments](#) to Sections 9 and 36 of the Law on Social Services and Social Aid, proposing to supplement the Law with the norms aimed at facilitation of social protection of the persons who have the status of refugees or alternative status in Latvia.

## Case Analysis

### *Regarding the possibility for persons with the status of refugees to have their driver licenses replaced*

The Ombudsman has received a few complaints in 2020 from the persons to whom international protection is provided in Latvia concerning the prohibition imposed by the Road Traffic Safety Directorate to replace the driver license issued in the country of their origin because they had refused to contact a diplomatic or consular mission of the issuing authority of their driver licenses in their country to avoid persecution or threat; obtaining a certificate of the issuing of driver's license is a mandatory precondition to replacement of driver's license according to Paragraph 25 of the Cabinet Regulations No. 103 “Procedure for the obtaining/renewal of a driver's license and the issuing, replacement and destruction of driver licenses”.

The Road Traffic Safety Directorate has reviewed the situation and undertaken to exempt refugees from the duty to obtain the required certificate from the country of their origin.

## Observation of Forced Extradition

The number of extradited foreign nationals has decreased in 2020 as well as the number of surveys and observation operations with participation of the Ombudsman performing the function of observer. This may be due to the fact that various restrictions have been imposed in 2020 to limit the spread of Covid-19 infection including increased national border checks and additional safety measures in Latvia and worldwide.

The Ombudsman has been informed about 30 forced extradition operations that have actually taken place in the reporting period.

Topic	2018	2019	2020
Adopted decisions on forced extradition	184	86	40
Respondents involved in surveys	30	49	5
Participation at actual extradition procedures	1	3	1

Subsequent to the surveys of foreign nationals who were subject to extradition and inspection of detention facilities conducted in 2020, the Ombudsman has recommended to provide detailed information on how far the extradited foreign national would be escorted and to take steps to ensure that the rights of unaccompanied minors are observed through the identification of their family members and ensuring that the minors have the possibility to contact their close relatives.

No episodes of intolerance or cruel treatment of persons in course of forced extradition operations were identified in the reporting year.

## Opinions and Applications to Court

[Opinion on case No. 2019-35-01](#) "Concerning compliance of Section 61, Part Eight, and Section 63, Part Seven of the Immigration Law with the first sentence of Section 92 of Constitution of the Republic of Latvia". The Ombudsman stated in his opinion that Section 61, Part Eight, as well as Section 63, Part Seven of the Immigration Law were inadequate to guarantee effective mechanism for protection of infringed rights because formal check did not provide the possibility for an individual to have their case reviewed with due regard to the grounds limiting their extradition. Even though reviewing of decisions adopted by the Minister of Interior and the Prosecutor General was available every three years, in the Ombudsman's opinion such possibility did not change the quality of appealing against the original decision, and non-availability of substantiation in case of extradition prevented persons from exercising of their procedural rights.



# PREVENTIVE MECHANISM

# PREVENTIVE MECHANISM

## Introduction

According to Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment dated 18 December 2002 (hereinafter referred to as the Protocol), each Member State is responsible for establishing the national preventive mechanism for more effective application of the Protocol.

Latvia has not neither joined to not ratified the Protocol until present<sup>14</sup>, the Cabinet decided at Cabinet Meeting of 9 May 2017 (minutes No. 23) to conceptually support joining to the Protocol and to appoint the Ombudsman for acting in the capacity of national preventive mechanism.

Pursuant to the above-mentioned decision, a new structural unit of the Ombudsman Office was formed on 1 March 2018 – the Prevention Division with the key task to visit on periodic and systematic basis all institutions where liberty of persons is or may be restricted. The purpose of such visits is to prevent potential infringements of human rights through checking the conformity of living conditions with the human rights standards, discussions with the persons placed in such institutions, and education of institutional staff on various issues of human rights.

Personnel of the Prevention Division was composed in 2020 of 3 layers and 1 social worker.

40 visits in total were conducted in 2020 to the institutions where liberty of persons was, or could be restricted.

The previous year necessitated adjustments to the schedule of visits because pursuant to the Cabinet Regulations No. 103 of 12 March "On declaring of the state of emergency" the Ombudsman issued on 13 March 2020 Order No. 3 whereby any business trips by personnel of the Office were suspended including inspection visits to liberty restriction facilities. The Order was aimed at minimizing the risk of danger to the health of personnel of the Ombudsman Office and of the persons placed in closed-type facilities. The inspection visits were not resumed until 10 June 2020, that is, when the state of emergency had been lifted.

Notwithstanding the short-term suspending of inspection visits, the Ombudsman continued to focus in particular on impact of the measures intended for spread of Covid-19 on the vulnerable groups of persons by requesting information from the competent authorities and issuing his proposals for the ensuring of human rights. *Additional information is available at Section "Human rights in relation to the spread of Covid-10 infection in our country" of this Report.*

## Visits Conducted by Prevention Division

### *Institutions for extra-familial care of children*

The Ombudsman has been continuously focusing on ensuring of the rights of orphans and children left without parental care. According to the available statistics<sup>15</sup>, 6 252 children were placed in institutional care in Latvia as of 31 December 2020 including 621 children (9.94%) placed in continuous social care and social rehabilitation.

According to statistic data, the number of children placed in institutional care is gradually decreasing, and still some children are continuously accommodated in institutions for several years.

<sup>14</sup> The Ministry of Justice has drafted the Law "On Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman of Degrading Treatment or Punishment" in 2020. Enactment of the said draft law is expected no later than in the 1 st quarter of 2021.

<sup>15</sup> Summary of report on work of custodian courts in 2019

Scheduled visits to municipal child care institutions were conducted by personnel of the Ombudsman Office to check the actual situation at child care institutions of Latvia in terms of provision of the rights of children.

The visits included inspection of the children's dossiers and individual social care and rehabilitation plans to obtain information on duration of their stay in the institutions and social rehabilitation available to children as well as other aspects related to the rights of children. Visits were conducted to 10 municipal orphanages of Latvia.

The Ombudsman appreciates the efforts put in by some municipalities to develop services in family-like environment. The fact that number of children placed in the institutions has decreased on most occasions also deserves appreciation because children live in smaller groups and have better access to support from the institutional staff. On the other hand, it was established at some institutions that they still lack proper understanding of the relevant social rehabilitation of children and the needs of children cannot be efficiently met due to shortage of specialists.

The Ombudsman's report on findings at child care institutions is available [here](#).

## 10 EXTRA-FAMILIAL CHILD CARE INSTITUTIONS WERE VISITED IN 2020

Date of visit	Location
11.03.2020	Association "Centrs Elizabete"
11.06.2020	Child and Young People's Center "Sapņi"
19.06.2020	Social Care and Rehabilitation Center "Eleja"
06.07.2020	Family Support Center "Lejasstrazdi"
08.07.2020	Family Support Center "Zīluku"
10.07.2020	Municipal Institution "Sprīdītis" of Jūrmala City
13.07.2020	Extra-familial care and support center of Madona County for children and young people "Ozoli"
21.07.2020	Social Services Center for Children and Young People "Priedīte"
22.07.2020	Children's Social Services Center of Rēzekne City Council Social Service
06.10.2020	Children's Social Care Center of Social Care house "Selga"

### *Old people's homes*

Elderly people have exactly the same rights as anybody else, however they frequently experience numerous problems in exercising of such rights, in particular those accommodated in social care centers or old peoples' homes. These include, for example, particular forms of social exclusion, limited possibilities of free movement, free attendance of different culture events, expression of their opinion, receipt of appropriate social care and social rehabilitation services, etc. Six visits were conducted to old peoples' homes in 2020 to check that human rights of elderly people were observed:

- 2 post-inspection visits with the view to check the progress in implementation of the Ombudsman's recommendations. Reports on visit to Social care center "Pļaviņas" of Pļaviņas County Council and visit to social care center "Liepa" of the association "Dzintarkrasta serviss" are available [here](#);
- 2 primary visits with the view to inspect the overall living conditions at institutions, the issues of provision of the clients' right to inviolability of privacy, and the range of social care and social rehabilitation services offered to the clients. Reports on visit to SIA "Veselības un sociālās aprūpes centrs "Sloka"" and Social Care Center "Derpele" are available [here](#);
- 2 visits pursuant to complaints filed concerning eventual infringements of the clients' rights to SIA "Aprūpes nams "Urga"" and Social Care and Rehabilitation Center "Staļģene". Replies in respect of such visits were prepared for the applicants.

## 6 OLD PEOPLES' HOMES WERE VISITED IN 2020

Date of visit	Location
31.01.2020	Social Care Center "Pļaviņas" of Pļaviņas County Council
27.02.2020	Municipal SIA "Veselības un sociālās aprūpes centrs - Sloka"
16.06.2020	Social Care Center "Liepa" of the association "Dzintarkrasta serviss"
04.08.2020	Social Care Center "Derpele"
07.09.2020	SIA "Aprūpes nams "Urga""
01.10.2020	Social Care and Rehabilitation Center "Staļģene"

### *State Social Care Centers (for adults)*

The Ombudsman has been setting protection of the rights of persons with special needs among his priorities.<sup>16</sup> This is the reasons of period visits by representatives of the Ombudsman Office to continuous social care and social rehabilitation institutions. Particular focus is made during such visits on the aspects of provision of human rights and respect to the rights of clients. Experts of the relevant fields are attracted to such visits as appropriate<sup>17</sup>.

<sup>16</sup> Cf: [https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga\\_2013\\_gada\\_zinojums\\_FINAL.pdf](https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga_2013_gada_zinojums_FINAL.pdf);  
[https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga\\_gada\\_zinojums\\_%202014.pdf](https://www.tiesibsargs.lv/uploads/content/legacy/Tiesibsarga_gada_zinojums_%202014.pdf);  
[https://www.tiesibsargs.lv/uploads/content/1\\_5\\_88\\_1582118598.pdf](https://www.tiesibsargs.lv/uploads/content/1_5_88_1582118598.pdf)

<sup>17</sup> in 2020, the Ombudsman attracted representatives of the Association "Latvijas Kustība par neatkarīgu dzīvi" and a certified psychiatrist as experts to the visits.

The Ombudsman also had to establish in 2020 to his regret that institutional care was the only service offered by the state in case of persons with very severe development impairments. On the other hand, the range of available municipality-based services is very limited, their availability is highly different, and no services are available or expected in the nearest future on most occasions. It was also established that services of support person are not provided on national level, notwithstanding that for numerous persons with mental impairments such services would constitute a significant precondition to their effective integration in community.

The Ombudsman arranged a press conference on 13 October 2020 to draw attention to the seriousness of situation and to facilitate the provision of the rights of persons with disabilities, and applied to the Prime Minister calling for provision of wide range of community-based services across the country including the services of support persons also funded from the state budget.

Five visits to state social care centers were made in 2020:

- Spot visits to three state social care centers subordinated to the Minister of Welfare, namely, "Iecava" branch of VSAC "Zemgale", "Rūja" branch of VSAC "Vidzeme" and "Litene" branch of VSAC "Latgale". The purpose of such visits was inspection of overall living conditions at the institution, observation of the clients' right to inviolability of privacy, range of social care and social rehabilitation services offered for the clients, and progress in the implementation of deinstitutionalization project. Reports on visits to ["Iecava"](#); ["Rūja"](#); ["Litene"](#);
- 2 visits pursuant to complaints filed concerning potential infringements of the clients' rights at "Ziedkalne" branch of VSAC "Zemgale" and "Ezerkrasti" branch of VSAC "Rīga". Replies in respect of such visits were prepared for the applicants.

## 5 SOCIAL CARE CENTERS (FOR ADULTS) WERE VISITED IN 2020

Date of visit	Location
25.02.2020	"Iecava" branch of VSAC "Zemgale"
16.07.2020	"Ziedkalne" branch of VSAC "Zemgale"
19.08.2020	"Rūja" branch of VSAC "Vidzeme"
04.09.2020	"Ezerkrasti" branch of VSAC "Rīga"
09.09.2020	"Litene" branch of VSAC "Latgale"

### *Boarding schools*

The Ombudsman continued educational work at schools in 2020 by means of personal visits and presentation of educational online classes for children. *See also Section "Public awareness" of this Report.*

## 1 BOARDING SCHOOL OR SCHOOL WITH A DORMITORY WAS VISITED IN 2020

Date of visit	Location
04.03.2020	Lielplatone Elementary School – Support Center

### *Sobering Centers*

Investigation of the situation regarding placement of alcohol-intoxicated persons into sobering centers without their consent was started in 2020. As a part of investigation, officials of the Ombudsman Office visited sobering centers in Jelgava, Riga, Ogre un Cēsis.

It was established in the course of such visits that no uniform requirements were established in practice for arrangement of sobering rooms. Therefore, no uniform practice or base of regulatory acts is still in place in Latvia to govern the procedure and conditions to restriction of liberty of the intoxicated persons.

## 4 SOBERING CENTERS WERE VISITED IN 2020

Date of visit	Place of visit
20.07.2020	Jelgava
27.07.2020	Rīga
28.07.2020	Ogre
03.09.2020	Cēsis

### *Prison facilities*

In 2020, representatives of the Ombudsman Office conducted a comprehensive check of adherence to the rights and interests of children at Cēsis Educational Establishment for Minors as a part of the instituted investigation case. Representatives of the Ombudsman Office held discussions with personnel of the establishment during the visits, reviewed dossiers of individual children and social rehabilitation files, conducted anonymous surveys and discussions with the children and adolescents placed in the establishment.

Reviewing of the investigation case resulted in shortcomings identified in legal norms regarding placement of children in disciplinary and punitive isolation. Shortcomings were also established in the work of law enforcement authorities in relation to disproportionately long detention of a child at short-term detention isolation for performance of processual actions.

Opinion on the investigation case is available [here](#).

Please see Section "Rights of imprisoned persons" of this Report for further details.

## 12 VISITS TO PRISONS WERE CONDUCTED IN 2020

Date of visit	Location
20.01.2020	Riga Central Prison
21.01.2020	Cēsis Educational Establishment for Minors
05.02.2020	Daugavgrīva Prison
12.03.2020	Riga Central Prison
13.02.2020	Cēsis Educational Establishment for Minors
11.03.2020, 30.06.2020	Olaine Prison
07.07.2020	Jelgava Prison
04.08.2020	Riga Central Prison
19.08.2020	Valmiera Prison
26.08.2020, 03.09.2020	Cēsis Educational Establishment for Minors

### Implementation of Recommendations

A post-inspection visit was made on 31 January 2020 to Social Care Center "Pļaviņas" of Pļaviņas County Council to check the implementation of recommendations issued by the Ombudsman in 2018. It was established that 3 of the issued 13 recommendations were implemented, 6 were not, and another 4 recommendations were partially implemented. Full text of report and replies issued by the competent authorities are available [here](#).

A follow-up inspection was conducted on 16 June 2020 at Social Care Center "Liepa" of the association "Dzintarkrasta serviss" to check the implementation of recommendations issued by the Ombudsman in 2017. It was established that 2 of the 12 recommendations were implemented, 8 were not, and another 2 recommendations were partially implemented.

Full text of report and replies issued by the competent authorities are available [here](#).

A follow-up inspection was conducted on 30 July 2020 at VSIA "Piejūras slimnīca" to check the implementation of recommendations issued by the Ombudsman in 2017. It was established that most of the Ombudsman's recommendations were taken into consideration. The report is available [here](#).



# TRANSNATIONAL COOPERATION

## TRANSNATIONAL COOPERATION

Representatives of the Ombudsman Office has participated in 2020 at online events and attended events arranged by international business partners. For example: on 15 October, a representative of the Ombudsman Office participated at the 4 th seminar "Corona virus crisis and support to victims: impact on victims of trafficking in human beings and increased exploitation risks" of the conference organized by the Austrian Ministry for European and International Affairs "Trafficking in human beings during the period of Corona virus"; on 3 December, a representative of the Ombudsman's office participated as an observer of forced extradition with particular focus on the rights of children organized by the ICMPD, and on 4 December at the conference organized as part of the FLOW project "Detection and investigation of trafficking in labor – strengthening of trans-industrial cooperation"; on 14 December, representatives of the Ombudsman Office participated at online meeting with the group of experts in combating of trafficking of human beings (GRETA) including discussion of various issues related to the third stage state assessment visit conducted in relation to the implementation of European Convention on the Combating of Trafficking in Human Beings in Latvia.

Apart from the above-mentioned, a representative of the Ombudsman Office participated in early 2020, on 27-28 January at the seminar held in Trier by the ERA (The Academy of European Law) "EU Gender Equality Law"; on 1 December, representatives of Ombudsman Office participated at Equinet Webinar "Engagement with UN mechanisms, focusing on the Universal Periodic Review", and last but not least to mention was participation at the conference arranged by joint efforts of the Ministry of Justice and Protection of Consumers of Germany and the EU for Fundamental Rights "Doing AI the European way: protecting fundamental rights in an era of artificial intelligence".

The fact of especial importance to be mentioned in 2020 is the process of accreditation of the Ombudsman Office with the Accreditation Sub-Committee of the International Coordinating Committee for National Human Rights Institutions or the ICC. Accreditation with the above-named institution for human rights was required for the Ombudsman Office to be awarded with the superior internationally recognized assessment for conformity of the organization with the international standards of national institutions for human rights.



# FINANCIAL RESOURCES AND RESULTS OF OPERATION

# FINANCIAL RESOURCES AND RESULTS OF OPERATION

## Funding from the state budget and its application

Protection of human rights of private individuals as a part of activities of the Ombudsman Office is funded from the state budget program 01.00.00 "The Ombudsman Office". The program is aimed at protection of human rights and promotion of legitimate, efficient use of public authority in conformity with the principle of good governance and with Constitution of the Republic of Latvia and the international treaties binding upon Latvia.

Key activities:

1. To accept and review applications from private individuals;
2. To initiate investigation cases for clarification of circumstances;
3. To request specification of the relevant circumstances by authorities within the scope of their competence and the period prescribed by the law and provision of such information to the Ombudsman;
4. To issue recommendations and opinions to authorities in the course of handling of investigation cases regarding the legitimacy and efficiency of their activities and conformity with the principle of good governance;
5. To handle disputes between private individuals and authorities as well as disputes between private individuals in the matters of human rights;
6. To foster settlement between parties to dispute;
7. To issue opinions and recommendations to private individuals as part of dispute settlement regarding prevention of infringements of human rights;
8. To issue recommendations to the Parliament, the Cabinet, municipalities and other authorities regarding the issuing or amending of legal acts;
9. To advise persons on the matters related to human rights;
10. To conduct research and analyze situation in the field of human rights, and to issue opinions on urgent topics of human rights;
11. To visit on periodic and systematic basis the institutions where liberty of persons is subject to restriction/deprivation.

## STATEMENT OF FINANCIAL VALUES IN 2020 (EURO)

Financial values	Applied in previous year	Reporting year	
		Approved by law	Actual uptake
<b>Financial resources for costs (total)</b>	1 538 953	1 570 195	1 541 111
Subsidies	1 535 763	1 564 931	1 541 079
Services for charge and other own income	3 190	5 264	32
Financial support from other countries	0	0	0
Donations and gifts	0	0	0
<b>Costs (total):</b>	1 538 953	1 570 195	1 541 103
Maintenance costs (total)	1 503 748	1 570 195	1 503 416
Current expenditures	1 4921 185	1 558 024	1 491245
Interest costs	0	0	0
Subsidies, grants and social allowances	0	0	0
Current payments into the European Communities budget and transnational cooperation	11 563	12 171	12 171
Transferred maintenance costs	0	0	0
Costs of capital investments	35 205	0	37 687

The amount of planned funding from state budgeted in 2020 was 1.57 million euro against actually applied 1.5 million euro. Extra funding was allocated in 2020 for priority measures in the amount of 67.9 thousand euro including for strengthening of capacity of the Ombudsman Office.

Costs of business trips were reduced due to the spread of Covid019 infection and limitations applied in the state of emergency, so part of the funding (5.4 thousand euro) was allocated to the budget program 02.00.00 "Funds for unforeseen expenditures) and part (37.7 thousand euro) was applied to procurement of computer equipment, video conference facilities and disinfection equipment. Assignations from the annual budget in the amount of 18.5 thousand euro were closed at the end of year.

## RESULTS OF OPERATION OF THE OMBUDSMAN OFFICE IN 2020

Actual result	Planned in accounting period	Applied in accounting period
<i>Result of operation: public awareness and timely prevented offences</i>		
Inspections conducted at public and municipal institutions (closed and partially closed type facilities, custodian courts, educational establishments and similar)	80	104
Arranged educational seminars, discussions and other events	45	72
Participation at events organized by other institutions – lectures on the matters within competence of the Ombudsman	50	145
Prepared publications for media	4 000	4 887
<i>Result of operation: adherence to the principle of good governance</i>		
Opinions issued for the Constitutional Court	15	30
Opinions issued for public authorities on draft legal acts	45	38
Participation at action groups and commissions	100	102
<i>Result of operation: implementation of the Ombudsman policy</i>		
Received (reviewed) applications	1 900	1 617
Prepared replies to applications	1 800	1 287
Replies to applications without initiating investigation cases*	500	850
Investigation cases initiated pursuant to application	70	51
E-mail replies issued on the matters within competence of the Ombudsman Office	700	1 209
Provided oral advice:	7 000	4 135
In person	2 000	251
Via telephone	5 000	3 884
Investigation cases instituted at the Ombudsman's initiative	10	5
Opinion polls of foreign nationals subject to extradition	70	5

\* Specified wording of the result of operation "Prepared refusals to applications"

## EXTRA FUNDING ALLOCATED FOR PRIORITY MEASURES

- 1. Protection of personal data of natural persons – in the amount of 9 003 euro** to make payment for the services of data protection specialist and to ensure compliance with the requirements of the Regulation 2016/679 (EU) on the protection of natural persons with regard to the processing of personal data of natural persons and to ensure free circulation of such data starting from 25 May 2018 (Cabinet Meeting of 8 February 2019, minutes No. 6, 1. § 3.);
- 2. Strengthening the capacity of the Ombudsman Office – in the amount of 58 925 euro** to improve the ability of the Ombudsman Office to ensure more efficiently and qualitatively the protection of human rights of private individuals (Cabinet Meeting of 17 September 2019, minutes No. 42, 34. § 2.).

The Ombudsman Office continued implementation of the project “Implementation of effective monitoring process (stage 1)” (No. TSB/PMIF/2018/1) jointly with the business partner – the State Border Guards in 2020.

Funding in the amount of 52 136 euro was allocated to the Ombudsman Office in 2020 under the budget program 70.18.00 “Implementation of the projects and measures of domestic security and Asylum, migration and integration funds (2014-2020)”. 51 989 euro or 99.7% of the estimated annual funding were applied.

Multiple events are arranged as part of the project “Implementation of effective monitoring process (stage 1)” with detailed schedule of activities and time schedule in the following areas:

- 1) Strengthening the knowledge of observers upon forced extradition and the knowledge of State Border Guards officials on the key standards of human rights in the field of forced extradition of foreign nationals;
- 2) Improvement of the procedure for identification of victims of trafficking in human beings in the extradition procedure;
- 3) Ensuring of the rights of minor children who undertake unaccompanied trips in the extradition procedure.

## ANALYSIS OF THE POLICY AND RESULTS OF ACTIVITIES

**Purpose of the policy: protected human rights, minimized discrimination, facilitated legitimate, efficient exercise of the state power in conformity with the principle of good governance**  
(the Ombudsman Law)

<b>Results of policy</b>	<b>Development planning documents or regulatory acts</b>	<b>Actual value (2019)</b>	<b>Estimated value (2023)</b>
Assessment of the Ombudsman Office by the International Coordination Committee for Coordination of National Human Rights Institutions (ICC) According to the Paris Principles*	Strategies of the Ombudsman Office	1	1

\* Status according to the Paris Principles where 1 = A (the national institution fully conforms the criteria of the Paris Principles), 4 – no status is granted because of non-conformity with criteria of the Paris principles.

## DESCRIPTIVE RESULTS OF OPERATION

	2019. (actual)	2020. (actual)	2021. estimate	2022. estimate	2023. estimate
Implementation of the Ombudsman's recommendations, %	89.0	82.9	72	72	72
<i>Index of client attendance dynamics (base value 1.08 with 8 727 clients; target value - 1.1 with 9 600 clients)</i>	1.0	1.0	1.1	1.1	1.1

## QUALITY PARAMETERS

	2019. (izpilde)	2020. (izpilde)	2021. projekts	2022. prognoze	2023. prognoze
Public trust rating, points <i>("+" positive rating, "-" negative rating according to opinion poll, (data of SKDS/independent study)</i>	24.3	35.9	25	25	25
Claims granted by the Constitutional Court, %	100	100	94	94	94

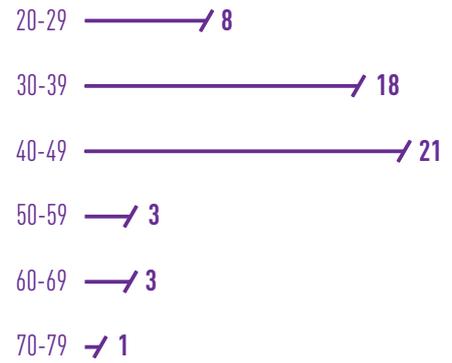


# PERSONNEL

# PERSONNEL

**7** Engaged  
**5** Dismissed  
**0.2** Turnover rate

## DIVISION BY AGE GROUPS (as of 31 December 2020)



## DIVISION BY GENDER GROUPS (as of 31 December 2020)



**7**  
Male



**47**  
Female

## AREAS OF RESPONSIBILITY (as of 31 December 2020)



**38**  
 (including 4 – prevention)  
 Legal analysis and consulting



**6**  
 Communication and international cooperation



**8**  
 Administration, document management, personnel and finance management



**2**  
 Procurement and management

## EDUCATION GROUPS (as of 31 December 2020)



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## SUMMARY

## SUMMARY

The enquiries and complaints received in 2020 by the Ombudsman Office also reflect the Covid-19 pandemics. Any decisions and communication by the government aimed at limiting the spread of Covid-19 infection find nearly immediate reflection in the content of e-mail enquiries and applications received by the Ombudsman Office. The Ombudsman has been strictly following up to ensure that restrictions imposed on the rights of individuals are proportionate and their duration is reasonable. Particular focus was made on the right of community to be informed in accurate and timely manner and in conformity with the principles of human rights as well as on provision of the rights of vulnerable groups.

In the Ombudsman's opinion, quite clear conclusion can be drawn that neither the Parliament nor the Government had been prepared for the crisis situation. Convincing pragmatism could be initially observed in the monitoring and supervision of epidemiological situation along, however, with failure to communication of clear, comprehensible, objective and timely information to the community in various formats to reach all groups of population including, for example, persons with vision and hearing impairments or persons who obtain information from social media. Objective observation of the situation showed that the Government had no clear plan of actions to be expected when the rate of infection reaches certain figures; whether or not and how would be access to health care provided; what support measures would be available if limitations are imposed on economic activities, and so on.

Apart from Covid-19 initiated complaints, the Ombudsman has also received in the reporting year numerous other applications on the issues already highlighted in previous years. For example, in terms of the nature of complaints received by the Ombudsman Office in general it has to be noted that persons with disabilities most often complain on inadequate social support, low amount of allowances and pensions, improperly determined group of disability, enabling environment, and housing adjustment. As regards persons with mental impairments, the Ombudsman is always accenting the need for drawing more attention from the competent institutions to the matters of guardianship, to the right of each person to live in society, targeted minimization of institutional care and fostering versatility and development of community-based services.

According to observations of representatives of the Ombudsman Office in course of periodic visits to social care and social rehabilitation institutions, most of the visited state social care centers have been expanded, voluminous funds are invested there from the state budget and therefore institutional care is strengthened in contradiction with the purpose and meaning of deinstitutionalization.

The highest number of applications related to the right to employment has been received concerning unequal and unfair treatment at working environment, potential psychologic terrorism on part of employer and fellow employees. The Ombudsman has issued several opinions in the reporting period concerning the prohibition to hold certain offices in relation to a previously committed offence.

Experience of the reporting period shows increasing number of complaints also on potential unequal treatment in working environment, demonstrating increased awareness among employees of their rights and their daring to apply for help. A lot has been achieved in terms of provision of equal rights and opportunities for men and women, and still there are certain areas where integration of gender equality is required. This is evident, from example, from gender-based violence, various stereotypes.

The total number of applications filed in the reporting period concerning the aspects of provision of the right to fair court was 328, indicating to increase in comparison to the previous year with 282 applications. Application to the Ombudsman and objections to decisions or actions on part of officials in pre-trial proceedings indicates to some extent to the low level of trust in supervisory institutions or doubt in effectiveness of their operation.

The applicants continue to seek information on the possibilities to protect their rights and interests, and complain on legal counselors and the quality of their work. The nature and content of applications therefore leads to conclusion that the persons involved in various procedures lack information on their rights and the possibilities to protect them, including the right to qualitative legal assistance. The state of emergency declared in our country has certainly had effect also on judicial work, and consequently on some situations the Ombudsman has been assessing the compliance with the guarantees to fair court right during that period. The limited access to court is continuously reported on as well as disproportionate hearing periods; it is also important to note that the number of applications has increased in 2020 where persons express their dissatisfaction with the reasoning and enforcement aspects of court rulings.

The Ombudsman investigated in 2020 the availability of legal aid for individuals in administrative proceedings before authorities and court. Results of investigation lead to conclusion that those who would actually need such aid are not properly informed on the availability thereof and the related procedure. Moreover, no criteria of complicated administrative cases are established by authorities and courts, and therefore authorities have wide discretion in the application of laws and such discretion can become an obstacle preventing individuals from access to legal aid before authorities and court.

High number of enquiries and complaints continued in 2020 concerning the enforcement of court rulings. Individuals point out in their applications, for example, that enforcement of a court ruling on recovery of debt continuously fails, and therefore no satisfaction is gained from what is adjudged by the court. In the Ombudsman's opinion, the state has to ensure that the system established for enforcement of rulings is effective not only in terms of regulatory norms but also in practical application. In addition, the measures of forced enforcement have to enable effective enforcement of rulings.

Another trend in the enforcement of rulings observed by the Ombudsman also in 2020 is related to complaints by debtors on the actions of enforcement officials who apply recovery either to their income without preserving the funds prescribed by the law or to the amounts exempted from recovery. This issue remains topical notwithstanding that the Ombudsman has been actively addressing the situation in cooperation of the Latvian Council of Certified Enforcement Officials. The Ombudsman has concluded from reviewing of the applications that, just like before, the said problems most frequently arise because of failure on part of the debtor to actively cooperate in the enforcement procedure and to adhere to the law stipulating that debtors have to inform the enforcement official of their financial condition.

Individuals have been applying to the Ombudsman in 2020 also in relation to various privacy issues including restrictions imposed on privacy during the pandemics. Numerous enquiries are related to the protection of personal data. Complaints have been filed regarding the publishing of a person's photos and videos without the person's consent. The topic of the "right to be forgotten" was activated within the meaning of the General Data Protection Regulation.

The year 2020 was marked in our country by wide manifestation of disinformation, basically on the Covid-19 pandemics and the related restrictions. The Ombudsman also observed notable increase of occasions where hate speech was addressed to persons with different color and ethnic background, and also to sexual minorities in the reporting year compared to the previous years. The Ombudsman applied to law enforcement authorities on more than one occasion in relation to such expressions.

As regards the right to property, individuals have been applying to the Ombudsman in the reporting period concerning individual infringements, and owners of multi-residential houses have been complaining on the actions of house managers. Discontent continues in relation to inability on part of the state to find a fair solution to the issue of property division, etc.

The reporting year has been a nearly historical milestone in the field of social security. As a result of efforts of previous years, it was marked in four important awards of the Constitutional Court concerning conformity of the minimum income with the Constitution. The Constitutional Court held in nearly all awards that importance of social security was high enough to be principally decided by the legislator. The Court also pointed out that any estimates have to be made with certain objective and based on empiric and scientific calculations appropriate to the economic situation in our country. Therefore, the amounts of minimum support cannot be fixed by means of political agreement anymore; they have to be based on logical considerations to ensure the living standard compatible with human dignity for everyone.

The Ombudsman finalized his study of homelessness in Latvia and the possible scope thereof and summarized the position of municipalities on potential solutions of that problem. It has to be concluded that most of municipalities keep no record of homeless persons and data are mainly based on the number of recipients of shelter services. As regards the right to live in enabling environment, the Ombudsman concludes that people trend to pay increasing attention to the environment they live in and to what is happening around, including increasing number of complains continuously filed with the Ombudsman concerning the lack of legal mechanism for protection of the rights of persons in case of domestic noise. In practice, police are helpless to those making noise, and therefore the right of people to quiet nighttime sleep (enabling environment) is not protected at all. Given the number of persons seeking solution to that issue for years, no further delay is permissible in enactment of a reasonable legal regulations to protect the right of persons to quiet nighttime sleep.

As regards the rights of children and young people, unfortunately the year 2020 was spent in looking forward to reform of the system for protection of the rights of children. It was reduced to institutional transformation: names of institutions were changed and functional subordination was shifted, however no changes have actually taken place. In the Ombudsman's opinion, there is only one way for institutional reform of the system for protection of the rights of children: the solution that is already approved and operating in all developed countries worldwide. In particular, the decision-making function of custodian courts on the matters of custody and guardianship should be taken over by courts. Custodian courts adopt legally binding decisions with legal consequences based on the norms of Family Law Section of the Civil Law and limiting the fundamental human rights: the right to private and family life. The fact that fates of children in Latvia are decided by extra-judicial institutions borders to some extent in legal nihilism. The court coverage in Latvia is optimal, however the number of judges specializing in cases related to protection of the rights of children and to the family law should be increased.

The number of applications in the field of the rights of children and young people has not changed in the previous year. 1 009 applications have been filed (964 in 2019), including 764 filed in person, and consulting via telephone or in electronic format. Individuals most frequently apply to the Ombudsman in relation to the exercising of access rights, suspending/renewal of custody rights, and right to education. The highest number of applications in the field of the rights of children, for example, refer to difficulties in the exercising of custody rights and enforcement of court rulings on access cases.

Provision of the rights of orphans and children left without parental care has also continuously been among focus topics of the Ombudsman. According to the available statistics, the number of children placed in institutional care as of 31 December 2020 was 6 252 including 621 children placed in long-term social care and social rehabilitation institutions. According to statistic data, the number of children placed in institutional care is gradually decreasing, and still some children are continuously accommodated in institutions for several years.

Scheduled visits to municipal child care institutions were conducted by personnel of the Ombudsman Office in 2020 to check the actual situation at child care institutions of Latvia in terms of provision of the rights of children. The Ombudsman appreciates the efforts put in by some municipalities to develop services in family-like environment. The fact that number of children placed in the institutions has decreased on most occasions also deserves appreciation. Children live in smaller groups and have better access to support from the institutional staff. On the other hand, it was established at some institutions that they still lack proper understanding of the relevant social rehabilitation of children and the needs of children cannot be efficiently met due to shortage of specialists.

Attention of the Ombudsman is focused on protection of the rights of not only the young generation but also of elderly persons. Elderly people have exactly the same rights as anybody else, however they frequently experience numerous problems in exercising of such rights, in particular those accommodated in social care centers or old peoples' homes. Therefore, visits were conducted to old peoples' homes in 2020 to check that human rights of elderly people were observed.

Complaints filed in the reporting period concerning the aspect of good governance basically refer to decisions adopted by authorities, improper or illegitimate actions on their part, failure to reply or provide information. On most occasions, however, no breaches of the principle of good governance are confirmed, and lack of communication on both parts is the cause. On some occasions the lack of efforts is evident on part of authorities to communicate adequately or to clarify their actions or decisions to individuals.

It should be noted that a new structural unit of the Ombudsman Office was formed on 1 March 2018 – the Prevention Division with the key task to visit on periodic and systematic basis all institutions where liberty of persons is or may be restricted. 40 such visits were made in 2020 as a part of performance of the function of preventive mechanism, including visits to prison facilities.

Imprisoned persons are in absolute subordinated position and therefore also to protection by the state. Regardless of the reason of imprisonment, the state is responsible for ensuring that conditions of and treatment at imprisonment entail no extra difficulties and limitations that may not exceed the distress threshold inevitably related to the fact of imprisonment. Particular attention of the Ombudsman is therefore focused on the protection of such persons. It is important to note that most of the applications originate from the largest prison facilities of Latvia: Daugavgrīva Prison and Riga Central Prison, and most of them are related to domestic matters. This certainly demonstrates that prison infrastructure remains inappropriate for ensuring enforcement of sentence/imprisonment in the conditions appropriate to human dignity, and the Ombudsman has activated this issue also to the government.

Investigation of the situation regarding placement of alcohol-intoxicated persons into sobering centers without their consent was started in 2020. As a part of investigation, officials of the Ombudsman Office visited sobering centers and established in the course of such visits that no uniform requirements were established in practice for arrangement of sobering rooms. Therefore, no uniform practice or base of regulatory acts is still in place in Latvia to govern the procedure and conditions to restriction of liberty of the intoxicated persons.

The year 2020 passed in active work to improve and strengthen the knowledge and understanding by the officials involved in prevention of trafficking in human beings in relation to the phenomenon of trafficking in human beings, its forms, causes, identification and protection of the victims. Comprehensive communications and proposals were issued in the reporting period concerning the required measures in preventing and eradication of trafficking in human beings, as well as information for community on the situations to be aware of to avoid becoming a victim of trafficking in human beings during the period of Covid-19 pandemics.

The Ombudsman also presented his initiatives in relation to the required upgrades and amendments to regulatory norms concerning the prevention of trafficking in human beings and minimization of prostitution. In the Ombudsman's opinion, no comprehensible action model clear for all stakeholders is currently in place for identification of the victims of trafficking in human beings and no effective mechanism for sharing and exchange of information between public authorities and the providers of social services. The Ombudsman therefore believes in the need for improved regulatory norms in the field of prevention of trafficking in human beings to specify who have to cooperate and how, including enshrined key principles and notions as well as criteria to be considered whenever potential trafficking in human beings is concerned.

The Ombudsman Office continued transnational cooperation in 2020, and a fact of especial importance to be mentioned in 2020 is the process of accreditation of the Ombudsman Office with the Accreditation Sub-Committee of the International Coordinating Committee for National Human Rights Institutions. Accreditation with the above-named institution for human rights was required for the Ombudsman Office to be awarded with the superior internationally recognized assessment for conformity of the organization with the international standards of national institutions for human rights.

LATVIJAS REPUBLIKAS

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**TIESĪBSARGS**