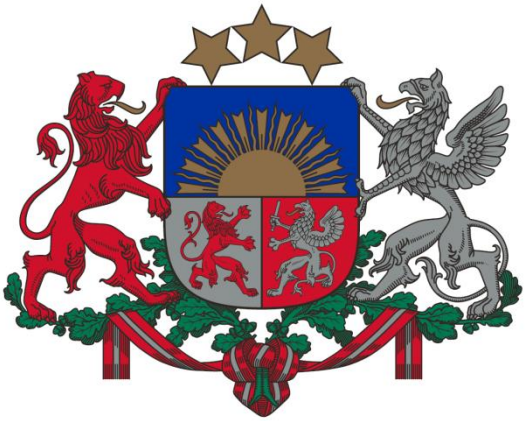


Ombudsman
of the Republic of Latvia
Annual Report 2015

Riga, 2016

Contents

Abbreviations Used in the Text

UN - United Nations

CIS – Courts Information System

Constitution – Constitution of the Republic of Latvia

CPHRFF – European Convention for the Protection of Human Rights and Fundamental Freedoms

CPT –Council of Europe Anti-Torture Committee

DSI - Data State Inspectorate

ECHR – European Court of Human Rights

LAVC – Latvian Administrative Violations Code

OCMA – Office of Citizenship and Migration Affairs

PA – Prison Administration

PDPL – Personal Data Protection Law

SBG – State Border Guard

SDC – Short-term Detention Centre

SIPCR – State Inspectorate For Protection Of Children's Rights

SRS – State Revenue Service

SSCC – State social care centre

Introductory Words of the Ombudsman

Esteemed Reader,

In a way, human rights can be compared with health. When we have it, often we do not even value it, but as soon as our health deteriorates, right away we feel its loss. Similarly with the human rights; every day we enjoy the opportunities provided by human rights and take it for granted, even consider it as something abstract. In my opinion, mostly people acknowledge the importance of human rights at the time when someone else attempts to restrict or infringe upon them.

Year 2015 may be characterised by challenges to the essence of human rights, causing each of us to ask the following questions to ourselves time and again: are such values as freedom of speech; the right to life, freedom and inviolability of person; protection against discrimination; protection against interference in private and family life; freedom of religion; freedom to peaceful meetings and association; the right to social security; the right to live in society; and other rights still relevant; do each of us on an individual level accept that such rights apply not only to each of us, but also to the other fellow men and women?

I believe that both local and international events in coming years will be a source of uncomfortable questions to politicians, businessmen, scientists, and to every member of society, thus reflecting if human rights, legal equality and good governance are important not only in words, but also in deeds. Time will show the level of our readiness to sacrifice some of our comforts, wishes, interests, or prejudices in order for someone else to be able to enjoy the guaranteed human rights as well.

Looking from a standpoint of the Ombudsman, special importance must be given to ensure the above mentioned rights to those groups of society that are the least protected. Because the health condition of the human rights can be judged exactly by rights ensured to the least protected groups.

Thus my activity as Ombudsman is mostly focused on protecting the rights of the least protected persons. It is also greatly connected with the resources of the Ombudsman's Office. Thus I would like to express my gratitude to the lawmaking authority that considered it necessary and created an opportunity to strengthen the institution of the Ombudsman, allowing for more effective further execution of the Ombudsman's tasks.

Along with the colleagues of the Ombudsman's Office, I have worked with integrity for the benefit of the Latvian population. I have a sense of a work well done, and I am satisfied that in these years since I have been the Ombudsman, it has been possible to accomplish much both on the local and international level. Institution of the Ombudsman is strong, recognised, and its opinion is taken into account and considered.

Raimonds Vējonis, the President of the Republic of Latvia, in his congratulatory speech to the participants of Ombudsman conference of 2015, stated that "without an effective institution of the Ombudsman the requirement for a democratic republic defined in Section 1 of the Constitution would not be fulfilled. Even though the Ombudsman is not mentioned in the text of the Constitution, there is no doubt that the spirit of Constitution requires an authoritative existence of the Ombudsman in the constitutional system of Latvia".

A testimony to the work and authority of the Ombudsman is brought by the fact that society recognises the institution of the Ombudsman and trusts in it. And that is the highest assessment.

Respectfully,

Juris Jansons, the Ombudsman

I. Area of the Rights of Children

1. Division of the Rights of Children: Developments

1.1. Statistics

As pointed out in the previous Ombudsman work overview reports, a separate position of the Ombudsman for children and institution for ensuring its work has not been formed in the Republic of Latvia. The Ombudsman of the Republic of Latvia at the same time takes on the function of the Ombudsman in the child rights issues and is a full member of European Network of Ombudspersons for Children (ENOC).[72] Division of the Rights of Children has been formed in the Ombudsman's Office, and its lawyers are responsible only for issues of children's rights.

In 2015, the Ombudsman's Office received a total of 890 submissions on children's rights issues, including submissions on possible violations. Of these submissions 204 were submitted in writing, including 10 from children; and 686 in oral and electronic form not signed by a secure electronic signature.

In 2014, the total number of received submissions was 672, of which 129 were in written form and 543 in oral and electronic form. Thus, in comparison with 2014, the number of submissions last year has increased by 24%.

In 2015, 18 verification procedures were initiated in order to examine the circumstances; two of these were initiated on initiative of the Ombudsman and 16 were initiated on the basis of submissions by private persons.

The largest number of submissions, 110, was received on issues regarding rights of orphans and children left without parental care. For instance, regarding placement in out-of-family care in another municipality far from the place of residence; placement in orphanage without seeking out the relatives; assistance after reaching the age of majority, etc. 108 submissions were received on the rights of a child to grow up in a family, namely, on rights not to be separated from the parents without a legitimate reason; renewal of guardianship rights, etc.; but in 82 cases persons had turned to the Ombudsman's Office regarding maintenance questions.

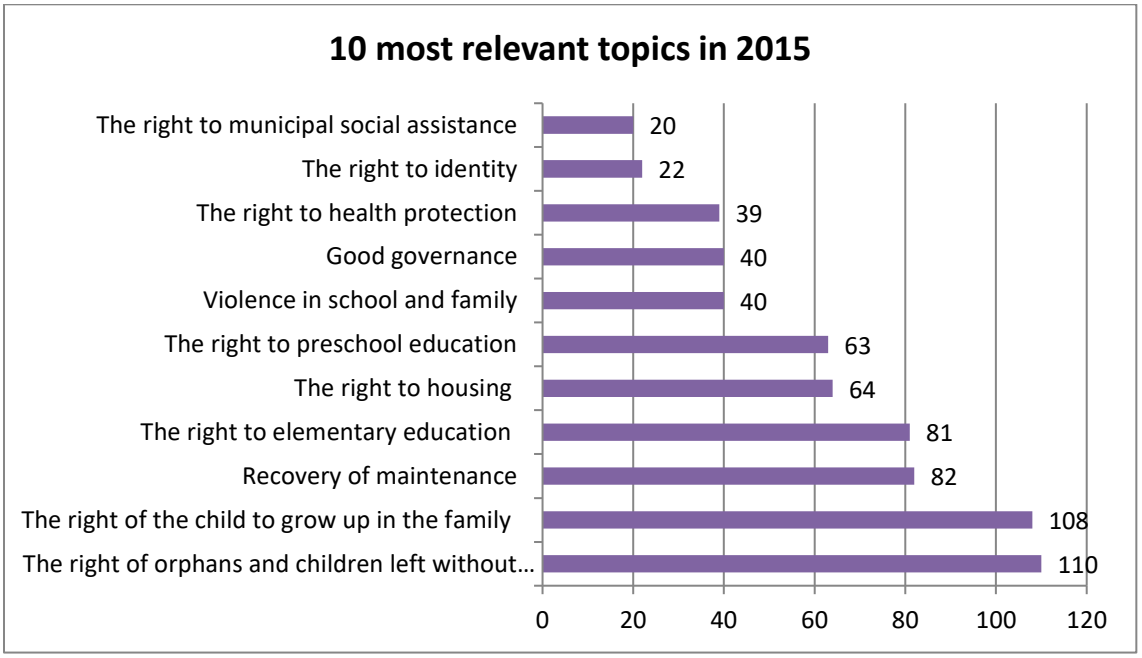
Comparing the statistics of submissions with the previous years, the rights of a child to grow up in a family is still a relevant topic: 163 submissions in 2013; 95 submissions in 2014; and 108 submissions in 2015. But number of submissions regarding the rights of

[72] For more information see: http://enoc.eu/?page_id=210

orphans and children left without the parental care has increased more than twice, namely, 61 submissions in 2013; 44 submissions in 2014; 110 submissions in 2015. Yet the increase in number of submissions may be explained by activity of the Ombudsman in increasing the awareness of children's rights violations in institutional care.

Number of submissions regarding maintenance recovery has also increased: 55 submissions in 2013; 37 submissions in 2014; 82 submissions in 2015. This can be explained by ever increasing wish of parents to increase or reduce the amount of maintenance means for the child.

Number of submissions regarding compliance with the principle of good governance in municipality institutions has remained at the same level, that is, 40 submissions in 2014, and the same number in 2015 as well. It should be added, that regarding this aspect persons mostly complain on the lack of impartiality and violations of provisions defining material rights.



1.2. Recommendations of the Ombudsman

Upon detecting violation of children's rights or principle of good governance, institutions receive the recommendations of the Ombudsman. For example, education institutions received a recommendation to comply with the requirements of regulatory enactments when reviewing the submissions of private persons; to improve communication with the parents of the learners by taking initiative in informing them of the completed work; by testing and improving the quality of provided service; ensure that

information provided by parents on the health condition of their child that might be meaningful in the learning process would be used according to the purpose; ensure training materials necessary for implementation of the educational programme and inform the teachers that regarding these training materials they should address the management of education institution and not the parents of the learners.

Medical treatment institutions received recommendations to amend the internal procedures on the rights of parents to participate in the treatment process; on acquisition of special knowledge in the area of children's rights; on inviting foreign specialists in case of rare diseases, etc.

Orphan's Court received recommendations to improve the recordkeeping system in order to have the information on children of the same family at the same location; to abstain from statements that might injure the private person, etc. But orphanages received recommendations to turn to social service with a request to develop a behavioural social correction programme for children; and local governments were requested to comply with the principle of good governance, especially courtesy.

The same way on 16 March 2015, in the letter addressed to the Defence Minister of the Republic of Latvia and to the National Guard, the Ombudsman invited them to pay attention to the youth of social risk groups living in orphanages by involving them in informative and educational events in the area of state defence and in the Young Guards movement in order to promote their awareness of citizenship, patriotism, as well as beneficial use of leisure time.

A positive moment to mention is that recommendation of the Ombudsman was taken into consideration.

Another event is worth mentioning. Namely, in 2015, the Ombudsman received information on tradition implemented in several educational institutions, so called secondary school initiation or reception of Grade 10 pupils into secondary school. It is an event organised by the school, and pupils of Grade 10 have to endure various tests devised by the school mates of senior grades. Every so often these tests are connected with abuse bordering with torture, damaging of personal belongings; actions inconsistent with the norms of morality and ethics.

According with Section 72, Paragraph one of Law on Protection of the Rights of the Child, principals and staff of the educational institutions are responsible for protection of the child's health and life, for the child's safety; for provision of qualified services, and compliance with the rights of the child. Furthermore, Section 9 of the Law states that the

child shall not be tortured or physically punished, and his or her dignity and honour shall not be violated.

According to Section 30, Paragraph one of Education Law, principal of the school is responsible for the operation of the education institution and results thereof, for compliance with this Law and other regulatory enactments that govern the operation of education institutions. Thus in the opinion of the Ombudsman, the above mentioned initiation of secondary school pupils may exist as one of the school traditions; however, the event shall never be focused on humiliation and torture of the children.

Taking into consideration that initiation of pupils of Grade 10 is organised before the autumn vacation, in September of 2015, the Ombudsman turned to all local governments requesting to inform the principals of secondary education institutions about the duty to ensure that the content of every event organised by the school would not endanger safety, health, morals, or other essential interests of the children.

1.3. Most Essential Opinions

In 2015, on the basis of submissions of asylum seekers the Ombudsman initiated a verification procedure No. 2015-37-8G on insufficient amount of costs for purchase of food, hygiene and basic goods; rights to information; efficiency of project implementation; lack of leisure activities for teenagers; failure to provide clothing and shoes; as well as unkind and deprecatory attitude of staff of accommodation centre for asylum seekers "Mucenieki" towards the inhabitants of the centre. In the course of the verification procedure, several deficiencies were detected in the work of the centre "Mucenieki" and the Office of Citizenship and Migration Affairs (hereinafter - OCMA), as well as deficiencies in the regulatory framework.

One of the main conclusions of the verification procedure regarding the amount for purchase of food, hygiene and basic goods, 2.15 Euros a day or 64.50 Euros per month, is not enough to provide a standard of living enabling the person to live in dignity and according to the condition of health, as well as staying in the centre, since it is lower than the actual minimum subsistence amount existing in the country.[73] More information is available in the section "Rights of Foreign Nationals, Status and Rights of Asylum Seekers and Internationally Protected Persons".

In 2015, on the basis of the submission by the private person, the Ombudsman initiated also a verification procedure No. 2015-8-20G on compliance of funding

[73] Full text of opinion is available on the website of the Ombudsman: www.tiesibsargs.lv

procedure of private educational institutions to the principle of equality in the context of the rights to primary education and secondary education.

In the course of the verification procedure it was concluded that the principle of "money following the pupil" regarding the state funding has been fully implemented and it works independently of the status of the founder of educational institution. Budgetary means and budgetary target subsidies are used to fund the remuneration for the work of the teachers[74] and purchase of specific teaching materials[75] both to private schools and educational institutions established by municipalities in equal amounts. Budgetary means for school meals are also assigned regardless of the founder status of the education institution in equal amounts both for the private schools and the education institutions established by the local government. Thus state funding is ensured by complying with the equality principle for learners who have chosen the municipality educational institution and learners who have chosen the private education institution.[76] But if the child does not attend the educational institution established by his or her municipality of residence, the local government funding shall "follow" the pupil only to the education institution established by another local government, but not to the private school. Thus the conclusion was made that in the legal system of Latvia the rights to obtain education in a private school or education institution established by another local government are acknowledged as the rights to choose, and that means that parents have a right to such legal and institutional system that would facilitate their opportunities to make this choice. Thus the State by promoting one choice and not the other implements an unequal treatment that cannot be acknowledged as being in compliance with the Section 91 of the Constitution of the Republic of Latvia (hereinafter - Constitution). The Ombudsman has invited the Ministry of Education and Science to eliminate these deficiencies.[77]

In 2015, on the basis of submission by a private person the Ombudsman also initiated the verification procedure No. 2015-25-5F on protection of the rights of the child in the event of unauthorised publishing of information. In the course of verification procedure the conclusion was made that for processing the personal data for the needs of journalism unrestricted freedom of action has not been provided. In every case prior to

[74] Section 59, Paragraph two of Education Law
[75] Section 59, Paragraph 2, Clause 1 of Education Law
[76] Cabinet regulation No. 1206 of 28 December 2010 "Procedure for Estimating, Assigning and Use of State Budget Means to Local Governments for Meals of Pupils of Elementary Education Institutions"
[77] Full opinion available at:
http://www.tiesibsargs.lv/files/content/atzinumi/Tiesibsarga%20atzinums%20lieta%20Nr.%202015-8-20G.pdf

data processing, including that of disclosure, it should be evaluated if the data processing shall impact the rights and legal interests of the child now or in future.

Data State Inspectorate (hereinafter - DSI) is not eligible to apply the liability for personal data processing defined by Section 204.[7] of the Latvian Administrative Violations Code (hereinafter - LAVC) to mass media without a legitimate reason. However, in other cases when information about the child has been distributed without authorisation by a person that is not a journalist or mass media, DSI is eligible to apply the administrative liability.

Verification procedure was completed by detecting deficiencies in regulatory enactments regarding effective protection of the child's identity – there are no sanctions for journalists or mass media who publish unauthorised information about the child.

1.4. International Cooperation in the Area of the Rights of Children

Within the framework of international cooperation on March 30-31, 2015 the Ombudsman and specialists of the Division of the Rights of Children participated in the annual ombudsman meeting of Baltic States and Poland in Warsaw. There ombudspersons shared information on the news of their work and discussed such topics as the right of child to access their imprisoned parents; submission of alternative reports to United Nations (hereinafter - UN) Committee on the Rights of the Child; rights of unaccompanied minor foreign nationals, etc.

Within the framework of discussing the topic of the right of the child to access their imprisoned parents was invited an expert in this area from organisation *"Children of Prisoners Europe"*, Kate Philbrick. She shared her experience regarding the needs of the children of imprisoned persons and how imprisonment of the parents affects the life of the children. She also shared about the competence, tasks and accomplished work of the organisation in this area.

In the last session the participants of the meeting gave reports on various topics that were relevant in 2014. For instance, the representatives from Lithuania shared their experience on research done on participation of children in the research of bio medicine, but the representative of the Latvian Ombudsman's Office spoke on the topic of the right of the child to grow up in a family and the results of monitoring of municipality orphanages. Representatives from Poland, in turn, analysed effect of migration of parents as workforce and its characteristic features, as well as introduced the research on teenagers and internet; and the representatives from Estonia spoke on the topic of secret of adoption.

On 22 May 2015, the representative of the Division of the Rights of Children participated in international conference *"Supporting Children with Imprisoned Parents and their Families: Rights, Opportunities and Responsibilities"* hosted by a non-governmental organisation *"Bufff"* in cooperation with the organisation *"Children of Prisoners Europe"*.

The conference was dedicated to the rights of the children whose parents are imprisoned and to opportunities of all involved parties in solving various problems. Representatives of the conference from various countries, including Malta, Croatia, Sweden, the Great Britain, and Finland, shared their experience of accomplished work in this area - their projects, tasks and future plans.

Representatives from the organisation of European countries *"Children of Prisoners Europe"* were satisfied about the research started by the Ombudsman regarding children whose parents are in imprisonment. The Ombudsman was invited to become a member of the organisation, as well as urged to prepare a publication on the results of the work. It should be added, that on 20 October 2015 it was accomplished by publishing the article *"Researching Children of Prisoners in Latvia: What Needs to Be Done?"*[78] discussing the research of the Ombudsman regarding the rights of children of imprisoned persons to contact with parents.

On September 21 - 25, 2015, the Ombudsman participated in the annual 19th conference of the European Network of Ombudspersons for Children and in General Assembly held in Amsterdam, Netherlands. The topics of the conference were "Violence against Children" and "Children in Motion".

In their joint statement "Violence against Children" the ombudspersons suggested to undertake measures in order to combat violence against children: to promote positive child-raising, train specialists and ensure better support to the victims. In the joint statement regarding the children in motion, an emphasis was made for the governments of the European states that it is necessary to undertake an urgent action to ensure respect of the rights of these vulnerable children.

In this conference a special attention was given to activities of ombudspersons in 2015 regarding issues on violence against children, especially mobbing, poverty of children, migrant children, education, the right of the child to be heard, and the right to participation, children in the out-of-family care, etc.

[78] Available at:
http://childrenofprisoners.eu/2015/10/20/researching-children-of-prisoners-in-latvia-what-needs-to-be-done/

In 2015, Ombudsman's Office received 16 international requests on issues of the rights of the children. Of these three were requests of ENOC to provide an opinion on violence against children in schools; on children who have suffered from the economy crisis; and on situation of unaccompanied minor foreign persons.

Four requests were received from the Ombudsperson institutions of European states regarding the rights of the child to participate in making a decision relating to medical treatment; infant mortality; equal opportunities to obtain education, and on missing children.

Nine requests and questionnaires were received from various institutions of European countries and international organisations regarding children with disabilities, children in places of imprisonment, rights of the child to obtain citizenship, unaccompanied minor foreign nationals, prevention and elimination of child suicide, involvement of the children in jihadist movement, strategy of European Council regarding the rights of the children, and state expenses for children.

On 15 December 2015, the Ombudsman submitted to UN Committee on the Rights of the Child an Alternative Report on the status of rights of the children in Latvia for the period from 1 January 2007 to 30 June 2012. By the report attention of UN Committee on the Rights of the Child was drawn to the problems in the following areas:

- obligation of the parents to respect the rights of the child,
- the right of the child to be protected from any kind of violence,
- compliance with the rights of the child in the psycho-neurological hospitals,
- the right of the child to grow up in the family,
- individual preventive work in municipalities,
- guarantees of the rights of the children and law enforcement institutions,
- the right of the children of imprisoned persons to contact with parents,
- availability of special education,
- rights of the minor ethnicities to obtain education,
- Roma segregation in educational institutions,
- compliance with the rights of the non-citizen children.

Annual consolidated (third, fourth, and fifth) report of the Republic of Latvia on execution of UN Convention on the Rights of the Child of 20 November 1989 and its two additional protocols in the Republic of Latvia for the period from 2004 to 30 June 2012 was reviewed on 12 and 13 January 2016 in Geneva, Switzerland, in Session 71 of the UN Committee on the Rights of the Child.

1.5. Research

On 14 September 2015, the Ombudsman started a comprehensive research on understanding and situation of violence against children in Latvia. The purpose of the research was to find out the opinion of pupils of grades 5 - 12, parents and teachers on what is violence against the child; how often and how children have suffered it; what has been the action of pupils, parents and teachers, if the child is suffering from violence.

Ombudsman implemented the research in cooperation with the research agency "TNS Latvia" and school management systems "E-klase" and "Mykoob". "TNS Latvia" helped to develop the questionnaires for pupils of grades 5 - 12, parents and teachers, and to summarise the received answers, but "E-klase" and "Mykoob" distributed information on research of the Ombudsman and sent the link of the questionnaire to all respondents. Thus anonymity of the questionnaire was ensured. The results of research were presented in the annual conference of the ombudspersons on 11 December 2015.

Main conclusions of the research "Prevalence of Violence against Children in Latvia"[79]

In situations of violence against children are involved both adults (parents/other members of the family, teachers/coaches/educators, etc) and peers, friends, classmates. Thus prevalence of violence against children should be reduced at home/in the family and in school. In order to implement it, education of all involved parties is necessary on the following issues:

- **What is violence, what are its types and forms?**

Special attention should be paid to those types and forms of violence of which these target groups have comparatively less understanding. For example, according to the Protection of the Rights of the Child Law smoking in the presence of a child is a physical violence against the child, yet this action as violence against the child is recognised only by 55% of children, 66% of teachers, and 66% of parents. The same way also neglect or negligence of parents expressed as not taking care of their child is comparatively little identified by respondents as violence against the child.

"Child asks for advice or help, but is ignored, not cared for, intentionally not spoken with" and "child is threatened with physical pain, but it is not done" – children have not

[79] Research and materials of the conference are available on the Ombudsman's website:
http://www.tiesibsargs.lv/files/content/Petijumi/4239_TNS_Vardarbibas_pret_berniem_izplatiba_Latvija_2015.pdf
http://www.tiesibsargs.lv/sakumlapa/tiesibsarga-ikgadeja-konference-atskats-uz-paveikto-pedejos-piecos-gados-papildinata-ar-konferences-materialiem

much understanding about these types of emotional violence, yet at the same time it is necessary to increase the understanding of parents and teachers as well.

In general emotional violence – action that causes emotional stress to the child by threatening or affecting age appropriate emotional development – is hardest to define and measure, therefore education is necessary in order for these offences to be recognised and prevented in a timely manner.

- **What consequences violence might have on the child.**

It would help the children to recognise violence aimed at themselves and/or other children; to analyse their own actions towards other peers; to improve their social skills. Parents and teachers will be able to identify and analyse their own actions and that of the other persons.

- **Education of all involved parties (children, parents, teachers, society) on what exact actions to undertake,** whom to inform on violence against the children is necessary.

- **To strengthen inter-institutional cooperation** (school-family-municipality); to pay special attention to dysfunctional families subject to special social risk by offering social and/or psychological help on issues of raising and disciplining the children.

In addition, to reduce the violence among peers at school, it is necessary to analyse the causes (biological, psychological and pedagogical) for mutual violence of children, to develop and implement preventive activities; for example, to formulate in a positive way the internal rules of the school; practically involve the children in implementation of positive behaviour at school; use extracurricular activities for creation of unity and sense of community.

In 2015, the Ombudsman's Office participated in implementation of European Commission's project of 2014 "Children's Rights Behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms" (JUST/2013/JPEN/AG/4581). The purpose of the project was to gain information on various types of closed type institutions where children are held, as well as to gain information on how the compliance with the rights of the children in these institutions is being monitored, and what mechanisms of complaint submission are in place if the child's rights have been breached.

The representatives of the Ombudsman's Office visited four institutions: VSIA Children's Psycho-neurological Hospital "Ainaži", social correction educational institution "Naukšēni", Iļģuciems prison and Cēsis education institution for juveniles. In the course of the visits, interviews with children and administration of the institutions were held. By

evaluating the received information as well as regulatory framework of Latvia, the following conclusions can be made: main concern is that children do not understand their rights to submit a complaint, and in closed institutions these complaints might not be registered and reviewed. Practice shows that greatest part of oral complaints are not registered and prepared in writing as prescribed by the Administrative Procedure Law.

There is also concern if the children are ensured an opportunity to complain outside of institutions – in a supervising institution, the Ombudsman's Office or State Inspectorate for Protection of Children's Rights; if information is provided (address, telephone) of institution for submitting complaints; if there is a possibility to send a letter (that is, if postage stamp, envelope, paper, pen are available); if an opportunity to call to free children's hotline is provided. In this context, based both on number of complaints and submissions and what children said, they are not effectively provided with an opportunity to lodge a complaint outside their institution. Mostly it is connected with the lack of understanding of children regarding their rights to submit complaints, as well as insufficient provisions of the institution (telephone, postage stamp, envelope, no paper, lack of anonymous mail box, etc). Furthermore, the institutions still view complaining as a negative phenomenon to be prevented. Therefore they are not interested in providing the children with information on the mechanism of submitting complaints and making it transparent and easily understandable. Thus the institutions are invited to:

1) register the oral complaints as prescribed by the Administrative Procedure Law;

2) perform the necessary actions in order to effectively provide an opportunity to submit a complaint outside the institution, as well as to complain anonymously;

3) provide children with comprehensive information on mechanisms for submission of complaints in a language understandable to children.

Institutions should be aware that submission of complaints may help to improve the quality of their services.

At the same time, in order to improve the mechanism for submission of complaints, the legal framework should be improved. Currently a general framework is provided by Administrative Procedure Law, Law on Submissions, Law on Notification, and specialised laws of the sectors. A special regulation regarding exactly the rights of the children to access state and municipal institutions has been defined in Section 70, Paragraph two of Protection of the Rights of the Child Law. However, it is not complete, since it provides the right of the child to submit a complaint only in case if his rights have been breached by a legal representative, employee of the child care or education

institution. Thus it is necessary to amend Section 70 of the Protection of the Rights of the Child Law by providing the rights for a child to complain in any case when his or her rights have been violated. The law should also define the obligation of each institution for children to provide the procedure of complaint submission and review, and to make it available to the children, if the procedure has not been determined by the regulatory enactments.

The closing conference of the project shall take place in Brussels, Belgium on 15 February 2016. Report of Latvia on project "Children's Rights Behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms" is available on the website of the Ombudsman.[80]

In 2015, within the framework of project by European Return Fund "Development of Mechanisms for Forced Return Monitoring", the Ombudsman performed a research on receipt and stay of unaccompanied minor foreign nationals in the Republic of Latvia, as well as their return to the country of origin. More information on conclusions is available in the section "Return of Unaccompanied Minor Foreign Nationals to their Country of Origin" in this report.

In 2015, the Ombudsman continued the research on the right of the children to contact with parents who are in imprisonment. The results of the research were presented in the annual conference of the ombudspersons on 11 December 2015[81]. See Chapter 8 "The Right of Children of Imprisoned Persons to Contact with Parents".

1.6. Educational Activities for Children and Subjects of Children's Rights

On 1 June 2015, in honour of International Children's Protection Day the Ombudsman hosted an event for children, the participants of Āgenskalns primary school summer camp. The purpose of the event was to introduce the children to their rights and duties. Within its framework in five sports relay races the teams had to obtain as many "rights, duties and prohibitions" as possible. At the end of the relay races "rights, duties and prohibitions" had to be grouped according to categories. The specialists of Division of the Rights of Children inspected the work performed by the teams and explained to the children their rights and duties.

At the conclusion of the event all teams received rewards, but the winning team received the certificate from the Ombudsman.

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[80] Available at: http://www.tiesibsargs.lv/petijumi-un-publikacijas/petijumi

[81] Research and materials of the conference are available on the Ombudsman's website:: www.tiesibsargs.lv

Just as it was done previously, in 2015, the Ombudsman actively promoted the awareness of society about the children's rights and protection mechanisms of these rights by giving special considerations to issues on safety of children in education institutions. For this purpose were organised seminars to educators and other subjects of children's rights protection, for example, on 10 February 2015 - to Stopiņi municipality subjects of children's rights protections; on 30 October 2015 was held a seminar on Ombudsman's Office and children's rights to employees of Jelgava municipality and Ozolnieki municipality education institutions and education administrations; but on 18 December 2015 was held a seminar "Topicality of Issues on Human Safety and Human Rights in the Process of Education" for the council and employees of Olaine 2 Secondary School. Moreover, the Ministry of Justice in cooperation with the Ombudsman's Office hosted a public expert discussion "A Child or a Law Breaker? To Punish or to Educate?". Children's rights, including the right not to suffer from violence, and the rights protection mechanism in case of violence were the topic of the third day of the Ombudsman's annual conference.

2. Promoting the Rights of the Children to Grow Up in the Family

2.1. Issues Regarding Guardians and Foster Families

On 26 January 2015 in the meeting of the Cabinet of Ministers was reviewed a concept "On Improvement of Adoption and Out-of-family Care Systems" developed by the Ministry of Welfare. Concept provides gradual implementation of changes in the system of adoption and out-of-family care in order to ensure appropriate funding and social guarantees to the persons who assume the care of children. Regarding guardianship the Ministry of Welfare offered both to increase the child maintenance benefit and to review the remuneration for fulfilling the obligations of the guardian.

Regarding the remuneration to guardians the Cabinet of Ministers supported the third version in the meeting of 26 January 2015, requiring from 2018 to stop the payment of remuneration for fulfilment of obligations of the guardian, and one of the deficiencies of it was pointed out: "The number of children under guardianship may decrease".

The Ombudsman addressed the Prime Minister with an invitation to review the decision regarding remuneration for fulfilment of the guardian's obligations on the basis of the following arguments:

1) Section 110 of Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma, adopted in November 2014, had set one of the priorities of the government the task to strengthen the movement of guardians: "In order to ensure a possibility for every child to grow up in a family or a family-like environment, we shall strengthen the movement of alternative families (foster families, guardians). (...) We shall ensure payments to foster parents and guardians from the state budget for pension insurance."

2) The government action plan for implementation, Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma[82], included the measure of implementing measures scheduled for 2015-2018[83] proposed by the "Framework of Social Service Development for 2014 – 2020)[84]. This framework sets out a task to review remuneration for the guardian and foster family for fulfilment of obligations and conditions for receipt of such remuneration.

3) According to implementation of action plan "Framework for State Policy on Family for 2011 - 2017"[85], the Ministry of Welfare has a task to increase remuneration to guardians for fulfilment of obligations.

Solution included in the concept and supported by the Cabinet of Ministers to stop the payment of remuneration for fulfilment of obligations to all guardians is contradictory to the tasks set by the framework - to review and increase the amount of the remuneration. Thus it may be concluded that stoppage of payments to guardians for fulfilment of obligations is contradictory to the tasks set out in Declaration on Scheduled Activity of the Cabinet of Ministers Headed by Laimdota Straujuma (to strengthen the movement of guardians) and the measures of the government action plan.

One of the aims of "National Development Plan for 2014-2020" is to ensure that children live in a favourable family environment or environment closely resembling it by planning that the number of children living in guardianship and foster family (family environment) in relation to all children being in out-of-family care would gradually increase from 77.8% in 2011 to 85% in 2020.[86]

The chosen solution not to pay the guardians for fulfilling their obligations may decrease the number of children under guardianship because it would worsen the situation of the guardians and may have a negative effect on the motivation of persons to become

[82] Approved by the Cabinet order No. 78 of 16 February 2015
[83] Action plan measure No. 110.2.
[84] Approved by the Cabinet order No. 589 of 4 December 2013.
[85] Approved by the Cabinet order No. 584 of 7 December 2012.
[86] Available at: http://likumi.lv/doc.php?id=253919, [259] Goal 2; [260] Indicators of achieved goal.

guardians. Furthermore, it does not comply with the provisions of Section 307 of the Civil Law stating that guardian who is not directly related to their ward, shall receive a just remuneration.

The objection of the Ombudsman was not considered. On 9 March 2015, the Cabinet of Ministers supported the concept. Regarding the foster families it states that, beginning with 2018, the benefit for the child's food shall be increased to amount twice the amount of minimum maintenance funds. From 2019, the plans have been made to review the remuneration for the foster family for fulfilment of obligations and to determine it on the basis of minimum income level according to the concept "On Determination of Minimum Income Level".

Namely, if under care of the foster family are:

- one child – 214 Euros;
- two children – 302 Euros;
- three children – 390 Euros.

The plans have also been made to implement specialised foster families from 2017, so that already from the beginning when the child is removed from the family, while appropriate guardian or foster family is sought, the child would be ensured with care in a family environment as soon as possible, and not receive care in an out-of-family institution. Specialised foster families would have special requirements for education, experience, skills and competencies, and they would receive a larger remuneration.

Regarding guardianship, it is planned that from 2016 the benefit for child maintenance shall be determined for the amount of maintenance set by the state, but since 2018 the benefit shall be paid amounting to double amount of the minimum maintenance set by the state.

Provisions of the concept, except the cancellation of remuneration for fulfilment of guardian obligations, are in line with the recommendations of the Ombudsman to increase the support to the guardians and foster families.

2.2. Problems of Service Procurement and Settlement of Out-of-family Child Care

On 26 January 2015 the Ombudsman addressed a letter to State Inspectorate for Protection of Children's Rights (hereinafter - SIPCR) informing them on detected practice in service procurements of continuous social care and social rehabilitation for children organised by local governments when the service provider is chosen solely on the basis of

the service price and economic profitability and not on children's rights and interests during the out-of-family care. As a result, children receive services far from the residence place of their parents, and a situation is allowed when in case of change of service provider the child is forced to change the care institution and place of residence several times.

The Ombudsman invited SIPCR to provide information on completed and planned measures to change such practice of local governments because it cannot be recognised as befitting the interests of the child. SIPCR asked the Procurement Monitoring Bureau to provide an opinion on opportunities for local governments to organise procurement of children's out-of-family care service that would set a requirement for the tenderer to ensure the respective service to the children in a time period longer than one or two years.

In the course of researching the situation in municipal orphanages, in 2014, a longstanding systemic problem was detected that for the care of a child in institutional care it was paid trice by covering the costs simultaneously in three institutions – child care institution (from the residence municipality budget), boarding school (from the budget of Ministry of Education and Science) and psycho-neurological hospital (from the budget of Ministry of Health); at the same time the used resources do not ensure the quality service appropriate to the child's rights and interests. The Ombudsman performed a research regarding the causes of the situation by asking the psycho-neurological hospitals to provide an opinion on frequency and reasons for admitting to the hospital the children living in orphanages, as well as boarding schools.

On 26 February 2015 a press conference was organised by the Ombudsman regarding the mentioned problems. Taking into consideration that the detected situation created doubt on profitable usage of state and municipality funds, on 2 March 2015, the Ombudsman addressed the State Audit Office with a request to begin inspection of legitimacy and efficiency of financial funds usage. On 3 March 2015, the Ombudsman in addition informed in writing the Saeima, Cabinet of Ministers and Ministry of Welfare about the detected problems in ensuring the rights of the children.

2.3. Recommendations of the Ombudsman to Local Governments

On 11 May 2015, the Ombudsman sent a letter to the Latvian local governments, Ministry of Environmental Protection and Regional Development, and Latvian Association of Local and Regional Governments with a request to promote prevention of deficiencies detected regarding ensuring of children's rights in municipal institutional

care, as well as undertake measures to strengthen the movement of foster families and guardians. Local governments of Latvia were given the time period of half a year to improve the situation and provide the answer regarding execution of the Ombudsman's recommendations till 30 October 2015.

Answers from 53 local governments were received to the letter of the Ombudsman, but 66 local governments did not respond. By summarising the provided answers, it may be concluded:

1. Number of guardians and foster families in the country is critically insufficient. Most local governments have not indicated what has been done to promote the movement of guardians and foster families. Therefore, it may be concluded that nothing has been done.

2. Several local governments have thoroughly analysed the situation in their administrative territory, have made conclusions and made suggestions of what should be done at the state level, as well as have informed on specific measures undertaken to promote the movement of foster families and guardians. For example: articles have been published in the local newspaper as well as invitations to become a foster family; staff of Orphan's Court have participated in the meetings of parents in education institutions; brochures have been prepared, and information has been placed in the premises of the local governments; informative events have been organised in Christian churches; potential guardians and foster families have been approached personally; a conference has been hosted in the premises of the education institution; video material has been made with an invitation to become a foster family, and it has been demonstrated in population meetings; information on the topic of foster families has been given in the radio broadcast; training of guardians has been organised, etc. Such activities have been implemented in the municipalities of Alūksne, Jaunpils, Salacgrīva, Rēzekne, and Daugavpils, as well as in Rēzekne, Valmiera, and Riga.

3. Several local governments have given short answers; for example, the regional government of Viļaka municipality stated that it has taken into consideration the recommendations of the Ombudsman and is organising its implementation.

4. Some local governments on their own initiative pay the child maintenance benefit for a child in a foster family of a greater amount than the minimum 108 euros set by the government. For example, Ozolnieki municipality pay 350 Euros for this purpose; Valmiera, Jūrmala, and Riga - 270; Iecava municipality - 260; Tukums municipality - 175 - 280; Cēsis municipality - from 224 euros for a child up to three years of age to 256 euros

for the children aged 15 - 18; Ķekava municipality - 250; Talsi municipality - 215; Konknese and Rūjiena municipalities - 200.

5. Some local governments on their own initiative pay the benefit to the foster family for fulfilment of obligations (in addition to state benefit), namely, a benefit paid in Jūrmala is from 114 to 683 Euros depending on the number of children under care; in Riga - 213.43; in Ozolnieki municipality - 50; in Jēkabpils municipality - 30 Euros.

6. Several local governments on their own initiative pay the benefit to the guardian (in addition to the state benefit). For instance, in Iecava municipality the amount is 60 Euros per month for the second and every successive child; in Ozolnieki and Koknese municipalities - 30 for each child. Bauska municipality pays the benefit for the maintenance of the child under guardianship - 50 Euros per month; in Tukums municipality and Jūrmala - 55; in Riga - 54.07 Euros per month for the second and each successive child; but in Nīca municipality the guardian is given an additional one-time benefit of 100 Euros for each child.

It is essential that several local governments, for example, of Koknese and Burtnieki, have indicated that positive initiatives have been implemented exactly as a response to the invitation of the Ombudsman.

7. There are local governmetns where no children are placed in the orphanage; as examples can be mentioned Durbe, Aglona, Rucava, Nīca, and Mālpils municipalities, or in the last year no children have been placed in the orphanage, as in Skrīveri and Cesvaine municipalities.

8. Some local governments have no foster families at all, including, Jaunjelgava, Koknese, Babīte, Lubāna municipalities, etc.

It should be added, that on 18 May 2015, the Ombudsman informed the General Prosecutor of the Republic of Latvia on violations of rights of children left without the parental care detected during the research of situation in municipal child care institutions, and asked to begin the inspection. A letter for information was sent also to the Human Rights and Public Affairs Committee of the Saeima.

The General Prosecutor's Office provided a reply that according to the instructions of the General Prosecutor the issue on inclusion of appropriate inspection in work plan of the Prosecutor's Office for 2016 shall be decided.

3. The Right of Orphans and Children Left Without Parental Care to Housing

Regulatory enactments provide guarantees to every child in an out-of-family care the right to receive social guarantees after reaching the age of majority and termination of out-of-family care. One of the rights is the right to receive the assistance of the local government in solving the housing issue.

By the beginning of 2015, the Ombudsman's Office received submissions from several persons on the right of the orphans and children left without parental care to receive assistance of the local government in solving the housing issue after 1 January 2015.

On 19 June 2014, the Saeima accepted amendments to the Law "On Assistance in Solving Apartment Matters", thus from 1 January 2015 implementing a new type of assistance - apartment benefit to the orphan children and children left without parental care. Thus amendments created an opportunity for orphans and children left without the parental care to choose between two types of assistance. One of the variants offers an opportunity to the child until reaching age 24 to choose the right to lay a claim on renting municipal living quarters by registration for receipt of this assistance. But according to the second variant, the child until reaching age 24 may choose the right to receive the apartment benefit in the amount stipulated by the binding provisions of the local government, yet in this case he or she may not claim the renting of municipal living quarters.

The representative of the Ombudsman participated in the working group and sessions of Public Administration and Local Government Committee of the Saeima, where the mentioned amendments were discussed. These were developed according to the suggestion of the Latvian Association of Large Cities and Riga City Council Housing and Environment Department. The Ombudsman supported the amendments in part, by drawing the attention of the members of the Parliament to necessity to specify the wording.

Namely, the Ombudsman supported the proposal on implementation of apartment benefit believing that it may be an alternative solution to those orphans and children left without parental care whose actual place of residence in their time of out-of-family care has changed to another municipality and who upon reaching the age of majority and termination of out-of-family care do not intend to return and live in the administrative

territory of the municipality that was its place of residence until transfer to out-of-family care. According to the regulatory enactments on ensuring social guarantees, including provision of assistance in solving the apartment matter, responsibility lies with the local government that has made a decision on transfer of the child to out-of-family care and having the place of residence of the child in its administrative territory before the making of this decision, and not the municipality in the territory of which the child actually lives. The same way an opportunity to receive the apartment benefit would allow independent solving of the housing issue on the part of the young people who after termination of out-of-family care due to various reasons do not wish to rent the municipal living quarters (they are not satisfied with the utilities, space of these quarters, deadlines for assignment of assistance, etc.)

At the same time the Ombudsman expressed an opinion that acceptance of amendments in the offered wording may worsen the situation and exercise of the rights of orphans and children left without parental care who have reached the age of majority. In the view of the Ombudsman, it is not permissible that the legal framework puts the young people in a different situation depending on if the local government has available housing that it may immediately secure. Namely, according to the new procedure, in the local governments with the available housing the young person has an opportunity both to rent a municipal apartment and to receive the apartment benefit. But in a situation when the local government that cannot immediately provide the living space to the young person, upon receipt of apartment benefit they lose the right to receive another kind of assistance - the right to rent the municipal living quarters or social apartment. Thus the framework may lead to the situation that in municipalities without available housing, the matter of housing for orphans and children left without parental care shall be solved only by paying apartment benefit. Taking into consideration, that the legislative authority has delegated the right to determine the amount of apartment benefit to the local governments, in practice it may be insufficient in separate cases for coverage of actual expenses and allowing the person to solve the housing issue. Therefore, the Ombudsman offered in situations when the local government cannot immediately ensure the living quarters to the orphan or child left without the parental care and thus is formed an objective need to receive the apartment benefit, not to restrict the right of the young person to receive assistance in renting the municipal living quarters, unless the person refuses from such assistance. Unfortunately, the working group did not take into account the indicated considerations of possible risks and suggestion to amend the wording of provisions, and

Public Administration and Local Government Committee of the Saeima did not consider it necessary to begin discussion on the respective issue when reviewing the proposals on amendments to the Law "On Assistance in Solving Apartment Matters".

Submissions that were received by the Ombudsman's Office in 2015 criticised the new procedure by indicating that it increases the vulnerability to social risk of orphans and children left without parental care having reached the age of majority. In large municipalities lacking in available housing assistance in relation to renting the municipal living quarters might actually not be received by the child. For instance, already now the Riga municipality is unable to ensure the living quarters in a timely manner to orphans and children left without parental care who have been registered for receipt of this assitance; and once the children will have reached the age of 24, the local government will make a decision of excluding them from the assistance register. But regarding children who choose to receive the apartment benefit the amount determined by the local government is insufficient and does not provide for coverage of actual expenses.

According to the information available to the Ombudsman, in 2015, the amount of municipal apartment benefit for orphans and children left without parental care ranged between 50 to 200 euros per month. By looking at the information on rent amounts for living quarters of private persons that is publicly available in advertisment portals, it may be concluded that in separate cases the amount of benefit denies to the orphans and children left without parental care the opportunity to find suitable living quarters, and part of expenses for apartment use they have to cover themselves. The following actual situation is contrary to the essence of amendments and the purpose of the legislative authority - to provide support to orphans and children left without parental care in solving the housing matters and reduce the burden of expenses that they are faced with right after termination of out-of-family care.

It should be considered that many orphans and children left without parental care upon reaching the age of majority and termination of out-of-family care may not right away be able to sustain themselves due to objective reasons because they continue full time studies in general or professional education institutions. Thus they need the support of the local government in order to obtain education, acquire vocational skills instead of giving all of their time and strength to earn the living and for solving the question of survival.

The right to receive municipal assistance in solving the apartment matters is one of the social guarantees provided by the state to the orphan or a child left without the

parental care upon reaching the age of majority. Obligation of the local government to specially assist such children is based also on Section 110 of Constitution. In a situation when the local government is unable to immediately ensure the living quarters to the child who has reached the age of majority after the termination of out-of-family care, apartment benefit is the only way for a young person to solve the housing issue. Thus, the local government is obligated to ensure that assistance would not be formal, and the amount of the benefit would be sufficient for coverage of the actual expenses.

4. The Right of the Child to Be Protected from Violence

4.1. Unacceptable Content on the Web

In 2015, several shocking sexual offences against children took place and were publicly discussed in Latvia. As a result, became important the question on amendments to the Criminal Law that would provide more severe punishment for sexual violence against children.

The Ombudsman received information that an audiovisual recording is available on the internet site *www.youtube.com* in the form of the animated film that pictures childhood memories of a young person on sexual violence that had taken place. From the text recorded in Latvian it is very clear that the boy had supported and justified such a sexual violence against himself because he had wanted to bring joy to a person (character) that was emotionally dear to him. By allowing himself to be sexually abused, the boy expressed his thanks to imaginary character Shrek.

In addition to this animated short film, at least two short films of similar content were available where the boy's, who was the main hero, imaginary character Shrek rapes and kills other children (these actions were shown both visually and named verbally), but at the end of the short film the main hero himself willingly becomes involved in sexual relationships with Shrek, thus showing his love and gratitude.

Section 50, Paragraph one of Protection of the Rights of the Child Law stipulates the prohibition to demonstrate, promote to the child the video recordings, computer games, newspapers, magazines and other publications that promote cruel behaviour, violence, erotica, pornography that pose a threat to psychological development of the child.

Section 50, Paragraph two of the Protection of the Rights of the Child Law materials, which promote cruel behaviour, violence, erotica and pornography and which

pose a threat to the psychological development of a child may not be accessible to a child, irrespective of the form of expression, devices for showing and location thereof.

According to Section 7 of the Law "On Press and Other Mass Media" it is prohibited to publish child pornography and materials that demonstrate violence turned against the child. Section 2 of the above mentioned law provides explanation that according to this law press and other mass media are newspapers, magazines, newsletters and other periodicals (published not less frequently than once every three months, with a one-time print run exceeding 100 copies), as well as electronic mass media, newsreels, information agency announcements, audio-visual recordings intended for public dissemination.

The above mentioned animated short films were freely accessible in internet environment to any internet user, and they were to be considered as promotion of sexual violence against the child. The main hero was pictured as unhappy child (who had suffered from violence in the family, orphan, receiving threats from peers at school, etc), whose only friend and saviour is Shrek who abuses him sexually. Prototypes of such children are easy to find in the society; thus it is of concern that the purpose of the animated short films is recruitment of the children in this risk group and justification of paedophilia. Additionally it is of concern that the animated short film was available in English, but a direct quality translation was recorded for it in Latvian, testifying of organised activities in the area of sexual abuse of children. It is important that the storyline used a character familiar to the children, Shrek, thus creating additional threat because children could find this recording by accident, entering the key word "Shrek" in the search window in order to find the original of the animated film with that title.

Section 110 of the Constitution establishes the obligation of the state to protect the rights of the child. Both UN Convention on the Rights of the Child and Protection of the Rights of the Child Law defines that the child is to be protected against all types of violence.

Taking into consideration the above mentioned, the Ombudsman asked the State Police to evaluate the situation and take an urgent action in order to stop the violations of the children's rights and prevent further public accessibility of the mentioned animated film. The Police were invited to perform investigation actions to investigate individuals who are involved in creation and publishing of the short films, with what purpose it has been done, and if authors and recorders of these animated short films have not committed

criminal offences for which the liability has been defined in Chapter XVI of the Criminal Law, "Criminal Offences against Morals, and Sexual Inviolability".

Currently the mentioned short films no longer can be found on the internet by using the original key words.

4.2. More Severe Punishment for Sexual Offences against Children

In 2015, the Ombudsman was involved also in development of amendments[87] to the Criminal Law determining more severe punishments for sexual offences against children. As recognised by the specialists, sexual violence against the child is the least discovered type of violence because the victims usually do not speak of it. There are several reasons for it: the children are afraid that people will not believe them, that they will experience revenge; they do not know what will happen afterwards, how emotionally close people will react to it. Most often small children do not report a sexual violence because they do not understand what is happening to them, but older children usually hide the violence because they feel a strong sense of shame, guilt, and/or fear.[88]

It can be concluded from the above that the person begins to realise that they have been sexually violated only when they grow up, and even then they do not always choose to speak of it, and thus it is difficult to hold the guilty person liable. But in cases when the person is finally psychologically ready to testify about the sexual violence that had taken place, there is a possibility that a limitation period for criminal liability may become applicable.

Taking into account the above mentioned, the Ombudsman invited the Ministry of Justice to assess the need to make amendments to Section 57 of the Criminal Law by stating that limitation period of criminal liability shall not be applicable to the person who has committed a crime against the morals and sexual inviolability of a minor.

The mentioned proposal was supported in part by setting a longer time period when the person has a right to report the offence. The developed amendments to the Criminal Law stipulate that in cases when a criminal offence has been done against sexual inviolability of a minor, the limitation period shall be estimated from the day when the victim has reached the age of 18, that is, 20 years since the day when the victim has

[87] In 12 November 2015, in the third and final reading the Saeima supported amendments to the Criminal Law and Criminal Procedure Law developed by the Ministry of Justice and improvign the criminal framework in the area of sexual offences.

[88] Sexual violence.
Available at: http://www.bernskacietusais.lv/lv/vardarbiba_pret_bernu_teorija/definesana/novarta-pamesana-82/

reached the age of 18, if the offence has been done against morals and sexual inviolability of a minor, or 30 years since the day when the victim has reached the age of 18, if the offence requiring a life sentence has been committed.

It is generally known that sexual violence has a deep and devastating effect on psychological and physical health of the person. Practice shows that the younger the age of a child when he or she has been abused, the more serious the consequences. Thus the Ombudsman invited to assess the need to make amendments to Section 162 of the Criminal Law by defining the young age of the victim as a qualifying feature.

The mentioned proposal was taken into consideration, and currently for the criminal offence described by Section 162 of the Criminal Law, if it has been committed against the very young children, applicable punishment is deprivation of liberty for a term up to seven years and probationary supervision for the term up to five years.

At the same time the Ombudsman suggested to provide criminal liability if the person who is the family member of the person who has committed the offence or lives with that person in the same household knows about the offence against the morals and sexual inviolability of the minor but does not inform the law enforcement institutions.

The developed amendments to the Criminal Law[89] stipulate that term of probationary supervision shall be extended to five years (previously it was a term from one up to three years) for sex offenders. Amendments to the Criminal Law also provide for application of probationary supervision as obligatory additional punishment for all criminal offences against the sexual inviolability of the minors.

But separate sexual offences that have been classified as less serious criminal offences this far, are now classified as serious criminal offences since the amendments, thus failure to inform about these offences is a criminally punishable action.

5. Safety of Children in Public Events

In summer of 2015, namely, on July 6 - 12, XI Latvian School Youth Song and Dance Festival took place in Riga, and approximately 38,000 children and youth from all over Latvia participated in it. On 14 July 2015, the Ombudsman received a letter from the Latvian Medical Association on possible criminal negligence and violence against children in dress rehearsal of XI Latvian School Youth Song and Dance Festival. Mass

[89] These and other amendments to the Criminal Law came into force on 2 December 2015.

media as well reflected several facts that testified of serious violations of children's rights during the festival.

According to Section 11, Clause 4 of Ombudsman Law, one of the functions of the Ombudsman is on issues related to the observance of human rights and the principle of good governance, as well as to discover deficiencies in legal acts and their application, and to promote the rectification of such deficiencies. When performing functions and tasks defined by the Ombudsman Law, the Ombudsman is eligible on the basis of available materials to address other competent institutions in order to decide the issue on initiation of proceedings.

Since the Ombudsman received information on violations of children's rights during the time of organising the festival, including insufficient and non-quality meals, overwork, too many people on the stage, etc, the Ombudsman made a request to the General Prosecutor's Office to examine the information and if necessary to initiate the criminal proceedings. In January of 2016, this issue was still being assessed in Riga City Ziemeļi District Prosecutor's Office.

The Ombudsman made a request to the Cabinet of Ministers to assess the actions and suitability to appointed positions of the organisers of the XI Latvian School Youth Song and Dance Festival. At the same time a request was made to submit to the Ombudsman specific suggestions on how from now on the compliance with the children's rights shall be ensured in the time of hosting mass events in order to avoid repetition of similar violations.

In order to assess the possible violations, by the order of the Minister of Education and Science an evaluation committee was formed to evaluate the work organisation of XI Latvian School Youth Song and Dance Festival. Its report of 2 September 2015 provided conclusions that several violations had taken place during organisation of the festival, and it should be regarded as inaction of the responsible officials.

Namely, the mentioned report offers a conclusion that the acceptable number of participants was exceeded during the festival. The infrastructure of the Grand Stage at Mežaparks may provide conditions appropriate for safety of health and normal functioning of body's physiological systems for no more than 10,000 participants. Furthermore, information was published that civil engineers assessed the structural and technical options and recommended to place on the platforms no more than 6,000 children, yet the organisers ignored this recommendation and placed up to 12,500 children on the platforms.

The same way, when planning the menu for the participants of the festival, Cabinet regulations No. 172 of 13 March 2012 "Regulations Regarding Nutritional Norms for Educatees of Educational Institutions, Clients of Social Care and Social Rehabilitation Institutions and Patients of Medical Treatment Institutions". Commission concluded that in providing the meals not only age differences of participants were disregarded, as well as portion sizes or amount of calories required for a body on a daily basis, but also hot meals were not always provided. It was also concluded that the time allotted to the meals was inadequately short. Signs of dehydration were detected in children due to insufficient intake of water.

Report of the Committee states that State Fire and Rescue Service detected several violations of fire safety in accommodation locations of festival participants (in schools). Festival organisers publically provided information that Rescue Service and State Emergency Medical Service assessed all venues of the festival, yet the representative of State Fire and Rescue Service said that Service was not invited and did not participate in the centralised development of risk analysis.[90]

Committee report also states that violations have been detected in planning of the schedule, thus causing exhaustion of children; and the children had not been prepared for action in non-standard situations, thus leading to panic attacks.

Taking into consideration the above mentioned, the Ombudsman asked the Prosecutor's Office to assess the actions of the responsible officials regarding the decision to place 12,500 children on Mežaparks stage that is not intended for such a number of participants, thus committing a serious breach of safety rules and creating a risk to health and life of children.

The Ombudsman also asked to assess the compliance of ensured meals to children with requirements of the regulatory enactments, and the possible violations of fire safety in the accommodation locations of the festival participants.

According to Section 50^1, Paragraph one of Protection of the Rights of the Child Law, a child may participate in various activities (events) if it does not hinder his or her acquisition of education, as well as does not threaten his or her safety, health, morality or other substantial interests. According to Section 50^2, Paragraph one of the Protection of the Rights of the Child Law, child safety shall be ensured at public events in which

[90] SFRS were not invited to participate in development of centralised analysis of song festival risks. Available at: http://www.ir.lv:889/2015/7/22/vugd-nav-aicinats-dziesmu-svetku-risku-analizes-izstrade

children participate, or a public recreation activity, sports or recreation location accessible to children.

Section 72, Paragraph one of the Protection of the Rights of the Child Law states that organisers of events for children and such events in which children take part shall be liable for the protection of the health and life of the child, that the child be safe, that he or she is provided with qualified services and that his or her other rights are observed. Paragraph two of the mentioned section provides that for violations committed the organisers of events shall be held disciplinarily or otherwise liable as laid down in law.

In the opinion of the Ombudsman, thorough examination of the circumstances regarding compliance of the festival organisers with the children's rights during the Song Festival may provide a significant contribution to child safety issues in future when organising festivals of such scale. Position of the Ombudsman regarding liability of the responsible persons as laid down in the law caused criticism from festival organisers who had committed violations of regulatory enactments directly or indirectly by their action or lack thereof. However, it should be considered that children's rights have been set as state priority, thus, in the view of the Ombudsman, organisational side of the Song Festival should be thoroughly examined and responsibility of each involved person should be assessed regarding the detected violations.

6. Mass Media and the Right of Children to Private Life

While reviewing the verification procedures in the area of children's rights, the Ombudsman detected deficiencies in the legal framework regarding liability of mass media and journalists on release of prohibited information.

Frequently media reporting on possible criminal offences against children describe thoroughly intimate details and disclose information by which it is possible to unmistakably identify the child, for example, in school or in the municipality. Media are obliged to inform the society on essential issues, including criminal offences against children, mutual violence of children, and legitimacy of action for municipal institutions. Restriction of such information is not acceptable in a democratic society. However, when releasing such information, the rights and legal interests of the involved persons, first of all, children should be taken into consideration. It is unacceptable to identify the child. Even though the society has a right to know of violations of children's rights, obtaining

accurate information on which exact child has suffered, is a mere satisfaction of curiosity without a legitimate purpose.

Clearly, public availability of such information may unfavourably affect future welfare of the children, may worsen their psychological and physical condition, as well as create new risks of violence.

By balancing the right of the person to private life and right to freedom of speech, European Court of Human Rights (hereinafter - ECHR) evaluates what important contribution shall be provided by the publication to the societal discussion. The Court analyses if the society has a legitimate interest to know all details of private life and observes what consequences the publication in question has had on the person.[91]

Even now the Protection of the Rights of the Child Law stipulates that action should be taken only for the best interests of the child. Section 71, Paragraphs one, two, and three of the mentioned law prohibits distribution of information which could in any way harm the future development of the child or the maintenance of the psychological balance of the child, as well as personally obtained information regarding a child who has become a victim, a witness or has committed a violation of the law, as well as such information as could harm the child now or in the future; it is forbidden to interview the child and disseminate in the press or other mass media information about the child who has become a victim or a witness of illegal activity or has committed a violation of the law, except in the events prescribed by the law. Paragraph five of the same section states that persons at fault for utilisation or dissemination of information as is prohibited shall be held disciplinarily liable or otherwise liable as provided by law.

Section 7, Paragraph six of Law "On Press and Other Mass Media" prohibits release of information on health condition of the persons without their consent. Paragraph eight of the same section states that without consent of the persons and institutions mentioned in Protection of the Rights of the Child Law it is prohibited to publish: information that permits identification of a minor offender or witness; image of the child who has suffered due to the results of illegal activity; and such information that may be a basis for endangering the interests - privacy, identity and reputation - of the child who has suffered due to results of illegal activity.

Section 4 of the Law "On Press and Other Mass Media" stipulates the duties for the mass media to gather, prepare and disseminate information in accordance with the laws of the Republic of Latvia, but Section 16 states that the editor (editor-in-chief) shall be

[91] ECHR judgments in cases *Von Hannover v. Germany* (2004) and *Von Hannover v. Germany* (2012) - 2

responsible for the content of the materials to be published in the mass medium. Sections 24, 25 of this law state that the journalist has a right to disseminate information, excluding information that shall not be disclosed in accordance with Section 7 of this law, and that the duty of the journalist is to comply with the rights and legal interests of the persons.

Section 24 of Electronic Mass Media Law stipulates that he electronic mass media shall comply with the human rights and ensure that facts and events reflected in broadcasts comply with the generally accepted principles of journalism and ethics.

Article 10, Paragraph two of European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – CPHRFF) states that restriction of freedom of expression may be permissible if required in a democratic society to protect dignity and rights of other persons, avoid the disclosure of confidential information.

Also Article 19, Paragraph three of International Deed on Civil and Political Rights stipulates that freedom of expression carries with it special duties and responsibilities. Therefore it may be subject certain restrictions, but these shall only be such as are provided by law and are necessary for respecting the rights and reputation of other persons and for protection of national security, social order, social health, or morals. Thus, International Covenant on Civil and Political Rights stipulates that freedom of expression may be subject to restrictions that have to be provided by the law. In the specific case, legislative authority has determined the restrictions for freedom of expression or prohibition to publish information of a specific content: information on sensitive personal data and information that permits identification of the child who has suffered due to illegal activity, or of a possible minor offender.

Article 8, Paragraph one of CPHRFF stipulates that everyone has a right to their own private and family life, secret of correspondence and inviolability of apartment. ECHR widely interprets the concept of the private life to include also the right to physical and moral inviolability, privacy, acquisition and publication of personal information.[92]

Article 8 of CPHRFF provides two types of duties for the state: prohibition to interfere in individual's private and family life, correspondence and home (negative duty); to undertake measures to ensure effective compliance with the rights to private and family life, inviolability of home and correspondence between the state and individual, individual

[92] R.Clayton and T.Tomlinson. The Law of Human Rights (2nd edn, OUP, 2009). See also ECHR judgment in case *Connors v. the United Kingdom* [2005], 40 EHRR 9. Para 82.

and private structures, as well as between private persons by using means of protection; ensuring legal and regulatory framework and resources (positive duty). [93]

Furthermore, Article 17 of International Covenant on Civil and Political Rights stipulates that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. According to Article 17, Paragraph two, everyone has the right to the protection of the law against such interference or attacks.

Thus, the member states shall be obliged to develop an appropriate legal framework for protection of the private life of the person. Rules and means must be such that they effectively protect the persons against any unlawful interference in their private life.[94]

Section 24 of International Covenant on Civil and Political Rights also stipulates that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Member states also have the special responsibility, namely, the above mentioned article defines the right of the children to necessary protection by the state.[95]

In verification procedure No. 2013-88-2A was detected[96] that reflection of prohibited information in mass media allowed the society to identify both the victimised child and the possible offender, but in procedure No. 2013-57-5D - the aspects of the child's private life. In verification procedure No. 2015-25-5F it was concluded that state does not have an effective protection mechanism in order to protect the right of the child to private life in case of publishing of prohibited information about the child, if the violation has been committed by a journalist or mass medium.

Already in 2013, the Ombudsman asked Ministry of Welfare as the leading state governance institution to provide an opinion in the area of protection of the children's rights on the necessity to improve the legal framework regarding the liability of the journalists providing administrative liability for dissemination of information about the child that is prohibited by the regulatory enactments.

However, in the view of Ministry of Welfare it is not necessary to specially stipulate the liability of the journalists in LAVC. The Ministry believes that promotion of effective

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[93] See, for example, I.Roagna. Protecting the right to respect for private and family life under the European Convention on Human Rights (Council of Europe, 2012), 60-76.
[94] CCPR, General Comment No 16, HRI/GEN/1/Rev.9 (Vol I) para 9.
[95] CCPR, General Comment No 17, HRI/GEN/1/Rev.7, para 6.
[96] Opinion on verification procedure No..2013-88-2A., [7], [8]. Available at: http://www.tiesibsargs.lv/atzinumi-modulis

use of current legal instruments should be made by the competent institutions by holding responsible the persons who have violated the legal regulation on protection of the children's rights. Ministry draws attention to the fact that processing data of natural person is protected according to Personal Data Protection Law (hereinafter - PDPL) and Section 204.[7] of LAVC, providing liability for unlawful actions with the data of a natural person. Considering that suggestion to make changes to the legal framework of administrative violations is connected with making changes to the policy of administrative penalty laws in general, the necessary changes were discussed also with the Ministry of Justice; the view of this Ministry on changes to the area of administrative penalty policy in general is in line with the position of the Ministry of Welfare. [97]

The Ombudsman made a request to DSI to provide an opinion on legal framework on protection of the private life of the child by indicating if the framework set out in Section 204.7 of LAVC is applied in practice in order to hold responsible the persons who have violated the prohibition stipulated in Section 71 of Protection of the Rights of the Child Law to disseminate information about the child.[98]

Data State Inspectorate informed[99] that according to Section 29 of PDPL its competence does not include evaluation if Section 71 of Protectiion of the Rights of the Child Law has been violated. Inspectorate applies Section 204.[7] of LAVC if unlawful actions with data of a natural person have been detected, namely, Inspectorate evaluates if legal basis for data procession determined by Section 7 of PDPL exist. At the same time Inspectorate points out that according to Section 5 of PDPL, Section 7 of this law shall not be applied if the personal data are processed for journalist needs according to the Law "On Press and Other Mass Media". Thus PDPL does not obligate the journalists to ensure any of the legal bases for data processing defined in Section 7 of PDPL. Journalists are obliged to comply with the Law "On Press and Other Mass Media".

The letter states that DSI is not eligible to apply the liability provided in Section 204.[7] of LAVC on processing of personal data without a legal basis regarding mass media. However, in other cases, if information about the child has illegally been disseminated by a subject who is not a journalist or mass medium, Inspectorate is eligible to apply the liability provided by Section 204.[7] of LAVC.

Section 27, Paragraph one of the Law "On Press and Other Mass Media" stipulates that a person committing a breach of confidence with respect to publication of non-

[97] Letter No. 33-1-07/2509 of Ministry of Welfare dated 4 November 2013, page 4.
[98] Letter No. 6-8/86 of the Ombudsman, dated 8 April 2015.
[99] Letter No. 2-1/4134 of Data State Inspectorate, dated 14 May 2015.

publishable information defined by Section 7 of this law shall be held liable in accordance with laws of the Republic of Latvia. Section 28 of the same law states that injury, also moral injury, caused by a mass medium to a person by publishing of data and information the publication of which is prohibited by law, a mass media shall provide compensation to such person in accordance with the procedures prescribed by law.

It may be concluded that according to the effective framework the only type of liability of guilty persons - journalists and mass media - is civil liability. However, this mechanism for protection of rights is not sufficiently effective because the right to demand compensation by civil procedure is the choice of the private persons. If the legal representative of the child does not use the right to demand compensation by civil procedure for the injury caused to the child, the journalist may avoid any liability. Thus, there is a greater possibility of recurrence of publishing prohibited information about the child.

In the opinion of the Ombudsman, in order to prevent abuse of the lack of regulatory enactments and violations of the children's rights committed thereof, the legal framework must be improved by determining administrative liability for any subject, including journalists and mass media, for dissemination of information and data prohibited in regulations, including Section 71 of Protection of the Rights of the Child Law.

In July of 2015[100], the Ombudsman pointed out to the Ministry of Justice the detected problem and asked to provide opinion on the necessity to improve the legal framework. Ministry of Justice invited competent persons to the meeting in order to discuss the necessity of such framework. Representatives of journalists present in the meeting stated that in case of such violation it would be more appropriate to transfer this case for assessment to the journalist professional associations within the framework of the code of ethics.

Code of Ethics of Latvia's Journalists Association states that its violations are reviewed by the Ethics Committee of the mentioned Association, and that journalists are to comply with the children's rights when using them as sources of information. Code of Ethics also states that in publication the journalist shall respect the person's private life, norms of morals, and shall protect the general human values such as human rights.

In the opinion of the Ombudsman, the offered solution is not effective because the professional journalist organisations are eligible to assess only the violations committed

[100] Letter No. 6-8/172 of the Ombudsman, dated 2 July 2015.

by their members. If the journalist is not the member of the mentioned organisation, his or her violation may not be reviewed by the professional journalist organisation. Thus, in the autumn of 2015[101], the Ombudsman repeatedly addressed the Ministry of Justice, as well as the Human Rights and Public Affairs Committee of the Saeima, and the Legal Affairs Committee, by offering the draft of the legal framework that would provide administrative liability for unlawful dissemination of information about the child. The suggested wording: "For release of prohibited information specified in Section 71 of Protection of the Rights of the Child Law about the child in press and other mass media a fine shall be imposed - for natural persons from 250 to 500 *euro*, but for legal entities - up to 2500 *euro*."

At the same time the letter was sent to the professional journalist organisations by asking the representatives of the sector to provide opinion the wording of the suggested legal framework by 14 October 2015. None of the addressees has provided the reply even by January of 2016.

7. Individual Preventive Work in Local Governments

Preventive work with children in municipalities initially was not included in the work strategy of the Ombudsman. The issue became relevant by the end of 2011 at the time of review of a submission on socially unacceptable behaviour of children in the interest education institution, and it is still relevant today. UN Committee on the Rights of the Child already in 2006 in its last recommendations to Latvia stated that Committee is concerned about intimidation of children in schools.

In 2011, the Ombudsman performed the research of the situation on preventive work with children. The main conclusion was that educators and parents sufficiently early are able to notice the behavioural problems of the child, yet the child most often does not receive the necessary support in time. It is difficult for the parents to accept the fact that behavioural disorders might have psychological health, neurological or other causes, including errors in raising the child. Educators, in their turn, do not consider themselves as subjects of children's rights protection who are obliged to react when faced with the first signs of behavioural, emotional or learning disorders.

Section 58, Paragraph one of Protection of the Rights of the Child Law states: "Work with children for the prevention of violations of law shall be carried out by local

[101] Letter No. 1-8/18 of the Ombudsman, dated 11 September 2015.

governments in collaboration with the parents of children, education institutions, the State Police, public organisations and other institutions." According to Paragraph two of the section the local government develops a behavioural social correction program for each child who has committed unlawful actions or such actions that may lead to unlawful action. Thus the local government is obliged to develop a program appropriate to the needs of every child of the risk group.

In 2015, the Ombudsman updated the issue on preventive work with children. In order to clarify the current situation in local governments regarding execution of Section 58, Paragraph two, Clause 7 of Protection of the Rights of the Child Law a questionnaire of all local governments was performed. Responses were received from all 119 local governments of Latvia.

Results of the questionnaire show that in 104 local governments the development of behavioural social correction programs has been delegated to social services, in 6 - to the interinstitution committee, and in the rest - to other municipal institutions. In two local governments - in Ilūkste and Pāvilosta municipalities - the programs are not developed at all. In comparison with the previous period, the situation has slightly improved because in 2013 the programs were not developed in four local governments, but in 2011 - in seven local governments.

In 2011, only in two local governments behavioural correction programs for children were developed on initiative of the education institution, but in 2013 - in 55, and in 2015 – already in 69 local governments.

Taking into consideration that there are 119 local governments in Latvia, it may be concluded that in 50 local governments behavioural correction programs for children are not being developed on initiative of education institution, even though according to regulatory framework it is obliged to report to the local government if the child's behaviour does not improve after the support measures[102] undertaken by the school or kindergarten. In the questionnaire the social services pointed out as a problem that information from schools arrives late to the social service, namely, when problems are already very relevant.

In 2013, behavioural social correction programs were developed in 42 local governments only on initiative of State Police; in 2015 - in 28 local governments. It is too

[102] Cabinet regulations No. 1338 of 24 November 2009 "Procedure for Ensuring Safety of Pupils in Education Institutions and Events Organised by Them", Section 5.2: "If the behaviour of the educatee does not improve, and parents are not willing to cooperate with education institution and wish to involve other specialists in solving the situation, the head shall send this information to the respective local government."

late any time when the child has already committed an offence. It is confirmed by the local governments as well: "Since active preventive work with the child is started after the report from the police or probation service, then often it is already too late and does not provide the desired effect."

In 98 local governments in 2015 programs were developed for 0 - 10 children.[103] Taking into consideration that children with behavioural disorders area almost in every class, it shows that every child of the risk group does not receive assistance appropriate to his or her needs.

Number of children for whom in 2015 were developed behavioural correction programs	**Number of local governments**
0	32 (Daugavpils. Aglona, Alsunga, Auce, Baltinava, Brocēni, Burtnieki, Dagda, Grobiņa, Ilūkste, Jaunpiebalga, Kārsava, Krimulda, Lubāna, Mazsalaca, Mērsrags, Naukšēni, Nereta, Nīca, Pārgauja, Pāvilosta, Preiļi, Priekule, Priekuļi, Rauna, Ropaži, Rucava, Salacgrīva, Sēja, Vaiņode, Vecpiebalga, Viļaka municipalities)
1 – 5	49
6 – 10	17
11 – 20	8 (Ventspils, Valmiera. Alūksne, Bauska, Gulbene, Krāslava, Madona, Ventspils municipalities)
21 – 30	5 (Liepāja, Rēzekne. Dobele, Ogre, Saldus municipalities)
31 – 40	1 (Jēkabpils 34)
41 – 50	2 (Jūrmala 46, Tukums municipality 47)
61	1 (Jelgava)
70	1 (Rīga)
No response	3 (Ādaži, Mālpils, Mārupe municipalities)

[103] Data as to 1 October 2015.

In the report of 2011 and 2013 on detected issues, the Ombudsman informed the legislative authority and government; in the course of monitoring visits invited the heads of local governments to improve the preventive work; subjects of children's rights protection were educated on importance of preventive work. In May of 2015, the Ombudsman addressed all local governments of Latvia and invited them to ensure effective execution of municipal obligation stipulated by the law to develop behavioural social correction and social assistance program for each child with behavioural disorders.

As previously mentioned, in December 2015, the Ministry of Justice in cooperation with the Ombudsman hosted a public expert discussion: "A Child or a Law Breaker? To Punish or to Educate?, and the Ombudsman organised the first part of discussion on current situation. In the course of this part were sought answers to questions on what obstacles local governments encounter in order to successfully implement the obligation required by the law, and why education institutions do not provide information to the local government. Two local governments (city of the Republic, Jelgava, and Bauska municipality) shared their experience. Video recording of the discussion is available on the website of the Ombudsman.[104]

The Ombudsman's recommendations to local governments in this area are not properly implemented. Several local governments have not developed a system, and do not even have a vision of how preventive work should take place, it is considered to be walking of the child from one institution to another and talking with the staff. "There are cases when the child must visit police, and probation service, and social service. In such cases functions of each institution should be separated more accurately because conversations on similar topics, for example, attendance of education institution, leisure, etc, are often repeated in every institution."

The same way preventive work with children does not receive sufficient funding. In some local governments where the only specialist is a social worker who takes on preventive work with children alongside other official duties.

In the opinion of the Ombudsman, it is short-sightedness on the part of local governments because remuneration to specialists who would in timely manner develop and implement effective behavioural social correction program for each child living in municipality and whose behaviour might lead to unlawful action requires much less contributions in comparison with resources that would be used in future by the local government for every socially rejected inhabitant of the municipality, social benefit,

[104] Available at: http://www.tiesibsargs.lv/sakumlapa/iespeja-verot-tiesraide-publisku-ekspertu-diskusiju-berns-vai-likumparkapejs-sodit-vai-audzinat

social work and ensuring the housing and thus paying for the consequences of failure to do preventive work.

In the view of the Ombudsman, lack of a more detailed framework cannot be used as an excuse not to perform the preventive work altogether. Principles of the children's rights - rights to full development - and Section 58 of Protection of the Rights of the Child Law provide sufficient legal basis in order to give sufficient support to every child with behavioural disorders.

This is an area in which positive changes might be ensured with a more active involvement of society, therefore the Ombudsman invites parents to be active and ask to ensure kindergarten and school as a safe and violence-free environment for their children.

8. The Right of the Children of Imprisoned Persons to Access to Their Parents

In 2014, the Ombudsman for the first time turned attention to the problems of implementation of the rights of the children of imprisoned persons. In order to evaluate the compliance of the situation with the human rights standards and to promote the understanding of the conditions, needs and rights observance of these children, in the second half of 2014, the Ombudsman initiated a research on rights of contact of imprisoned persons and their children, one of the most serious problems children of the imprisoned persons face being restriction of right to access. In 2014, in cooperation with Prison Administration (hereinafter - PA) was performed questionnaire of 430 imprisoned persons in all prisons of Latvia, but within the framework of orphanage monitoring - questionnaire of 44 children in 11 municipal orphanages.

As a result of situational research conclusions were drawn that children have restricted opportunities to access their parents who are imprisoned: meetings take place seldom, and meeting rooms are not appropriate to the needs of the children. Yet one of the biggest problems faced by imprisoned persons when meeting their children is short and rare telephone conversations. Both imprisoned persons and children showed a great desire to be in touch with each other by means of video conferencing.

In 2015, research on issue of rights of children of imprisoned persons to access their parents was continued. Local governments were asked to provide information on foster families and guardians with whom live the children whose parents are imprisoned, and information was summarised on number of such foster families, guardians and children.

In order to obtain enhanced information on providing children in out-of-family care access to parents who are in places of imprisonment were conducted telephone interviews of foster families.

In cooperation with experts in the area of psychotherapy was developed informative and educational material for promotion of communication of children and parents and for reduction of negative influence imprisonment has on implementation of parental functions - "How a small conversation over telephone can achieve much" is available on the Ombudsman's website[105]. However, the material that was initially meant for the target audience of imprisoned persons may be useful to any parent who for some reason may not be with their children.

Ministry of Justice and PA were informed by the Ombudsman on detected problems that restrict communication of children and parents who are imprisoned. Ministry of Justice was asked to provide information on accomplished and planned actions regarding improvement of the legal framework for ensuring the access rights of imprisoned persons and their children.

On 16 December 2015, a meeting of Standing Working Group of Criminal Punishment Execution Policy took place. Agenda included suggestions of PA regarding amendments on expansion of access rights of prisoners.

Ministry of Justice and PA offered the following suggestions in order to improve the access rights of imprisoned persons with their children:

1) provide rights to the foreign national by the means of video call to communicate with a child who is outside the Republic of Latvia. The working group supported this suggestion, providing that this group of convicts has a right by means of a video call to communicate not only with a minor but with any other person outside the Republic of Latvia;

2) stipulate that minor convicts in Cēsis education institution have a right to use an unrestricted number of telephone conversations. The working group fully supported this suggestion;

3) provide the rights for imprisoned foreign nationals to contact children who are outside the Republic of Latvia by using video calls, and such practice was already started in 2016 in Iļģuciems prison within the framework of pilot project.

[105] Available at:
http://www.tiesibsargs.lv/files/content/Ka_maza_telefonsaruna_var_veikt_lielu_darbu_2015.pdf

4) provide the rights to imprisoned persons in a long-term imprisonment to a long meeting - such a practice was already started in 2016 within the framework of pilot project in Iļģuciems prison.

Regarding amendments to Section 66 of Cabinet regulations No. 423 of 30 May 2006 "Internal Procedures of Liberty Deprivation Institution" about increasing the number of visitors of the imprisoned person, PA pointed out that this issue may be solved only in the context infrastructure development of places of imprisonment. However, in the meeting of the working group the decision was made to amend Section 66 of the above mentioned regulations by stipulating the opportunity to modify the number of visitors of imprisoned persons, for example, three children and one adult.

Conclusions made from the questionnaire of foster families regarding the rights of the children of imprisoned persons to access to their parents revealed the following situation - according to the information provided by the local governments in the time period between 24 April 2015 to 16 September 2015 in Latvia 159 guardians ensured care to children whose parents are imprisoned. Total number of children under guardianship is 202. 48 children whose parents are imprisoned live in foster families. Total number of foster families is 31.

Results of enhanced interview of foster families show that children living in foster families mostly do not communicate with their parents, and the main cause is indisposition of parents and children themselves (54%). Relationships between children and parents were assessed as rather negative, and it was also indicated that children experience disappointment on unfulfilled promises of their parents and are ashamed of their imprisonment. Most often children and parents communicate by telephone conversations (56%).

Children living in foster families are informed of location of their parents. Forster families indicated that such attitude is held by Orphan courts. Furthermore, several foster families added that communication shall be implemented if Orphan courts shall emphasise the necessity thereof.

Regarding aspects that could improve the communication of imprisoned persons and their children, it was said that social work with children and their imprisoned parents should be performed. Several times an opinion was expressed that parents use their children and keep in touch only in order to reduce the imprisonment time, change the measure of security, etc. It is difficult for children to retain relationship with imprisoned parents, especially if communication is rare and indifferent. Thus many foster families

pointed out that it is important that parents themselves are motivated and honestly want to communicate. On visiting parents in prison, several foster families expressed the view that prison is not an appropriate meeting place for a child.

Taking into account the above mentioned, it should be concluded that children living in foster families are less motivated to contact their parents who are in imprisonment. If the child has no wish to contact his or her parents, then foster families are rather inclined not to promote and support it.

Article 9, Paragraph 3 of UN Convention on the Rights of the Child stipulates that member states shall respect the rights of the child separated from one or both parents to continuously maintain personal relationships and direct contact with both parents except cases when it is against the interests of the child. These rights are established also in Section 33, Paragraph one of Protection of the Rights of the Child Law that stipulates that a child who has been placed under guardianship or with a foster family or has been placed in a child care institution, has the right to maintain personal relationship and direct connection with parents. Paragraph two of this section stipulates that, the Orphan's court may make a decision on restricting the access rights in cases when contact with parents brings harm to the child or poses a threat to guardians, foster families, staff of child care institutions, or other children. Section 44, Paragraph two of Protection of the Rights of the Child Law prescribes that foster family, guardian and child care institution inform the parents on development of the child and promote renewal of family bonds. Therefore, if Orphan's Court has not made a decision on restriction of access rights, guardian or foster family should promote contact between the child and parent who is in imprisonment.

II. Civil and Political Rights

1. Ensuring Rights of Persons with Intellectual Disabilities

1.1. Characterisation of Received Submissions

According to the competence, the Ombudsman has chosen as one of work priorities for the last few years promotion of right protection of persons with mental disabilities. In 2015, just like in previous years, the Ombudsman received a rather small number of submissions from persons with mental disabilities, yet it should be stated that lack of submissions does not automatically mean lack of problems in this area. It should be emphasised that persons with mental disabilities are to be included to the groups of persons who are the least protected and who have limited possibilities of protecting themselves, thus protection of rights of these persons should be significantly focused on.

Number of submissions is small, yet in 2015 a tendency can be observed that persons with mental disabilities or their relatives more often use an opportunity to address the Ombudsman in order to receive consultations on their rights both electronically and in person, both in cases of forced hospitalisation and legal proceedings initiated regarding restriction of person's ability to act, as well as on other aspects of rights.

No less important is to indicate that there have been separate situations when relatives have expressed dissatisfaction with decisions made by the council of doctors stating that no need has been detected to apply to the person with mental disabilities the treatment in the hospital against their will. In separate submissions persons have expressed complaints on decisions of the court by which the person has been assigned a medical treatment in a general hospital, requests had been made to assess the possible violations in these proceedings by pointing out that person has not received the adjudication of the court, or in another situation - effective state representation had not been ensured in the court session. By taking note of the above, in 2015, with a purpose to promote the rights of persons with mental disabilities, the Ombudsman has focused both on aspects of private life and aspects of the right to freedom and right to fair trial.

1.1.1. The right to private life - the right of the patient of psychiatric hospital to meetings

It is important to note that the Ombudsman quite often receives information on violations of the rights of persons with mental disabilities also from non-governmental

organisations. It should be noted that one of the most active non-governmental organisations - association "Resource Centre for Persons with Mental Disability "Zelda", a longstanding cooperation partner of the Ombudsman, has reported to the Ombudsman on several occasions on possible violations of human rights faced by persons with mental disabilities. In 2015 as well, for instance, was received information on the client of psychiatric hospital who stayed in the hospital according to the adjudication of the court in the criminal proceedings applying to him a forced medical treatment and who was denied the right to meet his family members, including minor children. In reaction to the received information and by clarifying the actual circumstances, the Ombudsman initially drew the attention of the hospital to Section 69.[1], Paragraphs one and two of Medical Treatment Law describing the procedure for restricting the rights of the person to meetings. At the same time by detecting that the specific situation involves both children and persons with intellectual disabilities with restricted possibilities to defend their rights and objectively evaluate the actual and legal circumstances, the Ombudsman asked the administration of the hospital to assess the specific situation according to procedure prescribed by Section 69.[1], Paragraph ten of Medical Treatment Law. Additionally, the Ombudsman sent a letter to the responsible Orphan's Court with a request to be involved in evaluation of objective circumstances of the case according to the competence stipulated by the Law on Orphan's Court and to undertake measures in order to ensure compliance with the rights of the children involved in the actual situation.

1.1.2. Informed consent

In their monitoring visits, staff of the Ombudsman's Office quite often have received information from inhabitants of state social care centres that one of the methods to solve the conflict between the clients and care institution is to send the client to psychiatric hospital. Even though the Ombudsman has not identified this problem as systematic, yet there is concern regarding helplessness of the clients and limited possibilities to protect themselves in such situations.

In 2015, the Ombudsman has reviewed the verification procedure No. 2014-100-3F and in it emphasised that persons with mental illnesses or disorders that stay in an institution and receive the service of state social rehabilitation and social care are especially unprotected. Thus, these persons should be treated with special care in order to prevent action or lack thereof that could harm their wellbeing. To these persons as well the psychiatric assistance should be provided by observing the principle of voluntary

consent. Within the framework of the above mentioned verification procedure by assessing the materials of the case in general it was impossible to exclude reasonable doubt that action of staff of state social care centre branch was aimed at solving the current conflict situation between the client and staff by hospitalisation of the client in the psychiatric hospital. Furthermore, it was concluded: even though formally requirements of the regulatory enactments regarding the hospitalisation procedure were observed, submission signed by the client – consent to be submitted to the hospital cannot be considered as voluntary.

1.1.3. The right of the person to participate in the court hearing in the case on restriction of legal capacity

In 2015, a submission was received from a judge, drawing the Ombudsman's attention to essential aspects of human rights in the specific civil action by pointing out that before preparing and submitting an application on restriction of the person's legal capacity, the prosecutor had not met the person, and appearance of person to the court and hearing of the person was difficult because the person remained in the psychiatric hospital for a long time.

By pointing out the independence of the judiciary and inadmissibility of interference with the work of the court, as well as taking into consideration that the new framework of restricting the legal capacity is applied to comparably short time and its inadequate application may infringe upon essential fundamental human rights, the Ombudsman provided a general explanation regarding the application of the new framework of legal capacity and possible violations of human rights during the proceedings.

Thus, the Ombudsman expressed the opinion that in situations when the request on submission of application to the court on restriction of legal capacity is received by the prosecutor, according to the standards of the human rights the prosecutor shall initially clarify the opinion of the person on whom the issue shall be decided on necessity of restriction of legal capacity. By stipulating the duty of the prosecutor to protect the rights and interests of the person with disabilities, as well as opportunity to address the court with an application to restrict legal capacity in the interests of the person, the regulatory framework has provided sufficient authority to the prosecutor, including the possibility not only to obtain information from other institutions and undertake other necessary events, but also to visit various institutions, including psycho-neurological hospital.

Already by initial meeting with the person and hearing his or her opinion are ensured the rights of the person in the least restrictive way, as well as effective protection of the person from abuse. In addition it was stated that in a situation when the person remains in the treatment institution for a long time, it is essential that prosecutor would examine the compliance with the rights of this person while in the treatment institution, namely, has the person given informed consent regarding the provisions of the Law on the Rights of Patients and the principle of voluntary choice defined in the Medical Treatment Law.

According to the standard set by ECHR, mentally ill person shall be provided an opportunity to be heard in person or, if necessary, by the means of any kind of representation[106]. The new legal framework of Section 266, Paragraph three of the Civil Procedure Law included the duty of the court to invite to the court hearing a person on restriction of whose legal capacity the proceeding is held, and only as an exception the issue on proceeding without the person being present.

ECHR has pointed out in its practice that when dealing with proceedings with the involvement of mentally ill person the state courts should have a certain freedom to act. For example, the courts might determine appropriate procedural measures in order to ensure good legal proceedings, health protection of the respective person, etc. Yet such measures must not influence the right of the applicant to fair trial guaranteed in Section 6 of CPHRFF. When evaluating if specific measure, for instance, exclusion of the applicant from the court hearing was necessary, ECHR takes into consideration all essential factors.[107]

The mentioned guarantees arise also from Article 12, Paragraph four of Convention on the Rights of Persons with Disabilities providing that "States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests."

[106] ECHR judgment of 27 March 2008 in the case Shtukaturov v. Russia, Clause 71.
[107] ECHR judgment of 27 March 2008 in the case Shtukaturov v. Russia, Clause 68.

Regarding the duty set to the court by Section 266, Paragraph four of the Civil Procedure Law to collect evidence, it was indicated in the proceedings that in connection to the possibilities of the court to obtain objective information on the health condition of the person the legislative authority has provided an opportunity to the court to receive a reference from the medical institution, as well as in case of insufficient evidence to make a decision on ordering a psychiatric and, if necessary, psychological examination.

Even though designation of examination in a greater measure restricts the right of the person to the private life, in every specific case due to insufficient evidence the court has an opportunity to decide this issue according to essence by finding out the opinion of the participants of the proceedings, including the person who shall be submitted to the examination.

1.2. Discussion on Application of Section 68 of Medical Treatment Law - Rights of Persons with Mental Disabilities to Freedom and Fair Trial

Article 14, Paragraph 1, Clause b) of UN Convention on the Rights of Persons with Disabilities stipulates: States Parties shall ensure that persons with disabilities, on an equal basis with others are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Article 13 of Convention states that effective access to justice shall be ensured for persons with disabilities on an equal basis with others. In its practice ECHR has emphasised that mental illnesses may not be a cause to ignore the rights of the person to fair trial: "Even though mental illness may create definite limitations regarding the implementation of rights to fair trial, it may not justify complete denial of these rights guaranteed by Article 6 (1) of European Convention for the Protection of Human Rights and Fundamental Freedoms." [108] The same way it should be stated that the purpose of convention is to guarantee practical and effective rights, not theoretical or illusionary rights.

Section 68, Paragraph one of Medical Treatment Law provides cases when freedom of the person with mental disabilities may be limited and psychiatric assistance provided without the person's consent by adjudication of the court. Section 68, Paragraph nine of

[108] ECHR judgment in the case *Winterwerp v. Netherlands*, Clause 75.

Medical Treatment Law stipulates that patient shall participate in the court hearing in which the judge shall examine the materials submitted regarding the provision of psychiatric assistance in the psychiatric medical treatment institution without the consent of the patient if his or her health condition allows it, the public prosecutor, representative of the patient or advocate.

In spring of 2015, the Ombudsman organised the round table discussion with the judges of the Riga City Ziemeļi District Court, representatives of the prosecutor's office and resource centre for persons with mental disabilities "Zelda". The purpose of the discussion was to update and discuss aspects of human rights in relation to ensuring the rights of the persons with mental disabilities to fair trial by reviewing the submissions on providing psychiatric assistance without the patient's consent. Prior to discussion adjudications made in 2014 by Riga City Ziemeļi District Court were analysed.

In the course of discussion attention was paid to the following issues: the right of the person to be present in the court hearing; the right to be heard (by mediation of the representative and/or in writing); the rights of the person to effective defence (the right to receive advice of defender before and after the court hearing); role of the prosecutor in the given proceedings; the obligation of the court to evaluate objectively the materials, existence of evidence in the case (reports provided by the police and emergency medical aid team); grounds for court's adjudication (reflecting opinions of all participants of the proceeding in the decision); the right of the person to appeal the adjudication of the court; and efficiency of appeal mechanism.

In ECHR[109] practice an insight has been firmly grounded that in order to detain mentally ill persons the absolute minimum of legal procedure is the right of the individual to protect him or herself in court and to challenge the medical and social evidence used to support his or her detainment. It is highly important that person with mental disability has an opportunity to be heard, if necessary, by using assistance of the representative, else the person would not have been ensured the fundamental procedural safeguards that are applied in case of deprivation of liberty. Mental disabilities may be a cause for limiting the implementation of such rights, yet it may not be a basis for limiting these rights in essence. There is also no doubt that special procedural protective mechanisms may be used to protect the persons who may not fully protect themselves due to mental disabilities.

[109] ECHR judgment in the case *Winterwerp pret Nīderlandi*, Clause 60.

Taking into consideration that health condition of the patients is subject to change, and the decision of the council is made a day or two previously, the participants of the discussion acknowledged that in the course of the court hearing it is essential to ascertain the health condition of the person in the day of the court hearing by listening to the advice of the representative of the medical treatment institution, and, if necessary, judge shall contact the patient in the hospital. The representatives of the court added that such practice exists because medical treatment institutions offer judge an opportunity to visit the hospital and contact the person. Even though in the opinion of the discussion participants such practice should be supported, the representatives of the court pointed out that in separate situations this action should not be permissible, namely, if the person has severe health issues, as well as for the reasons of safety.

Regarding aggressive patients, representatives of the association "Zelda" drew attention of the present participants to the fact that aggression of patients sometimes is connected exactly to the restriction of their right to freedom - their placement in the hospital, conflict situations with relatives whose explanations are given a greater degree of credibility. Thus, when assessing the possibility of the person's participation in the court hearing, as well as when assessing the necessity of providing psychiatric assistance against the patient's will, this aspect should be considered. The same way the person or its representative should have an opportunity to provide their opinion of actual circumstances of the case to the court in writing, if the person wishes for it.

Regarding the defence provided for the person, it should be pointed out that from the reviewed decisions it is clear that in most cases for the defence of the patients in such proceedings state funded advocates are invited. It is important to note that regardless of the fact if the person has hired a defender for themselves or defence is provided by the state funded defender, defence shall be qualitative and effective. It should be considered that the person with mental disabilities may perceive the court proceedings as alarming and strange, but providing grounds for restriction of freedom is a part of professional work of the representative of the medical treatment institution. In this situation the patient may find it difficult to defend him or herself, to acquaint him or herself with all evidence obtained in this case, as well as in separate cases ability to concentrate may be reduced due to influence of the medication.

It is no less important to note, that ECHR in its practice has stated: appointment of a defender in itself does not guarantee effective assistance to the person with mental disabilities, and it is important to be aware that person should not always take on initiative

to find representation. Section 68, Paragraph eight of Medical Treatment Law stipulates that the psychiatric medical treatment institution on the basis of a request from the representative of the patient or advocate shall ensure the possibility to meet with the patient in order to provide consultations.

Only from separate reviewed adjudications of the court it is obvious that defender has met with the client prior to the court hearing and has heard the person's opinion and has expressed it later to the court in the hearing. It should be noted that in most cases defender in providing defence has expressed an opposite opinion to the one expressed by the patient in the court hearing. Participants of the discussion shared their thoughts on what shall be considered as effective defence of the rights and interests of the person with mental disabilities by pointing out the balance between the right of the person to freedom and the right to health care. In the course of discussion the representatives of the court confirmed that in cases when the opinion of the defence has been opposite to the one expressed in the court hearing by the patient, the defender had supported his or her opinion by setting as a priority the right of the patient to health care. However, from the aspect of the human rights it should be noted that in these situations the defender represents the patient, and thus expressing opposite or his or her own personal subjective opinion is not acceptable, since in that way the right of the person to defence is violated.

Participants of the discussion drew attention to the fact that prosecutor participating in these proceedings upon detecting that in the proceedings effective defence is not ensured or defender acts contrary to the rights and interests of the person, should interfere and promote assurance of person's rights and interests.

In order to promote the right of the persons to receive legal assistance prior to the court hearing, the court representatives made a specific suggestion - upon beginning the hearing, the court is eligible to ascertain if the person has received a consultation, wishes such a consultation, as well as cooperate if necessary in order to provide it. At the same time it was stated that provision of such consultation should not interfere with the work of the court, and such practice should be ensured and promoted that defence provide consultation in due time, prior to the court hearing.

The right to a motivated adjudication of the court is closely related with the right to comprehensive and objective assessment of the circumstances of the case and the right to appeal the adjudication. By reviewing the adjudications, it was detected that mostly these were detailed and motivated, and only in separate adjudications were detected such

deficiencies as lack of reflection of opinions expressed in the court hearing by the participants of the proceedings.

It should also be noted that mainly the motivation of the court is based on the decision of the doctors' council, in separate cases lacking the exposition of the hospitalisation circumstances. Participants of the discussion drew attention to the fact that in practice there are problems with reports of emergency medical care unit and police, namely, these are short or have not been received at all, thus making the work of the court more difficult in assessing the necessity for providing psychiatric assistance to the person against their will in situations when such evidence is critically important.

By assessing the necessity to hospitalise the patient against their will, the principle should be adhered to that restriction of freedom due to mental illness would be unfounded if based on discrimination or prejudice against persons with disabilities. According to CPHRFF, mental disabilities should be of a definite severity in order to justify the restriction of freedom.

1.3. Improvement of Regulatory Framework

Already previously in his annual report the Ombudsman has stated that in September 2014 upon coming into force of the amendments to the Medical Treatment Law, one of the longstanding problems in mental health area was being solved. Regulatory framework stipulated that restricting means may be used to persons who have been hospitalised in the psychiatric hospital against their will. Section 69.[1], Paragraphs three and nine of the Medical Treatment Law included delegation to the Cabinet of Ministers to determine the procedure for limiting patients by using restrictive means and the list of items prohibited to be kept and received with consignments (parcels) in psychiatric treatment institution.

Even though late, yet welcome was action of Ministry of Health by the end of 2015 both in undertaking measures and organising meetings and discussing draft regulations of Cabinet, and transfer it for further review and acceptance by the government. Staff of the Ombudsman's Office also took place in discussions on compliance of the draft regulations with human rights. Acceptance of such a regulatory framework is fundamentally necessary in order to ensure the treatment process in compliance with the standards of the human rights.

1.4. Observation of Elections in Psychiatric Hospitals

Already in the report of 2014 the Ombudsman informed that staff of Ombudsman's Office in 2014 performed observation of both European Parliament elections and Saeima election process in psychiatric hospitals. In connection with ensuring the right to vote for persons with mental disabilities in psycho-neurological hospitals were detected specific problems of systemic character for solution of which in the beginning of 2015 the Ombudsman summarised the results of election observation and his recommendations and sent these to the Central Election Commission, Ministry of Justice, as well as to all psycho-neurological hospitals.

Ministry of Justice in reaction to the Ombudsman's recommendations stated in its response letter that part of these recommendations are aimed at organisational issues of election for implementation of which amendments to regulatory enactments are not necessary. Ministry of Justice has expressed an opinion that implementation of the mentioned recommendations is possible within the framework of election procedure prescribed by the regulatory enactments, by means of issuing relevant instructions of the Central Election Commission, organising training of election commission members and measures determined by the management of the psycho-neurological hospitals.

Ministry of Justice has fully acknowledged as supportable that recommendations of the Ombudsman on the necessity of support measures during election for persons with mental disabilities that would promote the availability of elections to this group. At the same time it drew attention to the fact that support provided to the persons with mental disabilities must not create the risk to the restriction of free will of these persons. It should be considered that political participation rights prescribed by UN Convention on the Rights of Persons with Disabilities are to be viewed in connection with the obligation of the member states to acknowledge that persons with disabilities equal to others have a legal capacity in all areas, including in political rights. UN Committee on the Rights of Persons with Disabilities in explaining Article 12 of the mentioned Convention emphasises that in order to support provided to the implementation of legal capacity of the person should not be a basis for restriction of other fundamental rights, especially emphasising the right to vote.

1.5. Personnel Policy in Psycho-neurological Hospitals

By positive evaluation of amendments to the Medical Treatment Law, the Ombudsman emphasises that these were developed in cooperation with the Ministry of

Health, as well as by taking into consideration the suggestions of Association of Psychiatrists. At the same time being aware that work with mentally ill persons or persons with mental disabilities always provides a difficult task to all categories of involved personnel, a special attention should be paid to the issue connected with the personnel policy of the psycho-neurological hospitals.

By noting that psychiatric treatment is based on individual approach, and the treatment plan should include a spectrum of rehabilitation and therapeutic measures, the resources of personnel should be sufficient regarding its number, categories (psychiatrists, nurses, psychologists, ergotherapists, social workers, orderlies, etc), experience and practice. Publicly information has been available that in somatic hospitals fixation of patients has been applied due to lack of personnel. However, according to the standards of human rights, fixation is to be considered as the last resort and may be applied only to such patients who are placed in the hospital against their will.

The Ombudsman is informed that psycho-neurological hospitals desperately lack personnel, and as a result there are situations when also to especially monitored patients including voluntary ones are fixated, and there are also problems with providing everyday walks for the patients. Also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has emphasised in its reports that lack of personnel resources often is a cause for reduced opportunities to offer the aforementioned activities that ensure therapeutic environment, and thus situations of heightened risk and violations of rights may be caused.

In order to receive objective information on issues of personnel policy, in 2015 the Ombudsman asked all psycho-neurological hospitals of Latvia to provide information on if they have a sufficient number of medical personnel in order to ensure appropriate care and treatment to persons with mental disabilities. Summarisation and assessment of the received information shall be continued throughout the first quarter of 2016, and Ombudsman shall inform the Ministry of Health on his conclusions and suggestions.

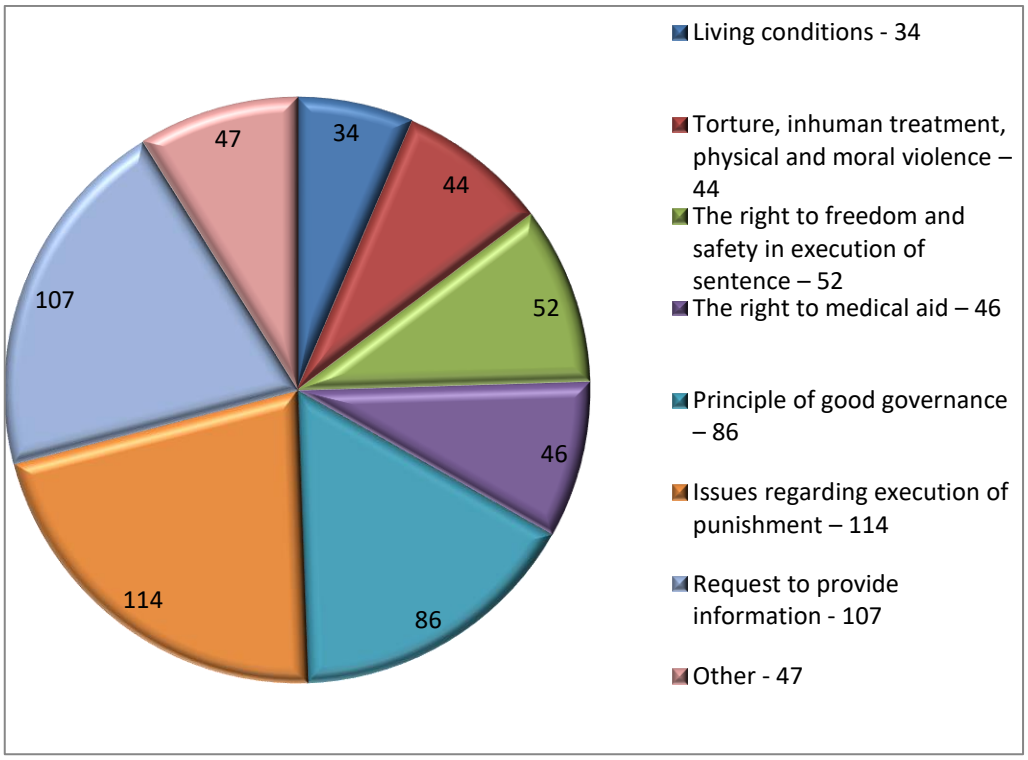
Yet already at the moment a positive example can be presented that in a situation when psycho-neurological hospitals outside the capital city have observed a desperate insufficiency in a number of doctors psychiatrists, and, for example, VSIA "Daugavpils psihoneiroloģiskā slimnīca" in cooperation with Daugavpils City Council has undertaken measures in order to attract future doctors for work in the hospital by the use of grants provided by the local government and offering them support in their years of studies. However, the management of the hospital has pointed out the limited number of residents

in the psychiatric residenture, including the number of resident places funded by the state that are by far fewer than the deficit of doctors outside Riga and thus create objective obstacles for involvement of future doctors. The mentioned example illustrates a positive action on the part of the local government; however, it also reveals the necessity to look at the systemic solution of the problem at the state level.

2. Protection of Persons' Rights in Places of Imprisonment

2.1. General Information

Activity of the Ombudsman's Office in the protection of prisoner's rights is manifested in several ways: review of submissions, including electronic ones; oral consultations; participation in working groups; monitoring visits to places of imprisonment, etc. The Ombudsman's Office constantly every year receives a large number of submissions from the places of imprisonment on possible violations of rights of imprisoned persons. In 2015 were received approximately 530 such submissions as well:



In the reporting year the Ombudsman participated in two working groups of the Ministry of Justice connected with criminal punishment execution policy, namely, the

standing working group for criminal punishment execution policy and a working group for development of a new Criminal Punishment Execution Law. However, within the reporting year the staff of the Ombudsman's Office have participated in five such working groups.

Regarding the monitoring visits to the places of imprisonment, it should be pointed out that Latvia still has not signed and ratified the Additional Protocol to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman's institution may not be considered as effective independent preventive mechanism in the understanding of the Additional Protocol because no preventive regular visits are made to secure institutions, but rather reactive visits on the basis of information received on possible violations of human rights. In the reporting year, a total of 10 such monitoring visits have been made to the prisons, of which six were to Riga Central Prison, one to the Latvian Prison Hospital in Olaine prison, and one to Jelgava, Brasa and Daugavgrīva prisons each. The purpose of all these visits was to clarify the necessary information regarding separate submissions and/or verification procedure. However, complex monitoring visits lasting for several days to any one of Latvian places of imprisonment have not been made in 2015.

2.2. Characterisation of Submissions

2.2.1. On living conditions

As every year, also in 2015 a greater part of submissions from prisoners are in relation to living conditions in prison; however, in comparison with previous years, in the reporting period such submissions have been decreased in double. Namely, in 2015 there were 34 submissions, while in 2014 there were 66. Possibly the aforementioned fact may be explained by increased interest of the responsible officials within last years and the attempts to improve the living conditions in places of imprisonment.

Just as before, also in 2015 requests have been received from administrative courts to provide information on observations of the Ombudsman during the monitoring visits to the places of imprisonment. Thus is may be concluded that regarding the actual activity of the prison by not ensuring conditions respecting human dignity, the prisoners actively make use of the existing mechanism for protection of the rights and initially turn to the responsible officials in whose competence it is to solve the respective problem, but if the decision is not satisfactory, they use the right to appeal it in administrative court. ECHR as well has acknowledged review of complaints on inappropriate living conditions at a

national level in administrative courts as effective mechanism for protection of the rights. Thus, the Ombudsman as well in the time of last two years has paid much less attention to inspection of living conditions in places of imprisonment, even though these questions are important and essential from the view of the human rights aspect.

In 2015, the most submissions with complaints on unsatisfactory living conditions have been received from the Jelgava prison, Daugavgrīva prison, Riga Central Prison, Brasa prison. As previously, submissions have been received with requests to send conclusions and opinions of the inspection visits of the Ombudsman on compliance of conditions with the requirements of the human rights.

2.2.2. On violence and self-government of the prisoners

The Ombudsman's Office still receives submissions on hierarchical system (self-government) existing among the imprisoned persons and on mutual violence. Even though the Ombudsman had already previously pointed out this problem both to PA and to Ministry of Justice and had asked to take appropriate measures to eliminate it[110]; however, submissions still indicate that the prison administration supports the existence of hierarchical system allowing the prisoners to settle accounts among themselves physically and morally. Furthermore, information on marked hierarchical system among prisoners has been confirmed several times during the monitoring visits.

Taking into consideration that PA has competence and responsibility in these issues, the Ombudsman forwards the submissions to this institution to be reviewed with a request to inform on results of inspection, while at the same time taking into account for further work the conditions indicated in submissions, as well as paying more attention to places of imprisonment from which these submissions have been received in a greater number.

Plans have been made to continue researching this issue and to promote discussion with the officials of PA on ways and measures of how to eliminate the hierarchical system existing among prisoners and the mutual violence by emphasising the role and responsibility of the personnel in this process.

2.2.3. On paid services provided by Prison Administration

Over the reporting period several submissions were received from arrested persons who expressed dissatisfaction that they just like convicted persons had to pay for the used energy when making use of individual household appliances, and even at a greater rate than persons being at liberty.

[39] Letter No. 6-1/1008 of the Ombudsman dated 16 May 2013 to Prison Administration and Ministry of Justice.

As of 14 July 2015, amendments to Section 14, Clause 10 of Law on the Procedures of Holding under Arrest stipulating that arrested persons are obliged to pay for paid services provided by PA and defined by Cabinet regulations No. 739 of 3 September 2013 "Charges for Paid Services of Prison Administration". Already in 2014, the Ombudsman submitted an opinion pointing out that calculations of charges for paid services in the above mentioned regulations are not clear and transparent, are disproportionately high, as well as do not provide a sufficient notion on basis of calculations reflected and their correspondence to the real situation.

By repeatedly reviewing the answers to the mentioned verification procedure provided by the responsible authorities, the Ombudsman asked State Audit Office to audit the grounds, proportions and usefulness of the calculations of paid services provided by Prison Administration and included in the regulations. The received answer states that State Audit Office has held negotiations with Prison Administration, and as a result it was ascertained that suggestions have been developed for amendments to the regulations, after review of the prices of paid services and recalculations of prices of several services. Currently these suggestions have been sent for assessment by the Ministry of Justice. At the same time the State Audit Office has pointed out to the Ombudsman that it shall consider an opportunity to plan inspections on the grounds of paid services of prisons in financial audit. The Ombudsman shall be involved in solving this issue in 2016 as well.

According to the submissions received in the reporting year there is concern that in many places of imprisonment a situation has formed that prisoners who do not receive money from the persons outside the prison, for instance, from the family members, and who cannot be involved in paid work are denied the opportunity to watch the television programs. Namely, the places of imprisonment are not able to ensure an opportunity for the prisoners to attend the common room for watching television programs as prescribed by the provisions of the Sentence Execution Code of Latvia. Research shall be conducted on this issue in 2016.

2.2.4. On health care

In 2015, the Ombudsman's Office received 46 submissions regarding provision of medical aid to imprisoned persons. Unchangeably the greatest part of the submissions are complaints on quality of the provided medical treatment and professionalism of the doctors when examining the patient and determining the necessary medical therapy. Frequently these submissions state that in prison only pain medication is given, but not

medication for treatment. Thus quality medical treatment process is not performed. Furthermore, with such complaints defenders of the imprisoned persons, sworn advocates, have turned to the Ombudsman's Office.

In their submissions, the prisoners also indicate that prison doctors therapists are unwilling to send the patients for examination by other specialists in Latvian Prison Hospital or in other medical treatment institutions outside the places of imprisonment. Such complaints have been received from Jelgava, Jēkabpils, Brasa, Liepāja prisons, as well as from Riga Central Prison.

Upon receiving submissions with complaints on professionalism of medical staff of prison or the quality of treatment, Health Inspectorate as the competent institution is asked to evaluate each specific case.

In comparison with the previous years, in 2015 the Ombudsman's Office has received fewer complaints about the availability and services of dentists. There are also positive trends that for receipt of dental care the prisoners are conveyed to hospitals or dental clinics outside the prison.

The Ombudsman has continuously turned attention to diagnostics and treatment of Hepatitis C in places of imprisonment. One of the obstacles for improvement of situation for treatment of Hepatitis C was the co-funding by the prisoner - approximately 300 Euros per month - for purchase of medication. Truth be told, on 8 December 2015, the Cabinet of Ministers accepted amendments to regulations No. 899 of 31 October 2006 "Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medicinal Devices Intended for Out-patient Medical Treatment", thus providing that as of 1 January 2016 shall ensure 100% state budget funding for acquisition of state compensated medication for treatment of Hepatitis C.

2.3. Imprisonment Conditions for Persons with Disabilities

In the last years special attention is given to imprisonment conditions of persons with disabilities. Considering the amount of hours imprisoned persons spend in their cells, imprisonment conditions have a significant effect on serving the sentence of deprivation of liberty.

When the state officials decide to imprison persons with disability and keep them imprisoned for a lengthy period of time, these persons should be ensured care that would correspond to the special needs of the specific person with disabilities. Furthermore, imprisonment of a person with disabilities in a place where he or she is not able to move around independently and especially where the person cannot leave the cell on their own can be compared to degrading action. The same way imprisonment conditions shall be comparable to degrading if persons with severe physical disability are left to trust in the help of their cell mates in order to use the toilet or shower, as well as when dressing or undressing[111]. Such a solution as leaving the persons with severe physical disability to supervision and care of other inmates is questionable even though it may be short-term.[112]

UN Convention on the Rights of Persons with Disabilities includes fundamental international standards. As the Ombudsman has pointed out repeatedly, according to Article 14, Paragraph two of the Convention, States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation. Article 2 of the Convention provides a definition of "reasonable accommodation" by which is understood necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

Thus, the definition of "reasonable accommodation" in Article 2 of Convention on the Rights of Persons with Disabilities includes the obligation of the State to perform appropriate changes to procedures and rooms of prisons in order to ensure the opportunity for the persons with disabilities on equal basis with others to use or implement all human rights. Non-existence of "reasonable accommodation" may lead to imprisonment conditions reaching inhumane treatment or torture.

Latvia has internationally taken on the obligation to ensure holding of imprisoned persons in such conditions that are compatible with human dignity. While visiting places

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[111] ECHR judgement in case 6087/03 dated 25 June 2013, *Grimailovs v. Latvia*, para 151, 153. Available: http://hudoc.echr.coe.int.ECHR judgment in the case 2689/12, dated 6 February 2014,*Semikhvostov v. Russia*, para.72, 74. Available: http://hudoc.echr.coe.int

[112] ECHR judgement in case 4672/02 dated 2 December 2004 Farbtuhs v. Latvia, paragraph 60. Available: http://at.gov.lv/lv/. ECHR judgment in case 6087/03 dated 25 June 2013, Grimalovs v. Latvia, para.152. Available: http://hudoc.echr.coe.int

of imprisonment, several times it was found that persons with disability are not ensured appropriate imprisonment conditions, including supervision and care. Namely, everyday responsibility for the person with disabilities has been laid upon other imprisoned persons, also such who themselves are ill; and such treatment is unacceptable. It was also found that mostly prison rooms are not reasonably accommodated for the persons with disabilities. Rooms are not technically adapted to persons with disabilities, and architectural obstacles to the persons in wheelchairs create difficulties of movement. Thus, due to placement of exercise yards and cells, the persons in wheelchairs are not able to go out for a walk on their own.

In each individual case regarding the found problems was informed management of PA and the Minister of Justice. Moreover, the minister of the sector is invited to see to adapting the environment of prisons in Latvia to persons with disabilities. It should be considered that Council of Europe Anti-Torture Committee (hereinafter referred to as CPT) already in its report of 2013 expressed regret to the government in Latvia that even after the recommendations given after the visit in 2011, in Riga Central Prison (also in Jelgava prison) imprisoned persons still perform various duties in Medical Department of the prison, including care for the patients.[113]

The Head of PA and the Minister of Justice have provided information on intended measures for improvement of imprisonment conditions and accommodation for placement of persons with reduced mobility. For instance, in Riga Central Prison no later than by the first quarter of 2016 would be prepared a cell accommodated for placement of persons with reduced mobility. At the same time the Minister of Justice informed that a new prison shall be constructed in Liepāja, and it shall comply with the requirements of the international human rights.

When visiting the places of imprisonment, the Ombudsman will still pay special attention to the holding conditions of imprisoned persons with disabilities. The same way it should be noted that the Ombudsman's Office more often receives submissions from imprisoned persons with disabilities, including from their relatives, on conditions of imprisonment and health care.

2.4. Availability of Regulatory Enactments

[113] Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrding Treatment or Punishment (CPT) from 12 to 17 September 2013, para. 42.
Available: http://www.cpt.coe.int/documents/lva/2014-05-inf-eng.pdf

According to Section 90 of the Constitution everyone has a right to know their rights. Already in the previous reporting year the Ombudsman raised an issue on access of the imprisoned persons to the regulatory enactments. Also in 2015, when visiting places of imprisonment, this issue was paid special attention.

On the basis of received information, the Ombudsman turned to PA with a request to provide information on access of imprisoned persons to websites *www.vestnesis.lv* and *www.likumi.lv*, as well as an opportunity to read the official information placed therein for free, especially in Jelgava prison. Head of the PA provided information on action of officials of prisons and procedure for imprisoned persons to read the external regulatory enactments published in the official magazine.[114] At the same time she informed that regarding Jelgava prison and taking into account the technical specification of the computers, the use of website *www.likumi.lv* has been intended in mobile version because it is adapted for use in lower performance computers and for users who only require the basic functions of the website, as well as for persons with impaired vision who use special software for browsing the web. Mobile version of *www.likumi.lv* ensures access to all regulatory enactments of the Republic of Latvia that are in force or are no longer effective, as well as to the judgements of the Constitutional court. Imprisoned persons in Jelgava prison have an opportunity to connect to the full version of *www.likumi.lv*, but due to the great amount of data, it is difficult to work with this version.

On 26 August 2015, the staff of the Ombudsman's Office visited Jelgava prison and found that in the computer room of the building for persons sentenced for life website *www.likumi.lv* is not accessible, thus an opportunity to be acquainted with the regulatory enactments free of charge is not available. Namely, even though the mobile version of *www.likumi.lv* is available, it does not react to any 'command' from the user. Connection to full version of *www.likumi.lv* is not possible. Taking into consideration that publishing of the law is a paid service, the Ombudsman concluded that in this case the rights guaranteed by Section 100 (the right to free access of information) and Section 90 (the right to know their rights) of the Constitution have been violated.

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[114] Namely, imprisoned persons may turn to administration of the place of imprisonment in due procedure prescribed by the law with a request to be able to access external regulatory enactments published in an official magazine without charge. In its turn, administration of the place of imprisonment upon receipt of a motivated submission by an imprisoned person and evaluating the current possibilities of the infrastructure of the place of imprisonment shall ensure the person with a possibility to read the external regulatory enactment without charge by providing for temporary use a printout of the official magazine in a paper format or by mediation of an official shall ensure to the imprisoned persona visit *to www.vestnesis.lv and/or www.likumi.lv* (in a presence of officials or staff). To a room with available computer with a connection to the website *www.likumi.lv* the imprisoned persons are taken on the basis of submission to the head of the place of imprisonment. Upon receipt of permission the submission is transferred to the on-duty assistant of the head of place of imprisonment who shall organise the person's access to the computer room.

Administration of Jelgava prison and management of PA were informed about this violation. In the response letter to the Ombudsman, it pointed out that information kiosk *Capital NEO GX29* with a possibility to connect to full versions of 12 websites has been installed in the computer room of the building for persons sentenced for life in Jelgava prison. The response letter also held an explanation that ten such information kiosks have been acquired and are already installed in Daugavgrīva prison (three), Liepāja prison (one), Riga Central Prison (three), Valmiera prison (one), and Jelgava prison (two).

On 24 November 2015, the staff of the Ombudsman's Office visited Daugavgrīva prison. At the time of the visit it was found that staff of the prison do not have complete information on these kiosks. Namely, separate staff were not informed about these at all, but other staff including Daugavgrīva prison administration did not have information that with these kiosks there is/will be an opportunity to connect to full versions of 12 websites.[115]

At the time of visit it was also found that information kiosks at Daugavgrīva prison do not ensure access to two websites - *www.likumi.lv* and *www.vestnesis.lv*. It was also found that information kiosks in this place of imprisonment have been for approximately two months.

Taking into account that the aspect of good governance includes also effective exchange of information between PA and its structural units, the Ombudsman turned to PA with a request to provide a comment on the facts discovered during the visit to Daugavgrīva prison on 24 November 2015. At the same time the Ombudsman asked to pay attention so that administration and staff of other places of imprisonment would also have sufficient information about the information kiosks and how these might be used.

In their letter of response, PA informed that on 14 September 2015 three information kiosks were set up in Daugavgrīva prison. In the time period to 30 November 2015 the imprisoned persons at Daugavgrīva prison had an opportunity to connect to the full versions of websites *www.likumi.lv* and *www.vestnesis.lv* by using information kiosks. But from 1 December 2015, the imprisoned persons located in Daugavgrīva prison have an opportunity to connect to full versions of 14 websites.[116] According to the information provided by Daugavgrīva prison administration, staff and officials of the prison have also been informed about the installed kiosks.

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[115] *www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv.; ievp.gov.lv. varam.gov.lv; pmlp.gov.lv; cvk.lv; lps.lv.*

[116] *www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv.; ievp.gov.lv. varam.gov.lv; pmlp.gov.lv; cvk.lv; lps.lv. www.likumi.lv; vestnesis.lv; vsaa.lv; nva.gov.lv; vni.lv; probacija.lv; tm.gov.lv; ievp.gov.lv; varam.gov.lv; pmlp.gov.lv; cvk.lv/pub/public; lps.lv; tiesas.lv* - lists of designated hearings..

In 2016 as well, when visiting places of imprisonment, the staff of the Ombudsman's Office shall pay attention to opportunity of access to information by imprisoned persons.

2.5. Right of Imprisoned Persons to Private Life

2.5.1. On correspondence restrictions for prisoners

In 2015, the Ombudsman raised an issue on correspondence restrictions for prisoners. According to the Sentence Execution Code of Latvia, the correspondence of the convicts is examined by reading it, except for correspondence with state and municipal institutions and addressees defined in Section 50, Paragraph three - UN institutions, Human Rights and Public Affairs Committee of the Saeima, the Ombudsman's Office, the Prosecutor's Office, courts, advocate, as well as the correspondence of a convicted foreign citizen with the diplomatic or consular mission of his or her residence country, which is authorised to represent his or her interests. Also regarding the arrested persons according to the provisions of the Law on Procedures for Holding under Arrest all correspondence of the arrested persons is subject to examination, except the above mentioned institutions and advocate.

The rights to inviolability of private and family life, home and correspondence have been prescribed by Section 96 of the Constitution and Article 8 of CPHRFF. The mentioned fundamental rights must not be restricted except cases stipulated by the law and necessary in the democratic society in order to protect the interests of state security, public order, or state welfare, and in order to prevent disturbances or crimes, in order to protect health or morals, or to protect the rights and freedoms of others.

It should be acknowledged that the rights of the imprisoned persons are not the same as those of persons being in liberty; however, the restriction of these rights should arise from the meaning and essence of the imprisonment itself. Article 3 of European Prison Rules (Recommendation Rec(26)2 of the Committee of Ministers of the European Union to member states on the European Prison Rules emphasises that restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

By evaluating the practice of ECHR regarding the control of correspondence of the prisoners, it may be concluded that in assessing the necessity and proportion of such control, it has used similar criteria. Regarding the convicts, restrictions for correspondence mostly are connected with ensuring the sentence execution because the

investigation is finalised, and the person serves sentence of deprivation of liberty, one of its purposes being reintegration in society. In its judicature, ECHR has emphasised that automatic examination of correspondence of persons sentenced with deprivation of liberty is even less permissible because the investigation is finished. Such interference might be justified in connection with existing security risk or secret agreement between the prisoner and the third party, for instance, regarding any process or criminal activity taking place at the state level.[117] Yet such a risk should be pointed out in each separate case instead of examining all correspondence.

The same way according to ECHR judicature, restriction of correspondence regarding some addressees is less required than others, thus varied regulations should be including in the law as well[118]. Correspondence with the public institutions should not be subject to examination. Correspondence with the doctor has been compared to correspondence with the advocate. Thus, if nothing shows that a prisoner abuses such confidentiality, there is no basis to restrict the inviolability of correspondence by subjecting it to examination. Correspondence with family members also is highly protected, especially because as much as possible the state should ensure maintenance of relationships with the family members.

In general, by assessing the regulatory framework regarding the control of the prisoners (arrested and convicted persons), the Ombudsman detected substantial problems and non-compliance with the ECHR judicature. Namely, in his opinion the Ombudsman stated that automatic control procedure prescribed by both the Sentence Execution Code of Latvia, and the Law on the Procedures for Holding under Arrest regarding all addressees who are not included in the list of institutions (persons) with whom the law allows uncensored correspondence, is contrary to the provisions of the international legal acts and the Constitutions.

The Ombudsman also pointed out that it is not permissible that correspondence with the doctor automatically without individual assessment is subject to examination. The law should provide a special protection for private correspondence of the prisoner with the family members. Correspondence with the family members may be controlled only in exceptional situations.

At the same time the Ombudsman said in his opinion that the regulatory framework should precisely determine in which cases the prisoner's correspondence is subject to examination, namely, in what cases it is permitted to examine it only by opening the

[117] ECHR judgment in case No. 23284/04, dated 28 October 2010, *Boris Popov v. Russia*, 108 p.
[118] For instance, ECHR judgment in case No. 2795/95, dated 4 July 2000, Niedbala v. Poland, 81-82 p.

letter, and when it is permitted to read it, and when it should be suspended or expropriated. The law should also determine the term for such restriction. Procedural mechanism should be provided, so that the prisoner might be able to contest possible arbitrariness of the prison officials.

2.5.2 On ensuring long-duration visits for convicted persons

The Ombudsman's Office finds that issue on ensuring long-duration visits for convicted persons has become repeatedly important. Namely, during the reporting year a submission was received where applicant pointed out that in long-duration visits he was not allowed the right to meet his girl-friend because he cannot prove that he had lived together with this person before serving the sentence.

According to Section 45, Paragraph three of Sentence Execution Code, during long-duration visits the convicted persons shall be permitted to stay with their relatives – parents, children, adopted persons, siblings, grandparents, grandchildren or a spouse. By the decision of the head of the imprisonment institution long-duration visits may be permitted also with another person if by beginning of serving the sentence the convict had a common household or a child with this person. Thus the law provides two criteria in order for the convicted person to have a long-duration visit with the person who is not a relative.

Already in 2014, the Ombudsman pointed out to PA and the Ministry of Justice that it might be useful to evaluate the practice of application of Section 45, Paragraph three of Sentence Execution Code and the possible problems in various places of imprisonment in order to understand if there is a necessity to improve these rights. PA did not see such a need stating that by implementing individual assessment of circumstances long-duration visit with another person may be permitted. Taking into account that the Ombudsman's Office repeatedly received submission on this issue, the Ombudsman addressed PA again with a request to gather information on practice of application of Section 45, Paragraph three of Sentence Execution Code. In the view of PA, this issue should be raised with the working group organised by the Ministry of Justice regarding the development of the new Criminal Punishment Execution Law, in which in the capacity of expert takes part also a representative of the Ombudsman's Office.

2.5.3. On necessity of improving legal framework regarding supervision of convicted persons when on temporary leave from the place of imprisonment

Over the reporting period, the Ombudsman's Office has received a submission in which the imprisoned person stated that the head of the prison granted the permission to leave the place of imprisonment, but with the obligation to remain in the place of residence at specific times. According to the submission, the police officers visited the specific address and found that the applicant was not there.

According to Section 49 of Sentence Execution Code, the administration of the deprivation of liberty institution shall forward the information regarding the convicted person who has been permitted to temporarily leave the territory of the deprivation of liberty institution to the territorial structural unit of the State Police. This information is only informative. The Ombudsman found that the legal acts do not define the rights or obligations of police officers to inspect if the convict who has received permission of temporary leave from prison is at the specified address. Such rights would arise if in the vicinity of the respective place of residence a criminal offence of a similar or the same type would have been committed. Thus the Ombudsman concluded that currently the regulatory enactments do not include a legal framework that would provide supervision of convicted persons outside the deprivation of liberty institution, even though in practice it sometimes takes place. In the opinion of the Ombudsman, thus systematically the right of the persons to private life are being violated. At the same time it should be noted that not only the right of these persons, but also fo their relatives is violated in cases when they provide accommodation to the convict who has been given permission for a temporary leave of the deprivation of liberty institution. PA, the State Police and the Ministry of Justice have been informed on the Ombudsman's conclusions.

In its letter of response PA stated to the Ombudsman that supervision of the convicts outside the territory of the deprivation of liberty is not in its competence, but supported the necessity of the framework. However, the State Police explained that it is not obliged to perform such checks on convicts, yet in practice there have been cases when it happens because such rights can be assumed from the law "On Police".

The findings of the Ombudsman in his opinion on necessity to improve the legal framework regarding supervision of convicted persons upon temporary leave from the place of deprivation of liberty was viewed also in the standing working group for Criminal punishment execution policy of the Ministry of Justice. It did not support the Ombudsman's suggestion because the number of such cases when the convicted person is

supervised or does not return to the place of imprisonment is very small, and PA theoretically has other means to ensure the compliance of the actions of convicted persons with the rules. The State Police also does not wish to receive additional functions.

2.6. Protection of Rights of Persons Sentenced to Life Imprisonment

Holding conditions of persons sentenced to life and rules of regime for places of imprisonment have been in the view of the Ombudsman already for several years. Exactly on issues regarding this category of prisoners Latvia has received the greatest criticism from the Council of Europe Anti-Torture Committee.

Regarding the topic of persons sentenced to life the Ombudsman in 2015 gave an opinion on changes and direction of the regime for serving the sentence within the framework of progressive execution of sentence. The persons sentenced to life contrary to other prisoners have been denied the opportunity within the framework of progressive execution of sentence to be moved to partly closed or open prison. Currently the persons sentenced to life within the execution of progressive system may move up the grades only within the closed prison.

By evaluating fundamental principles set out in documents of international human rights and insights of CPT, the Ombudsman concluded: even though the person has been sentence with the deprivation of liberty - life imprisonment, yet this category of prisoners by regulatory framework has been provided an opportunity similar to any person sentenced with deprivation of liberty, by serving the time stipulated by the law to be conditionally released before the term or to be pardoned. Furthermore, the system of progressive execution of punishment may be applied also to persons sentenced with a deprivation of liberty - life imprisonment, and one of the purposes of the punishment regarding this group of convicts is that upon return to liberty these persons would be ready to fully be included in life in society without committing repeated criminal offences. Thus, the Ombudsman concluded that, taking into consideration current specifics of punishment execution for persons sentenced for life, excessive security measures, long-lasting isolation, it is even more important that this group of prisoners would have an opportunity to serve the sentence in partly closed or open prisons that would allow them to be gradually prepared to live in society.

Current execution of punishment for persons sentenced to life is not oriented towards wholesome integration in society after release from the place of imprisonment. However, at the same time it should be acknowledged that during the last years progress

may be observed in punishment execution of persons sentenced to life. The view of the Ministry of Justice expressed within the framework of verification procedure should be agreed with that changes to practice and regulatory framework should be made gradually and thoughtfully by evaluating both the infrastructure of the places of imprisonment and the number of staff. For instance, in 2015, amendments to Sentence Execution Code have come into force providing that persons sentenced to life have additional right to an hour of communication (one to three times a month depending on the level of punishment execution regime) by video call with relatives and other persons. Amendments have come into force that stipulate that persons sentenced to life from the building with enhanced supervision may be transferred to premises where other convicts (not those sentenced to life) serve their sentence, if this transfer would promote re-socialisation of the convict. Moreover, in the second half of 2015, after visits to places of imprisonment it could be concluded that there have been separate cases when such an opportunity had been provided to persons sentenced to life. In the opinion of the Ombudsman, the mentioned amendments are progressive, and in the context of punishment execution development in Latvia the initiative of responsible institutions should be welcomed and supported.

Already since 2013, the Ombudsman has raised the issue regarding the work of commission and decisions made regarding the necessity of using special means on persons sentenced for life. It is important that this provision would not be formal and in practice the special means - handcuffs - would be used on persons sentenced for life when they are moved within the territory of the prison by assessing individually the need for these. It should be noted that also CPT in its report of 12 - 17 September 2013 on Latvia expressed criticism on content and assessment quality of these decisions.

In 2015, after the visits to the places of imprisonment where persons sentenced to life served their sentence, namely, Jelgava and Daugavgrīva prisons, and after studying the decisions on necessity to use special means - handcuffs, it may be concluded that the quality has improved, they are comprehensive, with argumentation of each member of commission and the opinion, explanation of the person sentenced to life. Decisions are well-founded, and it is clearly understandable why commission has come to such or such conclusion. Furthermore, condition should be considered that only to a few persons sentenced for life commission had decided on necessity to use handcuffs.

By the end of 2015, the Ombudsman's Office based on received information raised an issue on video surveillance of persons sentenced for life in the rooms of Daugavgrīva prison where meetings with advocates, social workers, chaplains, psychologist, etc. takes

place. During the visit to Daugavgrīva prison the mentioned information was confirmed, and several persons sentenced to life pointed out that in these rooms consultations with medical personnel have taken place, and in separate cases also medical examinations. In 2016, the work on research of this issue shall be continued.

2.7. On Use of Special Means during Conveyance

Over the time of the reporting year the issue of using special means on convicts during conveyance was raised. Namely, suggestions were received from the prisoners whom the court of first instance has sentenced to life with complaints that every time they are conveyed to the court hearing, special means are used - arm and leg irons connected by a chain.

The Ombudsman initiated a verification procedure on compliance of regulations on use of special means with standards of international human rights. In the opinion was found violation of prohibition on inhuman treatment prescribed by Section 95 of the Constitution and Article 3 of CPHRFF.

Section 19 of the Cabinet regulations No. 55 of 18 January 2011 "Regulations Regarding the Types of Special Means and the Procedures for the Use Thereof" provides an imperative provision stipulating that special means - arm and leg irons - shall be used, if it is necessary to transfer such person outside of a place of imprisonment, who has been sentenced to life imprisonment. The arm and leg irons shall not be removed throughout the time that the person is being transferred and under supervision. In the specific situation within the framework of the verification procedure the State Police pointed out that a reason for use of special means on the prisoner was information provided by Riga Central Prison that the person to be conveyed is sentenced to life imprisonment and should be isolated from the rest, the person has a tendency to escape and may assault the convoy. During the verification procedure the fact that this person would be sentenced to life imprisonment by an effective court judgment or injunction of the prosecutor on punishment was not confirmed. The Ombudsman also concluded that it is not permissible that use of special means - arm and leg irons - excludes implementation of Sections 15, 16, 17, and 18 of Regulation 55 prescribing removal of special means in specific circumstances. At the same time it was indicated that in every case an individual risk assessment is necessary that would be based on specific and provable evidence.

Currently the decision of the head of the convoy to use or remove the special means is not documented, thus it is impossible to evaluate it. The opinion stated that in circumstances when the person has been placed in cage, cannot go to the washroom

without arm and leg irons, rest arms, straighten up, shall be ascertained as violation of Article 3 of CPHRFF. In situations when special means are used without legal basis, evaluation of proportion is not necessary.

The Ombudsman gave recommendations to the responsible institutions: Ministry of Justice and Interior Affairs were asked to review the compliance of Section 19 of Regulations 55 with standards of international human rights, and the State Police were asked to perform appropriate measures to establish individual assessment for use of special means, and in each case to provide grounds and document the use and removal of special means. The State Police also were given a recommendation to terminate the use of chains to persons.

It should be added that the practice of joining arm and leg irons is not in compliance with Article 33 of UN Standard Minimum Rules for Treatment of Prisoners and Article 68(1) of European Prison Rules prohibiting it. At the same time the Ombudsman turned the attention of PA, Court Administration and State Police to the fact that causes for erroneous information shall be evaluated when false information is provided on person's status (in the specific case - information that person has been sentenced to life imprisonment) and find solutions to preventing such causes.

Ministry of Justice informed that agrees with the recommendation of the Ombudsman and is ready to provide support to the Ministry of Internal Affairs for development of necessary amendments. But Court Administration informed that it has contacted PA and has discussed possible solutions for information exchange. In the near future it is intended to develop new interservice agreement because the current agreement does not regulate all relevant issues. Furthermore, development of additions to Court Information System has been performed in order to ensure the opportunity for the court institutions to send conveyance requests electronically to the State Police.

The State Police in reaction to the opinion of the Ombudsman, developed draft Cabinet regulations that would permit the use of special means according to the standards of international human rights. After refining the project, it shall be forwarded for proclamation in the meeting of State secretaries.

2.8. Organising and Ensuring Video Conferences in Places of Imprisonment

By the end of 2014, the Ombudsman's Office raised an issue of observance of the right guaranteed to imprisoned persons to fair trial in the court proceedings taking place by means of video conferencing. On 17 June 2015 was prepared the Ombudsman's report

"Ensuring the Right to Fair Trial in Court Hearings by Using Video Conferencing"[119]. Due to research of the topic four places of imprisonment were visited - Jelgava prison, Riga Central Prison, Brasa prison, Iļģuciems prison.

By summarising the information obtained during the visits, it was found that there are no unified internal procedures in places of imprisonment regarding organisation of video conferences and ensuring other related issues. Taking into consideration that the given issue is not structured internally, organisation and ensuring of court hearings by the means of video conferencing is viewed as burden by officials and staff of the places of imprisonment, since it provides additional obligations to the current insufficient resources without appropriate regulation and without ensuring additional human resources. Since the time of video conferencing is unpredictable, ensuring video conferences burdens the ability of officials and staff of places of imprisonment to do their direct work duties fully.

By the report PA and Ministry of Justice were recommended to promote a unified practice regarding solving issues related to video conferencing in places of imprisonment, as well as solve the issue of personnel policy, namely, the necessity to involve additional trained staff in order to ensure video conferences.

In their response letter the Ministry of Justice pointed out that by assessing the conclusions and suggestions included in the Ombudsman's report regarding PA work in ensuring court hearings by the means of video conferencing, the video conferences in places of imprisonment are organised and ensured according to internal rules No.1-2/14 of Ministry of Justice of 12 June 2013 "Procedures for Booking and Using Video Conferencing Equipment in the Court Proceedings". In connection with the necessity to solve the issue pointed out in the Ombudsman's report regarding personnel policy in order to involve additional trained staff for ensuring video conferences, the Ministry of Justice informed that personnel of the places of imprisonment participated in training organised by Court Administration regarding court hearings by means of video conferencing. But in cases when the imprisoned person needs information on the rights during the court hearing by the means of video conferencing, then he or she may address the prison administration. Both Court Administration and PA have assigned contact persons for ensuring operative and immediate cooperation on issues regarding the use of video conferences and staff training.

Yet, by assessing the information available to the Ombudsman's Office, it must be concluded that regardless of internal rules No.1-2/14 of Ministry of Justice of 12 June

[119] Report available at the website of the Ombudsman: http://www.tiesibsargs.lv/files/content/zinojumi/Zinojums_Videokonferences_17062015.pdf

2013 "Procedures for Booking and Using Video Conferencing Equipment in the Court Proceedings", officials and staff of places of imprisonment perceive organising and also ensuring court hearings by the means of video conferences as a burden. Thus, for example, Iļģuciems prison head has given an order to set the procedure for work in the place of imprisonment by organising remote participation of imprisoned persons in the court hearing. The same way training of prison personnel regarding court hearings by the means of video conferencing does not solve the issue of personnel policy. Namely, places of imprisonment mostly do not have recruited enough personnel, and along with current obligations, additional ones are provided due to ensuring video conference. Insufficiency of personnel in places of imprisonment is still a relevant issue to be solved.

At the same time, the report on the right to ensured fair trial in court hearings by the means of video conferencing turned attention also to the fact that by growing demand for video conferencing, the issue should be raised on suitability of the rooms prepared for video conferencing in places of imprisonment. Initially the administrations of prisons were told that they should find a room that could be used for video conferencing, other conditions, such as logistics, security issues, etc, were not set at the time regarding the choice of the room. Thus, possibly, in some prisons the rooms for video conferencing have not been chosen as successfully as they should have been. Furthermore, administrations of prisons had not thought that these rooms would be used so often. For instance, in Iļģuciems prison and Brasa prison the room is small, and it may cause difficulty if for one court case several participants of the case would have to be heard. Moreover, in Brasa prison, by standing on the other side of the door to the video conferencing room, the persons passing by may easily hear what is being said, and on the other side of the wall sewing unit is located. When the equipment is at work, then audibility in the room worsens significantly.

In its response letter, the Ministry of Justice according to the information provided by PA, informed regarding suitability of the rooms that in each place of imprisonment these were accommodated by taking into consideration the structural possibilities of the buildings and availability of rooms, security reasons, for instance, conveyance of the imprisoned person to the rooms of the video conferencing would not create a threat to the person to be conveyed or to other persons. At the same time it was pointed out that PA has not received complaints on unsuitable rooms currently used for court hearings by the means of video conferencing.

Regardless of the information provided in the response by the Ministry of Justice, by visiting places of imprisonment it was found that such conditions as logistics, security reasons and other important aspects in the choice of the room were not required from the prison administrations. Thus, PA should find solutions for improvement of the current situation because that fact alone that no submissions have been received from the imprisoned persons does not mean that everything is in order.

3. The Right to Fair Trial

3.1. Characterisation of Submissions

In 2015, the Ombudsman received a total of 343 submissions in which population expressed complaints regarding the rights to a fair trial. In comparison with the previous year, the number of submissions has decreased slightly; however, over the last years in general the number of submissions on this topic has not decreased significantly. It should also be noted that aspects of the right to fair trial are among the most popular, and the staff of the Ombudsman's Office provide also oral consultations.

In their submissions the persons point at the problems regarding access to court (expensive legal services; inaccessible state funded legal assistance; rather high state fees); long terms for hearing the cases in all types of procedures; insufficient justification for adjudications; expensive and complicated execution process of adjudication; as well as other aspects of the right to fair trial.

By evaluating the character of the received complaints, it should be acknowledged that these show individual character, thus the Ombudsman turned the attention of the responsible institutions to problems of systemic character only in separate situations. For instance, when finding that cassation complaints submitted by the persons for a long time, sometimes even longer than one and a half years or two years remain in the Higher Court without any movement forward, the Ombudsman has invited to pay special attention to the action of the court after receipt of cassation complaints by ensuring a more timely determination of action hearting in order to make a decision on initiating the cassation case, thus not allowing a situation when cassation complaints remain for a long time in the court without being moved forward.

The Ombudsman still received complaints from the population on, according to their opinion, unlawful action of sworn court bailiffs by seizing the accounts in credit institutions, turning recovery against the only housing, etc. It should be pointed out that

such complaints are not reviewed in the Ombudsman's Office because according to Section 632 of Civil Procedure Law, actions of the bailiff in executing the judgment or his refusal to execute such actions, except the case defined in Section 617 of the Civil Procedure Law, collector or debtor by submitting a motivated complaint may make an appeal to the regional (city) court according to the place of office of the bailiff within the period of 10 days from the day of executing the action to be appealed or day when the plaintiff who has not been notified of time and place of the action to be performed, has found out this information. The Ombudsman has invited the submitters of complaints to use the remedies for protection of the rights stipulated by the law and to entrust assessment of legitimacy of the action of sworn bailiffs to the courts. Furthermore, submitters of the complaints have received explanation that in cases when amounts have been transferred to bank accounts that cannot be recovered (Section 596 of the Civil Procedure Law) and they should be excluded from the amount of recoverable funds, debtor is obliged to inform sworn bailiff about it.

3.2. The Right to Fair Trial within a Reasonable Period of Time

In general it may be considered that average time for hearing the case continues to decrease, yet in separate cases concern about the proportion of length allotted to hearing the case remains. In 2015, the Ombudsman provided several opinions in which he detected a violation of the right to a fair trial within a reasonable period of time. Due to court reform in transition to 'clean instances', in several cases the Ombudsman turned attention of the courts to the necessity to pay attention to terms of hearing the cases in situations when the court has not been able to accomplish it within the transition period provided by the legislative authority, and as a result the case in another court is started all over.

The Ombudsman has become aware of a criminal case that is in adversial procedure in appellation instance already for seven and a half years. Currently adversial procedure has been started anew by sending the case from Higher Court to Riga Regional Court according to jurisdiction. In the opinion on verification procedure No. 2014-16-3E-4D-5D the Ombudsman emphasised that criminal proceedings that were sent to Court Chamber of Criminal Matters of the Higher Court as the court of appeal by 31 December 2013 and adversial procedure of which was not started till 30 June 2014, are subject to considerable risk of violation of the right to fair trial within a reasonable period of time, and special

attention should be given to supervising the hearing of the case within a reasonable period of time. In this specific event the verification procedure was not initiated because currently the criminal case is in the stage of adversial procedure, and the person has available the remedies for protection of rights provided in Section 33, Paragraph five of the Law on Judicial Power and Section 49^1 of the Criminal Law.

It should also be noted that both Section 33, Paragraph five of the Law on Judicial Power and Section 49^1 of the Criminal Law include mechanisms for protection of the right of person to a fair trial - hearing of the case within a reasonable period of time, yet in several cases problems in implementation of Section 49^1 of the Criminal Law may be observed. For example, in verification procedure No. 2015-54-4D, by evaluating the length of hearing of the case it was found that court of appeal has not at all assessed the request of the defendant provided in the court hearing to evaluate claims on hearing the case within a reasonable period of time, but the reference included in the decision of the Higher Court has been highly formal. The opinion emphasised that the request to observe a reasonable period of time in case is a part of the right of the person to a fair trial. When the court after the request of the participant of the proceedings or on their own initiative would raise a question on possible violation of reasonable period of time of the proceedings, it should provide a well-founded, comprehensively motivated opinion on this question by providing a specific assessment on if the current term of proceedings can be viewed as reasonable.[120]

No less essential and relevant is an issue also on the rights of the victims to compensation if the criminal case has not been heard within a reasonable period of time because the right to a fair trial within the reasonable period of time can be applied to the victims as well. While reviewing the verification procedure No. 2015-4-4C within the reporting period, the Ombudsman discovered the violation of the right to fair trial within a reasonable period of time in the hearing of a criminal case. In this case the court proceedings of the first instance court did not contain long waiting periods (except designation of the first court hearing after a year), but the court of appeal did have disproportionately long periods of waiting for the court proceedings when no actions were taken in the case. It can be concluded that a lengthy period of hearing the case has not been due only to the actions of the participants of the proceedings, but also due to actions

[120] Senate Criminal Affairs Department of Higher Court of the Republic of Latvia: Judicial Practice regarding the Right to Completion of Criminal Proceedings in a Reasonable Period of Time and Determination of Punishment if the Right to Completion of the Criminal Proceedings in a Reasonable Period of Time Has not Been Observed. p. 29.

of the court. By observing that the law determines the procedure for persons who have a status of a victim in criminal proceedings and whose right to case hearing within a reasonable time has been violated may turn to court, the Ombudsman explained the right of the person to turn to a court of general jurisdiction on the basis of the insights by the Constitutional Court on applicability of Section 92, Paragraph three of the Constitution, as well as insights found in the practice of the Higher Court.[121]

In addition it should be pointed out that the same problem can be seen in cases of lengthy period of hearing the civil cases because the regulatory framework does not provide a procedure for the state to compensate to the participants of the case the violation committed by the state. The only possibility to receive compensation on violation of the rights is to turn to the court of general jurisdiction on the basis of Section 92, Paragraph three of the Constitution ". Everyone, where his or her rights are violated without basis, has a right to commensurate compensation."

3.3. The Right to Oral Hearing

In 2015, to the attention of the Ombudsman came several situations in which the persons have expressed dissatisfaction with the action of the court when it has not acknowledged the failure of the person or his or her authorised representative to appear to the court hearing as justified and has analysed the substance of the case in the absence of the person. In connection with this aspect of the rights it should be acknowledged that in last years the legislative authority has accepted several amendments in order to avoid the possibility for the participants of the case to delay the hearing of the case without cause; however, in the opinion of the Ombudsman, it is important to make sure that hearing of the case without the presence of the person would not violate the right of this person to fair trial.

In most situations the Ombudsman informed the persons on their right to appeal the adjudication of the court, but regarding verification procedure No. 2014-19-4F discovered a violation of the person's right to fair trial because the court when analysing the case had not ensured the right of the person to participate in the hearing of the court (oral process was not ensured) when the decision was made regarding the question on conditional punishment. The opinion emphasised that even though ECHR has admitted that the right

[121] Judgment by the Constitutional Court on 5 December 2001 in the case No. 2001-07-0103, Clause 1. Judgment of Senate Civil Affairs Department of Higher Court dated 24 November 2010 in the case No. SKC-233, Clause 17..

to a fair trial does not guarantee oral proceedings in deciding any issue connected with the case, it still has pointed out that according to the general principle the court at least in one instance should ensure the right of the person to oral proceedings if the person requests it.[122] The same way ECHR has acknowledged that case on application of the punishment may be analysed by the court without the presence of the defendant only if the person actively evades appearance in the court hearing, as well as exceptions to this provision may be permitted only in the instance of court that does not assess the actual circumstances.[123]

Appropriately to the discovered circumstances, the Ombudsman believed that in a situation when circumstances of the case point to the violation of the first instance court in communication with the convicted person[124], approach of the court of appeal to hearing the case must not be formal. Consequently in the given situation when court decides the question on replacement of conditional punishment with real deprivation of liberty and does not ensure oral proceedings to the person at least in one of the instances, violation of the rights to fair trial prescribed by Section 92 of the Constitution and Article 6, Paragraph one of CPHRFF is found.

It should be added that within the framework of verification procedure opinion of the Ministry of Justice was received. The Ombudsman asked the responsible ministry to evaluate if it is necessary to amend Section 651, Paragraph seven of Criminal Procedure Law in order to provide an opportunity for the judge of a higher level court to designate oral proceedings when the court considers that it would be more useful to review the complaint in the court hearing, and by this ensuring the right of the person to participate in the court hearing, especially in situations when due to justifiable reasons (or due to unjustified action of the court) has not participated in the hearing of the first instance court, but during the proceedings the question on person's real restriction of liberty shall be decided.

Ministry of Justice in its response letter to the Ombudsman stated that the convict who has not participated in the court hearing on decision of cancellation of conditional sentence has a right to appeal the mentioned decision and to turn the attention of the court to all justifiable circumstances that have been a cause to failure to fulfil the obligations and failure to appear before the court. By evaluating the provided information and

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[122] ECHR judgment of 23 February 1994 in the case *Fredin v. Sweden*, Clause 21.
[123] Commentary on the Constitution of the Republic of Latvia. Chapter VIII Human Fundamental Rights. Editorial team under scientific guidance of prof. R.Balodis – Riga: Latvijas Vēstnesis, 2011, p. 137.
[124] Decision of 28 October 2013 by the judge of Criminal Affairs Judicial Board of Zemgale Regional Court

evidence, judge of a higher level may make a decision on cancellation of the decision made by the lower level court and/or transfer of the case for a repeated hearing. In addition it was stated that Section 651, Paragraph seven of the Criminal Procedure Law prescribes that judge of higher-level court shall adjudicate a complaint in a written procedure, court has a right to choose a type of procedure more favourable for the person, namely, the court may exercise the discretion to designate adjudication of the issue also in an oral procedure if the person has indicated essential justifying circumstances in the complaint. Thus, the working group of the Ministry of the Justice concluded that regulation currently in force does not deny the court an opportunity to designate the adjudication of the issue in an oral procedure, if deemed appropriate.

Upon informing the respective court on the violation detected in this verification procedure, the court expressed a view that the right of the person to access to court are not absolute and in order to achieve a legitimate purpose may be reasonably limited as far as these are not removed. The opinion of the court is that the right of the person to access to the court were ensured according to the requirements of the regulatory enactments.

3.4. The Right to Legal Assistance

The Ombudsman positively assesses the reforms made to the judicial system, including increase of number of judges in courts, yet the right to fair trial may not be ensured without qualitative and accessible legal help.

The issue on amount of state ensured legal assistance to persons who cannot afford to hire advocates due to their limited resources is still relevant. Even though legislative authority in State Ensured Legal Aid Law expanded cases when state ensures legal assistance in administrative cases by providing legal aid also to appealing the decisions of the Orphan's Courts in administrative court; however, in the Ombudsman's opinion the amount of state ensured legal assistance is still insufficient.

At the beginning of 2015, the Ombudsman began research of the question on necessity of state ensured legal assistance in administrative proceedings. Within the framework of the research the courts, state administration institutions and local governments were asked to provide information on involving advocates for representation of institution interests in administrative proceedings in the time period between 1 June 2013 and 1 January 2015 in order to find out if such practice of institutions affects the hearing of cases in the court, and if it may hinder observance of the right of private persons to fair trial.

Even though Administrative Procedure Law has established the principle of objective investigation, practice proves that the least protected groups of population often ask for aid in administrative proceedings, yet cannot receive state ensured legal assistance in administrative cases. However, state administration institutions, local governments and capital companies formed by it tend to hire advocates, lawyers in administrative cases by using budgetary means even though their structure includes formed legal services and employed lawyers.

Data provided by state administrative institutions and local governments show the following:

1) Of 80 state administration institutions who provided answer to the request of the Office, 58 respondents denied involvement of advocates/advocate offices for representation of the institution in court, three respondents said that they have involved lawyers, and 19 respondents replied that they have involved advocates/advocate offices, and 12 of these confirmed involvement of advocates/advocate offices in administrative processes;

2) of 90 local governments, on condition that request was sent to all local governments, 50 local governments indicated that they have not involved advocates/advocate offices in providing legal assistance, 36 local governments confirmed that they have hired advocates, three local governments indicated that they have invited lawyers, and one local government replied that it has involved both lawyers and advocates. For administrative cases, advocate/advocate office were invited by 17 local governments.

The courts surveyed generally were critical towards outsourced services provided to institutions for representation in courts, emphasising that position of the institution in the court should be represented by a qualified lawyer of the institution and only by exception in specially complicated cases it would be permissible to involve providers of outsourced legal services. Regarding necessity state funded legal assistance in administrative proceedings, the court primarily emphasised the meaning of the principle of objective investigation and the active role of the courts in hearing the administrative cases, yet admitted that state funded legal assistance might be desirable in complicated cases, adding emphasis that individual traits of each person should be taken into consideration, for instance, age, education, etc.

By taking into consideration the above mentioned, the Ombudsman positively assesses the action of Ministry of Justice in developing amendments to the Administrative

Procedure Law in order to provide state funded legal assistance to the persons in complicated cases. Yet from the aspect of the function included in the Ombudsman's mandate - compliance with the principle of good governance in state administration - it should be specially emphasised that public persons should comply with the prohibition included in Section 9.1 of Law On Prevention of Squandering of the Financial Resources and Property of the State and Local Governments to conclude agreements on services in issues solving of which is included in duties of the official or employee of the respective institution.

3.5. The Right to an Advocate in the Process of Cancellation of Accessibility to Official Secrets

In 2015, the Ombudsman assessed the right to fair trial in the process of cancellation of accessibility to official secrets. At the moment law does not directly prescribe the right to be heard before the decision is made, and issue on the right of the advocate to participate in the negotiation of Constitution Protection Bureau with the client in the process of granting access or cancellation is not regulated.

By reviewing the submission of the person it was concluded that even though the process of granting or cancellation of access to official secrets may not be examined in the court and substantial restrictions of the rights to fair trial determined by Section 92 of the Constitution are permissible for the protection of state security interests, yet the process of granting or cancellation of access to official secrets may affect further court proceedings on legitimacy of termination of legal relationships of civil service. Hearing out the person is an essential procedural guarantee that should be ensured to the person before making the decision. Even though designation of the type of hearing is in the competency of the institution, it should ensure that hearing is effective and not formal.

In the opinion of the Ombudsman, legal provisions regulating the protection of official secrets may be interpreted in a way that would as much as possible ensure the interests of each person to be examined, and consequently the efficiency of the hearing. Information containing official secrets may be disclosed in negotiations only in that case if persons participating have appropriate access, or another regulation exists by which to ensure the protection of official secrets. It is permissible that there may be situations when participation of a provider of legal assistance in negotiations might be restricted due to protection of state security; however, the institution should be able to provide sufficient basis for reasons and proportion of restrictions in each individual case. Without providing

specific prerequisites for restriction of such rights, the activity of the institution is unpredictable, thus creating concern on efficiency of right protection of the person in the specific process.

3.6. Access to Court of Cassation

By verification procedure No. 2015-56-4C was assessed the possible violation to the right of the person to access to court. In the specific civil proceedings the representative of the person submitted to the regional court a cassation complaint that did not comply with the provisions of Section 82, Paragraph six of Civil Procedure Law. The regional court received the mentioned cassation complaint after payment of security and sent it to be processed by the court of cassation without detecting the deficiencies in authorisation. Only after more than a year Department of Civil Cases of Higher Court made a decision to refuse initiation of cassation proceedings, because cassation complaint was not submitted by an advocate or the person him/herself. In response to the request of information by the Ombudsman, the Higher Court agreed that in the specific situation the regional court had to make sure that the representative has a right to submit the cassation complaint before accepting the mentioned cassation complaint, and upon detection that representative has no such rights, according to Section 453, Paragraph three the cassation complaint should have been returned to submitter. It would not have created obstacles for the person to submit repeatedly a cassation complaint signed by the person and within the term defined by Section 454 of Civil Procedure Law. By noticing that in the specific situation the cassation complaint was submitted in timely manner - a week before the termination of the ruling set by the law - and regional court did not identify deficiencies in authorisation, the person was denied the right to submit a cassation complaint prepared according to the provisions of the law within the term of procedural term. Thus, the action of the court by erroneously assessing the acceptability of the complaint impacted the observance of the person's rights to access to court. At the same time the violation of the right to fair trial was not detected because in this case the regional court has formed practice favourable to protection of the private person's rights by admitting the error of the judge of regional court in assessment of acceptability of cassation complaint as a justifiable circumstance for renewal of procedural term. By taking into account the above, there is no basis to doubt efficiency of such protection means of the rights, and currently no violation of the person's right to fair trial stipulated by Section 92 of the Constitution and Article 6 of CPHRFF.

3.7. The Right to Fair Trial by Video Conferencing

In 2015, the Ombudsman continued the research on issue on use of video conferencing in courts and places of imprisonment.

On 17 June 2015, report "Ensuring the Right to Fair Trial in Court Hearings by Using Video Conferencing" was sent to the responsible institutions, indicating the detected deficiencies and providing recommendations in order to improve the situation.

The report included recommendations regarding possible improvement of regulatory framework, the right of the person to receive quality defence, information received by visiting the places of imprisonment, as well as data obtained in court survey.

With a view to the rights to ensuring fair trial by using the opportunity to hear the person by the means of video conferencing, the Ombudsman's opinion is that the most attention should be paid to procedural principles and guarantees arising from Section 92 of the Constitution and Article 6 of CPHRFF.

From ECHR judicature it is clear that hearing the person in the case is permissible by the means of video conferencing, and it is not contrary to the requirements of the convention; however, in each case the court should indicate the legitimate purpose of the chosen measures, as well as the use of video conferencing should be compatible with the requirements for fair trial on the basis of Article 6 of CPHRFF[125]. From the above it is possible to conclude that in every case the court should thoroughly assess the opportunities of using video conference both in situations when the use of video conference has been appointed by the request of the participant of the case so that the rights of other participants of the case would also be observed, and in situations when the court due to other objective causes has decided to use video conferencing, for instance, to ensure the processing of the case within a reasonable period of time.

With satisfaction it should be acknowledged that the performed research was seen as valuable and on its basis discussions have taken place among professionals, and specific measures for improvement of the situation have been taken. However, essential issues are still relevant that influence and may influence the rights of the persons to fair trial, namely, the issue on the right of the participants of the proceedings to defence and representation, confidential communication with the provider of legal assistance in the court proceedings in which video conferencing is used. Issue on organisation of training and informative and explanatory events is still relevant in order to promote the use of video conferencing in the court proceedings.

[125] ECHR judgment of 5 October 2006 in the case *Marcello Viola v. Italy*, clauses 63-77.

3.8. On Regulations of Chapter 54^1 of Civil Procedure Law

In 2015, the Ombudsman received several complaints with a request to address deficiencies in regulations of Chapter 54^1 of Civil Procedure Law. Applicants saw a deficiency in regulations that define the obligation of the court to refuse acceptance of appeal complaint in a small claim if it has been submitted with insignificant deficiencies.

In February 2014, draft law "Amendments to Civil Procedure Law" was submitted to the Saeima; according to this draft law was changed the previous appeal procedure in proceedings with small claims. Persons who submitted the amendments to the Civil Procedure Law indicated in annotation that examination of cases on small claims according to the substance of the matter in two court instances is contrary to the meaning and purpose of this legal institution. Therefore, in order to ensure the speed of circulation of civil liability and avoid overworking the regional courts, a different court procedure differing from the general appeal system was determined for cases due to small claims.

Persons who submitted the proposal in the annotation of the draft law provided grounds for restrictions including the one specified in 440^6 of the Civil Procedure Law, that appeal complaint acceptance is refused if state fee has not been paid, submission is not signed, claiming that by it legitimate goal is reached - procedural economy, effective functioning of making court decisions, as well as prevention of overworking the courts. Authors of the provision pointed out that along with implementation of so called "appeal permit" the criteria were set according to which processing of cases due to small claims in court of appeal is permissible, as well as provided the means to process the mentioned cases in written procedure.

Section 440^2 of Civil Procedure Law determined three foundations to be assessed for initiation of appeal procedure. Namely, cases due to small claims shall be processed by appeal only if the first instance court has wrongly applied or interpreted material or procedural provision or has wrongly established the facts, wrongly assessed evidence, and has provided a wrong legal assessment of circumstances of the case, and if that has led to wrong adjudication of the case.

In the opinion of the Ombudsman, faster processing of cases should be promoted, yet restrictions to access to the court are justifiable if they are necessary for reaching a legitimate purpose, and the chosen means are proportionate with the purpose to be reached.

Section 440^6 of the Civil Procedure Law stipulates that appeal complaint is not accepted if a) appeal complaint without signature has been submitted or it has been submitted by a person who is not authorised to appeal the court judgment, and b) state fee for submission of the appeal complaint has not been paid. Decision on refusal to accept the appeal complaint shall not be appealed.

Regulations of Chapter 54^1 of the Civil Procedure Law does not provide the court with opportunity to leave the appeal complaint without further attention if the person has not signed it in haste, is poor or indigent, and has asked to be released from payment of state fee or by error has paid the state fee incompletely.

With the right to process the case within a reasonable period of time being set against the right to access to court, there should be an essential assessment of proportion in order not to deny the individual a chance to defend their violated rights if these rights have been removed completely.

Regulations of Chapter 54^1 of the Civil Procedure Law already restrict the cases when it is allowed to submit the appeal complaint on judgments regarding small claims. Payment of state fee in inappropriate amount or prohibition to continue the court proceedings if the court has refused the release from payment of state fee, as well as non-signature of the appeal complaint significantly restrict access to court, and has been determined disproportionately. Legislative authority could have reach the legitimate purpose - faster and more efficient processing of the case - possibly even then, if there was an opportunity to leave the appeal complaint without further action for a definite time period by stating that this decision shall not be appealed.

Responding to the request of the Ombudsman to provide an opinion on proportion and necessity in a democratic society of prohibitions set out in Section 440^6 of the Civil Procedure Law, as well as assess the necessity to make amendments to the mentioned section, the Ministry of Justice provided explanation that spectrum of procedural guarantees regarding appeal procedure for small claims are restricted in favour of procedural economy, and due to these considerations there would not be grounds to hold a view that this way the rights of the person to access to court have been restricted. By justifying the implemented regulations Ministry of Justice indicated that in Chapter 54^1 of the Civil Procedure Law the reasons for refusal to accept the appeal complaint with a decision not to be appealed was determined with a purpose to prevent abuse of rights in order to delay further action in the case by not signing the appeal complaint or not paying the state fee. In the opinion of the Ministry of Justice, the state is obliged to provide

measures in order to prevent the participants of the case from using such abusive actions that affect the terms of processing the case.

Non-payment of state fee for the person in material difficulties is possible according to the requirements of this category, if the person turns to court according to Section 43 of the Civil Procedure Law and asks to be released from payment of state fee. Ministry of Justice holds a view that suggestion of the Ombudsman to limit the terms for elimination of deficiencies for participants of the case in order to avoid extending the term for processing the case, is not of use. Civil Procedure Law has an independent legitimate purpose aimed at preventing the abuse of rights determined by the law and respectively balancing the rights of the parties to fair trial.

Restrictions stipulated by Section 440^2 of Civil Procedure Law should not be viewed as more lenient means in reaching the respective legitimate purpose, and restriction set in Section 440^6 are to be viewed as the most appropriate means for reaching the legitimate purpose. Ministry of Justice does not believe that obligation to pay state fee and to sign the documents and check the amount of authorisation should be seen as such requirements that are not understandable and could not be fulfilled by reasonable effort.

Ministry of Justice pointed out to the Ombudsman that Civil Procedure Law does not deny the person whose appeal complaint has not been accepted due to detected deficiencies, the right to apply repeatedly to the court after elimination of deficiencies and in case of justifiable reasons also request the renewal of the procedural term.

By taking into consideration the arguments of the Ministry of Justice against amendments to Section 140 of the Civil Procedure Law, as well as number of small claims on which dissatisfaction about the regulations was expressed, the Ombudsman shall continue to follow the effect of the stipulated restriction to access of individuals to court regarding small claims and shall assess the necessity to turn to the Constitutional Court.

3.9. Opinion to Constitutional Court

In the reporting period, the Ombudsman provided opinion to Constitutional Court regarding the case No. 2014-33-01 on compliance of Section 279, Paragraph one and Section 288, Paragraph One of LAVC with Section 92 of the Constitution.

Thus, Sections 288 and 257 of LAVC prescribe that during the proceedings regarding administrative offence, the right of person (also legal) to property may be restricted (withdrawal of property) or removed (confiscation) regardless of the procedural

status (including its lack) of the owner in the case. In most cases, official and the court have options to choose from when deciding on restriction or removal of the person's right to property. Yet, Section 279, Paragraph one and Section 288, Paragraph one of the effective LAVC, the wording does not provide the right to appeal the decision (action) of the official to the person whose legal interests are affected by the decision made in the case of administrative offence, but who is not the defendant or victim (hereinafter - the third party).

The Ombudsman concluded that by denying the right to the third person to contest the decision made by an official within the framework of LAVC, and at the same time legitimacy control of state administration actions is lessened. Respectively, the gain of society from such restriction of rights should be evaluated critically. The right to contest the action or decision made by the official in the case of administrative offence is not absolute. Even though it would not be reasonable to ensure that any person may contest the decision made in the case of administrative offence, yet the same way it is disproportionate to deny the opportunity to the person whose legal interests are affected by the decision of the official to be able to take any action in order to protect the affected rights. By taking into consideration the above mentioned, the Ombudsman expressed the opinion that restriction to the third persons stipulated by Section 279, Paragraph one and Section 288, Paragraph one of LAVC disproportionately limits the rights guaranteed by the first sentence of Section 92 of the Constitution.

4. Inviolability of Private Life, Home and Correspondence

4.1. Characterisation of Submissions

4.1.1. Access to data existing in Courts Information System to unlimited number of persons

In 2015, the Ombudsman received complaint that contained a request to evaluate the issue on access that is too broad to data existing in Courts Information System (hereinafter - CIS) to unlimited number of persons.

In order to assess the genuineness of the received facts and possible violation of Section 96 of the Constitution, information was requested from the Court Administration being the custodian and manager of CIS data base, with a request for explanation if in such categories of cases that have touched upon the rights protected by Section 96 of the

Constitution - divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship - is not detected too broad access by all CIS users.

In response to the Ombudsman's request, the answer was provided that a judgements made in a closed session of the court in such categories of cases as divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship are fully placed in CIS on the basis of Cabinet regulation No. 582 "Regulations on Procedures of Establishment, Maintenance and Use of Courts Information System and Minimum Amount of Included Information". According to Clause 14.5.2. of these Regulations, the cases in the system are not categorised according to the form of the hearing; only the type of session is noted in the case - closed or open, and it ensures availability of information on cases processed in closed hearings in a limited amount. Texts of adjudications made in closed session of the court may be opened if the person has been given respective access. Adjudications in data viewing mode may be accessed only by a user with a special access right, but the external users of the system cannot access the adjudications from the case card at all.

Explanation was provided to the Ombudsman that judges and court officers may receive rights to use CIS when they begin their duties of office. According to the prescribed duties of office, the court requests from the Court Administration access rights to the system to such amount as needed for the court officers, as well as judges in order to carry out their duties. Court Administration grants the access right according to the data provided in the request.

To the institutions who require the use of data of the system in order to carry out the functions prescribed by the regulatory enactments, Court Administration grants access to CIS data to a definite amount required for fulfilment of functions. No access is granted to the data of pre-litigation procedures. Court Administration ensures that CIS users commit in a writing to keep and not disclose the data available in CIS during the time of their office, as well as after termination of employment relationships. Court Administration regularly audits the user rights and removes or locks access to CIS, if it is no longer necessary or has not been used for a long time. Thus, the Court Administration does not detect problems connected with the amount of access rights in such categories of cases as divorce, confirmation of adoption, establishing the descent of the child, determination of guardianship, and informs that it is intended to improve the functionality of access rights amount for more effective administration.

4.1.2. Patient fixation

In 2015, the Ombudsman's Office received two submissions on fixation of patients in medical treatment institutions. The Ombudsman had already previously urged to make changes in regulatory enactments regarding fixation of patients in psycho-neurological hospitals; and currently to patients who require psychiatric care fixation is applied according to the procedure set out in Section 69[1], Paragraph six of the Medical Treatment Law. Yet at the moment there are no regulations in relation to other persons whose movements should be restricted in specific cases of the treatment process.

As pointed out to the Ombudsman's Office in a submission by an official of a medical treatment institution, currently regulatory enactments do not provide instructions on how to balance the rights of the patients to freedom with their rights to safe treatment implemented in peaceful circumstances, as well as guaranteeing the rights of other patients to safety.

By evaluating the permissibility of fixation, the Ombudsman took into consideration the insights on permissibility of restricting a person's movements to patients in psycho-neurological hospitals expressed in the research by the Ombudsman's Office[126]. Indisputably there are cases when fixation of such patients is necessary immediately, for instance, for persons who due to cognitive deficiencies endanger themselves, or have become aggressive as a result of alcohol or narcotics use. Yet the current situation when patient fixation may be used completely arbitrarily is not permissible in the view of the Ombudsman.

By taking into account the above mentioned, the Ombudsman turned to the Ministry of Health by turning attention to the current situation and invite to review the regulatory framework in order to ensure the protection of the rights of persons in cases of applying the restrictive means. Ministry of Health essentially agreed with the opinion of the Ombudsman on permissibility of fixation admitting that fixation of patients might be used as a last resort to restricting the patient in cases when alternative means do not provide the results, and the risk of the patient injuring themselves or others is unacceptably high. Ministry of Health also informed that amendments to the Medical Treatment Law to be reviewed include an issue on prescribing a procedural procedure for application of fixation.

The same way, a submission was sent to the Ombudsman's Office by the family members of a patient by stating that fixation of almost 90 years old patient in the hospital

[126] Human rights of the patients in psycho-neurological hospitals. Available: http://www.tiesibsargs.lv/img/content/pacientu_tiesibas_psihiatrijas_slimnica_2012.pdf

was explained by the lack of personnel resources. Regarding the received submission, the Ombudsman addressed the Health Inspectorate by asking to perform an inspection in the respective medical treatment institution and expressing the view on permissibility of such fixation. As a result of submission by the Ombudsman and the private persons, a violation was found in the activity of the doctor treating the patient and a process of imposing an administrative penalty of the person has been initiated.

However, neither application of administrative penalty, nor amendments to the Medical Treatment Law may solve the issue on sufficient recruitment of medical personnel to the regional hospitals of Latvia, and as a result treatment quality suffers, and a person's life may be lost.

4.1.3. Photographing in public places

Several persons have turned for explanations on legitimacy of filming, photographing of persons in public places, especially in the hospital yard, work place, and airport. Such activities are regulated by Personal Data Protection Law, thus frequently the provisions of this law are explained to the persons, and the persons are invited to primarily turn to DSI if they believe that another person is performing unlawful filming or photographing.

4.1.4. Receipt of advertisements by e-mail

The Ombudsman's Office has also received a submission in which the person complained on receipt of such internet advertisement by e-mail, the content of which made it possible to make conclusions on health condition of the person. Furthermore, the received e-mail also showed other recipients of the message. The Ombudsman turned to DSI with a request to assess the situation; as a result, the sender of the message was imposed an administrative penalty for illegal processing of sensitive personal data.

4.2. Submission to Constitutional Court on Disclosure of Personal Data of Defaulting Maintenance Debtors

In 2015, the Ombudsman submitted an application to the Constitutional Court on compliance of Section 5.[1] of Maintenance Guarantee Fund Law, providing disclosure of personal data of defaulting maintenance debtors, with the right to private life included in Section 96 of the Constitution. Both before and after the acceptance of the contested provision the Ombudsman turned to the Saeima by inviting to eliminate the by 25 May

2015 the deficiencies identified by the Ombudsman. However, since Saeima did not do it, the Ombudsman made an application to the Constitutional Court.

In his application to the Constitutional Court, the Ombudsman pointed out that the restriction of the fundamental rights prescribed by the contested norm has a legitimate purpose - to promote the fulfilment of parental obligations. This purpose is aimed at protection of welfare of society in the best interest of which is not to assign significant amount of funds from the state budget in order to cover the civil liability of the maintenance debtors. However, it is doubtful that such a restriction of the right to inviolability of the private life is appropriate for reaching the legitimate purpose. Maintenance debtors mostly are persons without income, and their inability to fulfil the court judgment on maintenance recovery has been acknowledged in the procedure prescribed by the law. It is not understandable how, for instance, data disclosure of long-term unemployed persons would improve the financial status of these persons and promote payment of maintenance.

Annotation of the contested provision emphasises that data disclosure of the maintenance debtors would allow any interested person to obtain information on debtors of maintenance guarantee fund. In his application, the Ombudsman emphasises that from the standpoint of personal data protection it is disproportionate that without a legal basis personal data are available to any person. Republishing and use of data for abusive purposes will create a greater risk of violations to personal rights than the interest of the third persons and the need for such data. Besides, it may lead to unlawful theft of personal data. PDPL does not discuss further processing of publicly available data.

Disclosure of such data may also seriously injure the interests of the child, for instance, by subjecting the child to the risk of emotional violence, creating social rejection. In many cases the child might be placed in uncomfortable situation or humiliated when other persons find out about the indebtedness of their parents.

In the view of the Ombudsman, Maintenance Guarantee Fund would be eligible to provide such data only on the basis of a motivated request by the person, if these data might be legally used and if there would be a lawful basis for further processing of the data. The right and necessity to be acquainted with the debtor's data would be to persons for whose work needs it might be necessary, for example, credit institution. Thus in application it was emphasised that already at the moment state information system "Register of Applicants and Debtors of Maintenance Guarantee Fund" that is under management of Maintenance Guarantee Fund administration is being used. The right to

receive the information included in the register is given to the state and municipal institutions, for information necessary for fulfilment of work or service functions: sworn bailiffs, credit institutions, branches of credit institutions, capital companies that provide services of loans and financial leasing, insurance companies, and providers of electronic communication services.

In his application the Ombudsman also pointed out that it should be considered how to make the maintenance recovery more effective. By paying maintenance instead of parents, the state has provided support to parents on whom the child is dependant. Thus the state should also think of effective and legal means to recover the debt. In the opinion of the Ombudsman, the current legal framework should be used in order to prevent evasion of maintenance payments. For instance, when solving this problem law enforcement institutions should be more involved. For avoiding in bad faith to care for and maintain the children, criminal liability of the person is stipulated according to Section 170 of the Criminal Law. For this criminal offence the punishment may be temporary deprivation of liberty or community service, or a fine.

By evaluating the application of the Ombudsman, on 27 July 2015, the Constitutional Court initiated the case "On compliance of Section 5.1. of the Maintenance Guarantee Fund Law with Section 96 of the Constitution of the Republic of Latvia."

4.3. Opinions to Constitutional Court

In 2015, the Ombudsman provided an opinion to the Constitutional Court in case No. 2015-14-0103 "On Compliance of Section 1, Clauses 2 and 6, Section 4, Section 10, Section 18, Paragraph one of Law On Development and Use of the National DNA Database, as well as Clauses 2 and 13 of Cabinet Regulations No. 620 of 23 August 2005 "Procedures for the Provision of Information to be Included in the National DNA Database, as well as the Collection of Biological Material and Biological Traces" as Far as They Are Applied to Suspected Persons with Section 96 of the Constitution of the Republic of Latvia".

The applicant pointed out in the constitutional complaint that taking cell samples and storage of DNA profiles violate the rights to inviolability of the private life of a person whose guilt in committing a criminal offence was not proved or detected.

The Ombudsman in his opinion concluded that acquisition of cell samples and DNA profiles restricts the rights of the person to inviolability of private life because the Criminal Procedure Law provides the obligation of the person directing the proceedings to

assess the necessity of such action in each separate case. But information from DNA national database on person whose guilt in committing a criminal offence was not proved but whose cell samples and DNA profiles were obtained during the preliminary investigation of criminal proceedings may be deleted according to the application of the person or automatically after 10 years. The mentioned cases of data deletion were assessed separately.

The Ombudsman concluded that after the final decision in the criminal proceedings that did not prove the guilt of the person or in whose action no signs of criminal offence were found, but whose cell samples and DNA profiles were obtained, the state should, by observing the principle of good governance, destroy these samples without waiting for such application from the private person.

In the opinion of the Ombudsman, it is disproportionate to expect that a private person has de facto knowledge that he or she has an opportunity to request the state to perform certain actions in this situation, considering that in the process of obtaining the samples the persons are not informed on it. Thus, the state does not fulfil the positive obligation given to it by Article 8 of CPHRFF to protect the person's right to inviolability of the private life.

Section 2 of DNA Law prescribes that DNA national database is primarily used for disclosure of criminal offences. Yet it is not obvious how reaching the mentioned purpose would be promoted by the circumstance that DNA national database shall store for 10 years the information about the person in whose actions signs of criminal offence were not detected.

The Ombudsman drew attention of the Constitutional Court to the facts that:

1. By storing data on individuals who were not convicted might to especially great damage to the minors, taking into consideration their special status and how important is their development and integration in society. Accordingly there should be especially important reasons to store cell samples and DNA profiles of persons (also minors) who were not convicted of committing a criminal offence.

2. There are no reasons to store also the cell samples and DNA profiles of a victim after criminal liability limitation period has elapsed regarding a certain criminal offence. Yet Section 18 of DNA Law does not provide storage term for DNA profiles of the victims and obligation of deletion thereof, namely, the data may be stored for unlimited term.

The Ombudsman concluded that information storage term specified in Section 18, Paragraph one of DNA Law disproportionately restricts the right of persons to inviolability of private life.

4.4. Law Initiative

4.4.1. Processing of air passenger data

On 4 June 2015, in the Meeting of State Secretaries was announced a draft law "Law on Processing Passenger Data" that authorises the Security Police to perform extensive collection of personal data of natural persons from air carriers as well as storage, processing and provision of the data to other institutions, and other countries specified by the law.

The Ombudsman turned to the Ministry of Internal Affairs by indicating that such extensive collection of data of natural persons shall significantly affect the human rights of the persons, including the rights to private life. Emphasis was placed on the fact that even though observation, disclosure of offences, terrorist crimes are to be considered as legitimate purposes, the draft law already initially causes concern on proportion of restrictions on human rights. The Ombudsman drew attention to the fact that the draft law in its current wording causes many issues on volume of processing of personal data, number of involved institutions, and legitimacy in obtaining personal data, supervision of data processing, and use of personal data only for initially intended purpose. Special attention should be paid to incomplete annotation of the draft law that does not provide full answers to necessity of such amendments.

The Ombudsman shall continue to follow the development process of the draft law.

4.4.2. Data disclosure in emergency situations

After the Zolitude tragedy issue on data disclosure in emergency situations was raised. Namely, after publishing of unofficial name list of casualties in mass media discussion was initiated on if and who could publish these names. By the end of 2013, the Ombudsman provided an opinion on data disclosure in emergency situations. The opinion expressed conclusion that legal acts do not determine the institution that is responsible for the procedure of compiling and disclosure of such a list of casualties. Therefore, in this aspect deficiencies of regulatory framework in the country should be urgently eliminated. The Ombudsman turned to the Cabinet of Ministers with this message.

In 2015, the Ombudsman asked the Cabinet of Ministers to provide information on what measures have been taken in the respective time period to ensure a timely processing of personal data in emergency situations while at the same time observing the human rights according to the Constitution and international documents on human rights. The Ombudsman indicated that action of institutions in emergency situations is not understandable, as well as cooperation of institutions, and which institution and to what extent has an obligation to provide information to the society on personal data of victims and casualties. Regulatory framework regarding such situations should be clear in order to prevent misunderstandings in action of institutions and violations of personal data processing while at the same time providing to the society information on victims and casualties of the emergency situation in a timely manner.

In emergency situations the rights guaranteed to society by Section 100 of the Constitution to receive information, including information on victims, casualties collides with the rights to privacy, including protection of personal data, guaranteed by Section 96 of the Constitution. At the same time in situations of crisis several rights of the persons may be reasonably restricted. In emergency situations the state is obliged to ensure observance of individual human rights, yet it should be kept in mind that interests of society in situations of crisis may be more important than in everyday situations. Thus in such cases, when a large-scale catastrophe has taken place, for example, collapse of the buildings, air crash, natural disaster with potentially large number of victims, etc, interests of victims and their family members may collide with the interests of other members of society who do not know what has happened to their relatives.

In order to inform the society and to facilitate the work of the responsible services, release of specific information should be permitted in order to inform the society. A list of names and surnames of casualties is a part of information to be released, and in global practice it is not accepted to classify such information by assigning it the status of restricted access. Furthermore, it should be emphasised that in emergency situations quick reaction is important in order for information on victims and casualties to be provided as soon as possible, while at the same time ensuring accuracy of the provided information and personal data.

A response was received from the Prime Minister emphasising that: Section 36 of National Security Law stipulates that Ministry of Internal Affairs in cooperation with the other ministries shall develop the civil protection plan of the State and it shall be approved by the Cabinet of Ministers. State civil protection plan includes measures for ensuring

state civil protection system as well as preventive, readiness and response measures for emergency situations and measures for dealing with consequences of such situations. It also prescribes the action of civil protection system in case of military invasion or war. State civil protection plan (approved by Cabinet order No. 369 of 9 August 2011 "On State Civil Protection Plan") studies the possible types of threats and accordingly provides action of state institutions, local governments and rescue services in order to take urgent preventive, readiness, response and elimination of consequences measures, as well as provides execution terms for the measures.

Attention of the Ombudsman was drawn to the fact that State civil protection plan does not specify one responsible institution for all possible types of catastrophe, but for each type of possible threat its own responsible institutions has been determined. As indicated by the Prime Minister, from the current framework it is clearly understandable that each institution has an obligation in each specific case assess the necessity to disclose the personal data in the interests of the victims and make a decision, respectively. In addition, the responsible institution - State Police, Emergency Medical Care Service or medical treatment institution - shall assess at what time and how, and in what amount the personal data should be published. Thus, the action of institutions in emergency situations regarding disclosure of personal data is understandable, and there is no need to make amendments to the legal acts.

4.5. Opinions to Institutions

4.5.1. Secret recording of conversations between employer and employee

Regarding secret recording of conversations between employee and employer in order to use the recording for the rights protection in order to prove mobbing, DSI asked for an opinion of the Ombudsman on legitimacy of such violation of private life.

In order to admit that person's rights have been violated, it is important to detect the importance of restriction of human rights in relation to a specific person, namely, status, circumstances of the specific person should be considered, and other factors that in every specific situation may be important when making a decision, if decision or action essentially affects the human rights of the specific person.

Recording conversations without consent in itself without assessment of a specific situation, might not be considered as violation of the rights to private life. Namely, it is not enough to make an abstract observation that unlawful recording of the person's conversations has taken place, but specific circumstances should be assessed, for instance:

1) in what circumstances did it take place (did the person have a reasonable reliance on privacy);

2) for what purpose the conversations of the person were recorded (was there a legitimate purpose and proportion observed);

3) what was the framework of conversation (are the rights of the person to protection of deeply personal details of private life not violated by disclosing them to a wide circle of society);

4) how is the recorded material used (for protection of what interests is it used).

Furthermore, there is a need to assess: 1) were there other possible evidence that could prove the existence of the specific violation just as effectively, 2) did excessive provocation of the recorded person take place.

Consequently, it was concluded that secret recording by the employee of his or her conversations with employer without informing the employer about it in order to use the recording later as evidence when turning to State Labour Inspectorate or court in order to ensure the protection of employee's rights might be justifiable in specific circumstances. Such a conclusion arises from ECHR insights and judgment of Constitutional Court of the Czech Republic of 9 December 2014 in a similar case No. II. ÚS 1774/14.

4.5.2. Member lists of political parties

From DSI was received a request to provide opinion on permissibility of restrictions on person's human rights to data protection.

According to DSI request was evaluated restriction on the right of private life stipulated in Section 27, Paragraph 6 of Law on Political Organizations that provides that information on participation of the person in a political party is generally available.

In the opinion of the Ombudsman, for candidates of the parties who have chosen to perform their activity publicly and have set the goal of activity - to assume an elected office in the Saeima or local city council, such requirements of information availability are justified. Yet at the same time such persons are active in the parties who wish to be members of parties, yet do not wish to be candidates in elections or assume any other public offices or ones connected with governance of the party. For instance, according to Section 33, Paragraph two, Clause 5 of the Labour Law no questions are allowed in the job interview about the affiliation of the person with any political party, employee trade union or other public organization. Yet in this specific case party had general access to such information, and a risk of differing attitude exists due to person's political affiliation.

When obtaining information on data protection framework of the European Union, the Ombudsman concluded that member states of European Union set especially high requirements for protection of sensitive personal data. Essentially, the person has a right to choose freely to publicly express his or her political affiliation, and it should be critically evaluated if society in any situation has equally justified interest to receive information on every person's participation in a political party.

4.5.3. Video surveillance in a psycho-neurological hospital

From DSI was received a request to provide opinion on if personal data processing (video surveillance) done by state limited liability company "Daugavpils psihoneiroloģiskā slimnīca" in all acute rooms of the hospital buildings complies with Section 96 of the Constitution.

The Ombudsman already previously on 27 December 2013 in a letter No.1-5/34 addressed to the Ministry of Justice in assessment on permissibility of video surveillance in psycho-neurological hospitals concluded that video surveillance may be performed for the security of patients, clients and personnel, but is not permissible for observation of sanitary rooms. By taking into consideration the above mentioned, the Ombudsman's view is that in certain cases video surveillance may be implemented for patients who are in acute hospital rooms of the hospital buildings by taking into account that patients in this condition require enhanced supervision. However, also in this case it is necessary to perform individual assessment in specific cases in order to lessen restriction of person's right to private life as much as possible. Definitely continuous video surveillance of the person would not be permissible already once the initial reason does not stand.

4.5.4. Permissibility of obtaining and processing of biological traces of contact

The opinion of the Ombudsman was requested by the law enforcement institution regarding permissibility of obtaining and processing of biological traces of contact that has been performed in order to obtain the DNA profile of the person and to perform processing of the data.

Elements, for instance, name, sex, sexual orientation is included in the scope of private life. Also other elements that may identify the person or point to their family, as well as information on health and ethnic origin of the person is protected. DNA data allows clear and unambiguous identification of a specific person. That way ECHR has acknowledged that storage of cell samples and DNA profiles restricts the right of the

person to inviolability of the private life in the understanding of Article 8, Clause one of CPHRFF. Acquisition of information from samples is collection of personal data to which PDPL is applied. In order for such acquisition and processing of data to be legal and not in violation of the rights of person to private life, it should be performed according to the requirements of the law. Thus, collection of biological traces of contact without consent of the person is a violation of the private life.

5. Freedom of Speech and Expression

5.1. Characterisation of Submissions

During the reporting period several persons turned to the Ombudsman regarding offensive comments on the internet. Taking into consideration the recent judgment of ECHR in the case *Delfi v. Estonia*, it was pointed out that comments expressed on the website may injure the rights and interests of other persons, and medium should assume certain responsibility on the content expressed therein, and its supervision. More enhanced research of this topic shall be continued also in 2016.

In February 2015, attention of the Ombudsman was drawn to the episodes of the program broadcasted on Latvian Television "Aizliegtais paņēmiens" (Forbidden technique). The program showed persons against their own will, without covering their faces or otherwise concealing their identity. Even though within the framework of the specific submission no infringement of person's rights was discovered because the person had applied in order to protect the rights of other persons, the answer was provided that by pointing out the necessary considerations of human rights in such cases, as well as the right protection mechanism existing in the country.

ECHR practice shows that photographing and filming without consent in itself without assessing the circumstances of the specific situation may not be considered as a violation of the rights to private life. In order to determine if a fair balance between two interests protected by CPHRFF and possibly colliding in such cases has been reached, namely, freedom of expression protected by Article 10 of the convention and the right to private life established in Article 8. The interest of the society in published image and the need to protect the private life should be balanced. Both established values are equally important. In its practice ECHR has established criteria that should be evaluated amount others when balancing the freedom of expression and the right to private life. These criteria are the following:

1) contribution to the discussion on issue the society is interested in;

2) how well-known is the involved person, and what is the subject of this publication;

3) previous action of the involved person;

4) believability of information and method of acquisition, circumstances in which the image of the person was obtained;

5) content, form and consequences of publication.

In a situation when the persons seen in the television program believe that by the circumstances of the specific situation their rights to private life are disproportionately restricted, these persons have a right to turn to the general jurisdiction court with a motivated application. By taking into account Sections 7 and 28 of the Law "On Press and Other Mass Media", if information is published by violating the right of the person to private life, mass medium is legally liable for the incurred moral injury (see Section 1635 of the Civil Law). In addition, if disseminated information unlawfully violates dignity and honour of the person, then this person has a right to demand revocation of the information and remuneration by the way of court procedure (see Section 2352^1 of the Civil Law).

By discovering the importance of such problems, the Ombudsman on his own initiative initiated the verification procedure in the framework of which he requested explanations from the content editor of the program and DSI, as well as analysed most recent ECHR judgments - Peck v. United Kingdom, *Bremner v. Turkey* and *Haldimann v. Switzerland,* in which were expressed insights on legitimacy of secretly performed recordings.

Within the reporting period, the issue was raised regarding the inclusion of data of wanted persons in advertisements of the newspaper. The Ombudsman suggested that the newspapers refrain from processing the personal data in cases when there is doubt on ensuring data protection.

5.2. Role of Media in Ensuring Freedom of Speech

The role of media in ensuring freedom of speech according to the framework of human rights is a relevant topic both in international society and that of Latvia. In 2015, Media Policy Department was formed for the first time in Latvia in Ministry of Culture, thus showing the desire of the government to form a strong, professional, sustainable and stable environment of media. Media Policy Department developed and gave to public consultation "Latvian Media Policy Framework 2016 - 2020".

Within the framework of rights to freedom of speech the Ombudsman turned to assessment of media topic, namely, electronic mass media.

Section 100 of the Constitution guarantees to every resident of Latvia the right to freedom of speech and the right to obtain information. Article 10 of CPHRFF stipulates that the right to free expression of opinion includes freedom of opinion and the right to receive and disseminate information without interference of the state institutions and regardless of country borders.

Throughout the year the Ombudsman met with media experts in order to understand the problem aspects of the sector of media. As known, the freedom of media is essential to protection of all human rights, not only the freedom of speech. In order to discuss the relevant issues in the sector of electronic mass media with the representatives of the sector itself, the Ombudsman allotted one day of the annual conference only to the topic of media. In the course of the Ombudsman's conference discussion on such topics as the role of state in development of media policy, public service remit, editorial independence of the media, national informative space, and information pluralism was held.

The conference was informed on the state policy in the area of media and challenges by Roberts Putnis, the Head of the Media Policy Department of Ministry of Culture, and Uldis Lielpēters, the representative of Ministry of Culture. On public service remit of Latvian TV and Latvian Radio spoke Sergejs Ņesterovs, board member of the LTV, and Sigita Kirilka, board member of LR. Antra Cilinska, member of the Public Consultative Council of NEPLP informed on the role of the Consultative Council of NEPLP in development of public service remit. Associated professor Anda Rožukalne informed on a research on problems of editorial independence in Latvia. NEPLP member Dace Ķezbere pointed to the conflict of interests included in NEPLP functions. Ineta Ziemele, the judge of Constitutional Court, discussed the media environment in Latvia by emphasising that Preamble to the Constitution is necessary in order to protect the internal cultural environment, understanding of values, and history of the country.

Media must ensure information both on events in Latvia and European Union. Ieva Dzelme-Romanovska, the board member of Centre for East European Policy Studies, emphasised that media are to be viewed in the context of state security because they may be used as instruments for influence. Propaganda foundations laid in due time may later form the perception of the society of events. Guna Paidere, the senior public notary of the Enterprise Register defined the Enterprise Register as the front line because the registration of company is viewed as acknowledgement of the state.

Tarmu Tammerk, the Ombudsman for Estonian public media, also participated in the conference and shared on the role and functions of the ombudspersons. Ombudsman for the public media in Estonia acts as a mediator between private persons, interest groups and public media. The main activity instrument of the ombudsman is providing recommendations. For reflection of contested issues the ombudsman's program in Estonian public radio once a month is used. Among others such issues are solved that are related to protection of children's rights by reflecting events in mass media, data protection, and independence of media. The ombudsman hosts training for journalists on issues of ethics, as well as promotes the understanding of persons on media by meeting with the representatives of society. Answers provided by the ombudsman to the submissions of persons are reviewed in Estonian Press Council that ensures self-regulation of media area.

In 2015, by paying attention to the activity of media, listening to media experts, being acquainted with the documents for media environment planning, regulatory enactments and international documents binding to Latvia, the Ombudsman made the following insights or suggestions:

- Public broadcasting currently does not reach all inhabitants of Latvia, and it must be assessed negatively.
- In order to avoid the propaganda opposed to the statehood of Latvia, critical thinking and skills of using media should be promoted among the populace. On promotion of this skill should responsibly think every resident of Latvia according to his or her competence.
- The National Electronic Mass Media Council should ensure that assessment is made in a timely manner and mess media are punished for hate speech and reflecting unilateral information on issues essential to society.
- Politicians should be responsible regarding strengthening of mass media. Unfortunately, budget for 2016 has decreased funding in comparison with 2015, and it is an obvious violation of law, because Section 70, Paragraph 1, Clause 1 of Electronic Mass Media Law stipulates that a State budget subsidy for the implementation of the public service remit, may not be less than that for the previous year.
- In the media environment, especially internet, violations of ethics, personal data are often found. The problem is exacerbated by the fact that many internet portals don't see themselves as media, thus stating that regulatory enactments regulating the

media environment do not apply to them. Such violations can be much less observed in public media.

- The National Electronic Mass Media Council is the holder of public media shares and regulator of media environment of the whole Latvia. By uniting these two functions the conflict of interests is inescapable. The representatives of the Council have admitted it themselves.
- A thought of Ombudsman for the media is to be considered, and it would promote the improvement of media environment according to human rights.

5.3. Opinions to Constitutional Court

5.3.1. Opinion on placement of the national flag of Latvia on private house

Within the reporting period the Ombudsman was asked to provide an opinion to the Constitutional Court in the case No. 2015-01-01 "On Compliance of Section 7, Paragraphs one and two of the Law on the National Flag of Latvia and Section 201^{43} of Latvian Administrative Violations Code with Section 100 of the Constitution of the Republic of Latvia". The applicant contested the obligation prescribed by the law to place the national flag on private houses.

Annotation of the law mentions that obligation to continually use the national flag of Latvia on the buildings of sector ministries and local governments was prescribed in order to promote the use of state symbols of Latvia by society and to strengthen the national awareness. It may be concluded thus, that the idea on promotion of national awareness applies to private persons as well. Namely, a strong national awareness strengthens the democratic state system as well and indirectly could promote the welfare of society.

While assessing the necessity of the current restriction in democratic society, also its social necessity and proportion were analysed. By observing the proportion of the specific restriction it may be concluded that restriction was set with a purpose to promote national awareness, to remember historical events of importance to society, and is aimed at recognition and development of society's values.

On November 18, the Proclamation Day of the Republic of Latvia was celebrated in Latvia. But on May 4 we remember the Day of Restoration of Independence of the Republic of Latvia because on 4 May 1990 was proclaimed the Declaration on Restoration of Independence of the Republic of Latvia. To a numerically large part of population who arrived in Latvia after 1940 and to their descendants due to logical

considerations these are not historical memories, thus the rest of the Latvian society and state even has an obligation to explain the importance of certain historical facts and dates. Placement of the national flag of Latvia on November 18 and May 4 on buildings of the state and local governments, and on residential houses of private persons would promote the national awareness and belonging to this country. Placement of the national flag would promote commemoration of these fundamentally significant events in the history of Latvia.

At the same time it should be pointed out that over the time many historical events have taken place in Latvia, commemoration of which causes various attitudes among population. Currently individuals are denied the opportunity to express their views and attitude towards these historical events freely, thus restricting the freedom of expression of these persons. On these dates (March 25, June 14, June 17, July 4, and on first Sunday of December in mourning presentation, as well as on May 1, August 21, November 11) it is not possible to find the suitability of restriction because the purposes may be reached with less restrictive means. A situation has formed that private persons on days determined by the law often raise the flag on the buildings owned by them not due to their patriotism in commemoration of a historical event or in solidarity with the victims of the specific event, but rather in fear of possible administrative fine, and it does not promote national awareness and strengthening of democratic system.

The same way it is impossible to detect the necessity for the restriction because its goal could be reached by other means. Promotion of commemoration of historical events might be implemented, for instance, by informing the population on historical events, explaining the importance of these events in the history of Latvia and the world and development of society's values, as well as invitations to remember and honour these events by placing the national flag of Latvia. By evaluating the necessity of the implemented means, it may be concluded that means mentioned in the previous clause might be just as effective and would place less restrictions on fundamental rights. Thus the chosen means may not be considered appropriate to the criteria of necessity.

In the opinion of the Ombudsman, administrative penalty imposed according to Section 201.43 of LAVC for failure to place the national flag should be kept regarding two dates - November 18 and May 4 - yet the amount of the fine may be discussed. Currently the administrative fine is sufficiently severe, and sometimes owners of the buildings who are elderly people or do not live in the buildings owned by them for long

periods of time, may not be able to fulfil the duty of raising the flag due to objective reasons.

By taking into consideration the above, it may be concluded that regulation on raising the national flag on the residential houses of private persons prescribed by Section 7, Paragraph one of the Law on National Flag of Latvia on May 1, August 21, November 11, as well as Section 7, Paragraph two of the Law on National Flag of Latvia - on March 25, June 14, June 17, July 4, and the first Sunday of December server a legitimate purpose. However, restriction should not be considered as proportionate and necessary in a democratic society. There are other means that might be just as effective and would place fewer restrictions on fundamental rights. Thus the mentioned restriction cannot exist in a democratic state.

However, November 18 and May 4 are dates that were crucial to formation and restoration history of independent Republic of Latvia. Therefore, according to opinion of the Ombudsman, the obligation to place the flag of Latvia on these dates should definitely be kept regarding the buildings of public persons, buildings of private rights legal entities and associations of persons, and the residential buildings of private persons.

5.3.2. Opinion in the case on compliance of Section 11.^{6}, Paragraph one of Judicial Disciplinary Liability Law with Section 100 of the Constitution

Within the reporting period, the Ombudsman provided an opinion also in case No. 2015-06-01 "On Compliance of Section 11.^{6}, Paragraph one of Judicial Disciplinary Liability Law with Section 100 of the Constitution".

The mentioned provision lays a prohibition on persons who have available the materials of a disciplinary case initiated against a judge of disclosure of the information regarding these materials until the moment when the disciplinary board makes a decision. The Ombudsman acknowledged that interest of society to know of possible violations in activity of judiciary system is not to be viewed as simple curiosity but rather as a legitimate interest. By observing the above, the Ombudsman agreed with the applicant - Administrative Affairs Department of Higher Court, by expressing opinion that Section 11.^{6}, Paragraph one of Judicial Disciplinary Liability Law does not comply with Section 100 of the Constitution.

In the opinion of the Ombudsman, the disclosure of information should not be applied in similar amount to all situations. Yet, by prescribing a complete prohibition on disclosure of any information regarding the initiated disciplinary case and without setting

any specific criteria for provision of information, including not provided by the judge him or herself against whom the disciplinary case has been initiated, restriction on the right to request disclosure of information cannot be viewed as proportionate.

5.3.3. Opinion in the case on compliance of transitional provisions of Electronic Mass Media Law with the Constitution

Within the reporting period opinion was provided to the Constitutional Court in the case No. 2015-15-01 "On compliance of Section 27 of transitional provisions of Electronic Mass Media Law with Section 1, first sentence and Section 105 of the Constitution of the Republic of Latvia".

By the mentioned regulatory enactment the provisions are changed regarding issued broadcasting permits, thus stipulating that radio stations whose broadcast in the official language exceeds 50% are obliged to re-register the issued permit starting by 1 January 2015 in order to broadcast only in official language.

The Ombudsman acknowledged that essential interests of society may justify the restriction on person's rights to freedom of speech and ownership, including by amendments to regulation that defines the requirements for radio program broadcasts thus respectively restricting the use of rights. However, also in this case it is necessary to assess the applicability of the specific regulation for reaching the legitimate purpose, as well as its proportion by paying attention to the legal trust of the person in the use of rights assigned by the administrative act - the broadcast permit. Only immediate interest of society to apply the accepted regulation to issued broadcast permits may justify a significant restriction of person's rights.

In this case, the immediate interest is not unanimous, especially by taking into account that regulations of transitional provisions of Electronic Mass Media Law are not consistent in stipulating that electronic mass media that this far broadcasted in official language less than 50% of the programs the right to broadcast only in a foreign language hereafter. The same way, the opinion of the Ombudsman is that a regulation is possible that in order to reach the legitimate purpose would less infringe upon the rights or legal interests of the applicant of constitutional complaint. Situations when programs are broadcasted in official language only at night, but during the day broadcast takes place only in a foreign language may be prevented by a request to broadcast the radio program in specific hours of transmission time both in official language and foreign language in equal parts.

5.4. Filming of Officials

In 2015, DSI asked the opinion of the Ombudsman on the right of the private person in various situations and for various purposes to obtain photographs of an official. Without assessing the circumstances of a specific case, the Ombudsman pointed out that Section 96 of the Constitution and Section 8 of CPHRFF stipulate that everyone has a right to inviolability of their private and family life, home and correspondence. The concept of private life involves such elements as person's name or image. Yet, it should be considered that by fulfilling the official duties, an official performs the functions of the institution and implements the state authority.

Person who of their own will participates in the area of public rights may not require for themselves the same attitude as a private person who has a right to anonymity. The right of society to obtain information in certain circumstances may refer also to separate aspects of private life of public persons.

There is a difference between the protection level of rights to private life of politicians, officials and private persons. Furthermore, at the time of fulfilling official duties, the officials are assigned special rights as well as special obligations and restrictions. Officials in state service have high requirements for ethics and conduct, execution of which is applied also to the time when the persons are not fulfilling the duties of office. Restrictions of fundamental rights are also in force, regardless of whether the person at the specific moment is fulfilling official duties in a broader sense of this concept, or not. Necessity to restrict the person's right to obtain information and express opinion must be convincing, namely, there must be genuine interest of society.

Acquisition of information on officials who ensure secretive execution of public order and national security functions by the private person may negatively affect the efficiency of activity of this institution. Respectively, free acquisition and access of such information is not in the interest of the state and society.

At the same time it is in the interest of society to prevent or stop unlawful action of an official regardless of the time it is committed. The responsible institution should perform comprehensive assessment of circumstances regarding violation of law detected by the private person. The institution should fulfil the mention obligation even when for

some reason this private person has chosen to publish this information even though no infringement of interests and rights of a specific person has taken place.

The right to express the opinion and discussion in policy area would be endangered if public officials would be able to limit (censor) them by referring to protection of their private rights. Furthermore, by using the authorisation assigned to the office for protection of their private rights, the official may have conflict of interest, namely, use public power (position of office) in personal interests.

It should be considered that actions of an official are not always legal or ethical. Moreover, court in judicature assigns a high degree of believability to testimonies of officials if no illegal action or interest has been detected on their part. In case of disagreements, recording done by technical means may provide a more comprehensive and objective information on circumstances of the event rather than any other way of recording the action. By taking into account the above mentioned, as well as the circumstance that individual in relationship with the state, for instance, during interrogation, objectively is a weaker party, absolute prohibition to the private person to record the action of official in any way if the institution itself does not record this action, should be considered as a disproportionate restriction of fundamental rights because it would deny an effective way of protection of interests.

At the same time it should be emphasised that any person even one recognised by society should have an opportunity to legitimate expectations that their private life will be protected. In the opinion of the Ombudsman, in order to ensure a reasonable balance between protection of private life and freedom of speech it is crucial if the published article or photograph contributes to a discussion that is significant to society. Thus, information on the activity of official outside the duties of office may be assessed from the viewpoint of legal interest of society. The mentioned interest includes the activities of the person that in any way are connected with execution of official duties in the area of public rights. However, curiosity of an individual person or a group of persons, as well as commercial interest of a newspaper or publication is not to be considered a legal interest of society and may not serve to justify the restriction of the official's rights to private life outside the time of execution of official duties. Thus, in such cases the right of the private person to acquisition of information may be restricted.

6. Rights of Foreign Nationals, Status and Rights of Asylum Seekers and Internationally Protected Persons

6.1. Characterisation of Submissions

In 2015 the trend still continued that the Ombudsman's Office received a small number of submissions from foreign nationals and persons having requested and received international protection. In comparison with the previous years, such persons came more actively to the Office for help who do not have a citizenship in any country and who lived in the territory of Latvia illegally for a long time, as well as persons who asked for advice regarding refusal to issue a residence permit in the Republic of Latvia to the spouses who were foreigners.

In 2015, three persons addressed our Office with submissions for aid in legalisation of non-citizen's status, and the same number of submissions regarding the compliance with the rights of foreigners in the Republic of Latvia was received. Mostly above mentioned persons were invited to turn to OCMA with a submission on assigning the status of a non-citizen or in court in order to contest the refusal to issue a residence permit.

With submissions for aid within the framework of asylum procedure two foreigners turned to Ombudsman's Office in 2015. In 2015, the Ombudsman initiated a verification procedure No. 2015-37-8G on the basis of submissions on insufficient amount of expenses for purchase of subsistence, hygiene and basic necessities for asylum seekers; the rights to information; efficiency of project implementation; lack of leisure activities for teenagers; failure to provide clothing and shoes; as well as unkind and deprecatory attitude of staff of accommodation centre for asylum seekers "Mucenieki" towards the inhabitants of the centre.

In the course of verification procedure several deficiencies were detected in the work of the centre "Mucenieki" and OCMA, as well as deficiencies in the regulatory framework. One of the main conclusions of the verification procedure regarding the amount for purchase of subsistence, hygiene and basic necessities, 2.15 Euros a day or 64.50 Euros per month, is not enough to provide a standard of living enabling the person to live in dignity and according to the condition of health, as well as staying in the centre, since it is lower than the actual minimum subsistence amount existing in the country.

Ministry of Welfare pointed out that according to Directive 2013/33/EU the guaranteed minimum subsistence level for the Latvian national may be adapted to the part

of material conditions to be ensured to asylum seeker regarding food and clothing. Thus, the amount could be set at 1.66 per day.

At the same time, the Ministry of Welfare recognised that on a national level the defined minimum income levels in regulatory enactments have been defined not on the basis of any specific methodology, but by taking into account the financial capacity of state and local governments at the specific time. Currently no methodology has been developed in Latvia that would determine a real minimum income level in the country, thus it is not clear according to what criteria, for instance, the benefit has been set for ensuring the guaranteed minimum income level.

By taking into account the above mentioned, opinion of the Ministry of Welfare is difficult to oppose, because Article 17, Paragraph five of Directive2013/33/EU states that amount of material conditions of receipt shall be determined on the basis of levels set by each member state not only in legal acts but also in practice in order to ensure sufficient standard of living for the nationals of the country. Amount of minimum guaranteed level that may currently be used (official data) is annual risk of poverty threshold (260.17 euro per month) calculated by Central Statistical Bureau and minimum subsistence calculations of December 2013, which is 252.19 euro. Thus, Ministry of Welfare was invited to repeatedly evaluate increase of amount of expenses for the purchase of subsistence, hygiene and basic necessities for asylum seekers; and Ministry of Internal Affairs was asked to initiate amendments to Cabinet regulations No. 24 of 12 January 2010 "Regulations Regarding the Amount of Expenses for the Purchase of Subsistence, Hygiene and Basic Necessities for Asylum Seekers and the Procedures for Covering of these Expenses".

In his opinion the Ombudsman turned the attention of competent institutions to elimination of such deficiencies as accessibility of information on asylum procedure, rights and duties during this procedure, and competence of institutions involved in asylum procedure. UN High Commissioner for Refugees has acknowledged that provision of information should be effective, such that person would fully understand it and would be able to be fully involved in the procedure of asylum. Taking into consideration that the centre "Mucenieki" has available the Cabinet regulations No. 173 in Latvian, English, French, Arabic, Georgian, and Russian, and Cabinet regulations No. 24 in Latvian and English, the centre "Mucenieki" were invited to check regularly if regulations are available to asylum seekers by placing them on information board.

Complaints of inhabitants of the centre "Mucenieki" on inconsiderate content and quantity of food packages and sets of hygiene items did not prove effective implementation of ERF project regarding food and hygiene packages because the issued goods were not usefully applied, and as a result the asylum seekers had formed stores of goods. The Ombudsman invited to put together the content of food and hygiene packages so that its use would be effectively implemented: in volume and quantity (compliance with the indicator of quantity), combination of specification and characteristics of item or service in a way that would determine the ability to satisfy certain or expected needs (compliance with the indicator of quality). In order to develop the content of packages, it was suggested to form cooperation with the Ministry of Health, Ministry of Agriculture, and Ministry of Culture (as a responsible institution that implements the state policy in the area of integrated society and facilitates development of civil society and cross-cultural dialogue), as well as Food and Veterinary Service.

In accordance with Article 30, Paragraph one of Convention on the Rights of the Child, States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. During inspection of "Mucenieki" recommendations were made to inform the asylum seekers on possibilities of leisure, especially children's play room, library, playground, as well as provide the centre with wireless internet thus allowing all asylum seekers living at the centre to use internet because the room of the centre intended for this purpose has only four computers, and furthermore separate asylum seekers according to their cultural traditions are not allowed to be in the same room with unknown representative of the opposite sex.

According to Section 11, Paragraph 3 of the Ombudsman Law one of the functions of the Ombudsman is to assess and promote compliance with the principle of good governance in state administration. Taking into consideration that practice not compliant with the principle of good governance was discovered during inspection, the staff of the centre "Mucenieki" are invited to improve the quality of provided services by taking into consideration life experience of the asylum seekers and in communication with the inhabitants of the centre to avoid actions that might offend them, thus ensuring compliance with courteousness and the principle of good governance. Furthermore, attention was turned to the fact that processing of complaints promotes sustainable development, improvement of services and circumstances, as well as development of good practice. Thus, the staff of the centre are invited to be courteous and be tolerant

towards all inhabitants of the centre, including those, who turn to institutions with complaints.

On 16 November 2015, in response to opinion OCMA provided an explanation that it shall consider a possibility to establish wireless internet in the centre "Mucenieki", as well as within the framework of Asylum, Migration and Integration Fund 2014-2020 make an assessment of food and hygiene packages intended for asylum seekers in coordination with Ministry of Health, Ministry of Agriculture, Ministry of Culture, and Food and Veterinary Service.

In reaction to discovered insufficient amount of means for purchase of subsistence, hygiene and basic necessities, Ministry of Welfare pointed out that on 2 December 2015 Cabinet of Ministers gave an order No. 759 by which it approved "Action Plan for Transfer and Acceptance of Persons in Need of International Protection in Latvia". Section 3.5 of this document states that by 1 January 2017, Ministry of Welfare and Ministry of Internal Affairs should evaluate the opportunity to review the amount of benefit for purchase of subsistence, hygiene and basic necessities according to the concept "On Planned Actions of Determination of Minimum Income Level".

In 2016, one of the priorities set by the Ombudsman is to follow the implementation of Order 759 of the Cabinet of Ministers and informing the responsible institutions on the findings during monitoring visits.

6.2. Challenges of Integration of Internationally Protected Persons

In a similar way to a request to review the amount of funds allocated to asylum seekers for purchase of subsistence, hygiene and basic necessities, in 2015, the Ombudsman expressed his protest to the decision of the government to decrease benefits to internationally protected persons because such reduction may become contrary to international obligations assumed by the state.

As a full member state of the European Union Latvia has undertaken the obligation within the framework of social aid to provide without discrimination to internationally protected persons adequate social welfare and subsistence means in order to prevent social difficulties encountered by persons who seek aid outside their country of origin due to war conflicts, persecution, and threat to life. When assessing what are adequate subsistence means for internationally protected persons, in the initial stage of integration it is important to consider the fundamental needs arising to these persons. Currently effective Asylum Law and Cabinet regulations No. 210 "Regulations on Benefit to a Refugee and

Person Granted Subsidiary Status" stipulate that benefit is received only by those internationally protected persons who, firstly, do not have subsistence means, and secondly, persons receive this benefit only for a definite period of time: 9 - 12 months.

Grant of the benefit is aimed at covering the basic necessities: apartment rent and expenses for utilities, food and clothing, as well as for purchase of basic necessities. When reducing the amount of benefit the state may not reduce it so far as to deprive the persons of minimum subsistence means for ensuring existence worthy of dignity. Therefore, the Ombudsman invited not to reduce the amount of benefit for internationally protected persons because the research performed by the Office in 2013 shows social rejection in the mentioned group of vulnerable persons, critical condition in acquisition of subsistence means and inclusion in labour market, non-existence of state-wide effective and sustainable integration program. The Ombudsman reminds that similar conclusions have been mentioned in the research published by UN Refugee Agency in 2015 "*Integration of refugees in Latvia. Participation and Empowerment*".

On the basis of conclusions of previous research by the Office, the Ombudsman reminded in 2015 in a public space, and representatives of the Office participating in discussion of the draft law "Asylum Law" in Saeima reminded several times that by solving the consequences of refugee crisis and expected arrival of a large number of asylum seekers in Latvia in 2016, it is important that state would have an existent and effective mechanism for integration of internationally protected foreigners in society without creating a rejected part of society that might cause risks to the state, its development and security. For the purpose of integration of internationally protected persons in Latvia it is suggested to form not only a one-stop agency that would coordinate integration of these persons by developing for each person an individual integration plan (learning official language, in addition - professional skills, etc), but it is also possible to consider the necessity to implement an integration agreement that would be signed between an individual and state.

The Ombudsman draws attention to the fact that state is in need of not only political framework for integration, but also an institution that is able to ensure a long-term implementation of the mentioned document. Learning of official language and state system must be allocated sufficient funds, and the programme for learning these skills should be developed. The State must not allow the possibility that ranks of non-citizens and stateless persons may be increased by persons who have received international

protection and are not able to accept the order of the country and the necessity for integration.

Alongside the above mentioned it is important to note that in 2015 within the framework of draft law "Asylum Law" processed in the Saeima the Ombudsman asked to find an opportunity to include in Section 11 of the law a provision that by taking into account the special reception needs of the asylum seeker would guarantee assignment to minors of state-funded medical aid of all kinds refusal of provision of which would endanger the child's development and health.

6.3. On Deliberation of Draft Law of Repatriation

On 25 March 2015, the representative of the Ombudsman's Office participated in deliberation of draft law "Repatriation Law" in the Human Rights and Public Affairs Committee of the Saeima by expressing the opinion that the purpose of the effective Repatriation Law was and is the return to their native land of indigenous nation - the citizens of Latvia, Livs and their descendants. The plan of re-emigration that was at the basis of beginning the discussion for development of a new Repatriation Law encompasses a broader range of persons in comparison with subjects to which the effective Repatriation Law is applied. The attention of MPs was drawn to the fact that needs of economic emigrants and returning migrants are different, and the state should form a different approach and measures in order to promote return and integration of returning migrants and persons who had migrated within the last years.

If the state would choose to enhance the concept on returning migrants to include the economic migrants as well, it was recommended to review the list of family members of the returning migrant who are eligible to return with this person. The same way invitation was given in the process of solving the re-emigration problem to find out reasons that hold back the economic migrants from returning to their country, and to assess the usefulness of the amendments to the regulatory framework or to develop a new law that would solve specific problems fo emigrants. It was indicated that the suggested draft law applies social assistance and integration measures only to returning migrant, though a similar measures would be useful regarding his or her family members. Risks of abuse of the law were also discovered in the suggested draft law; it did not limit the number of times the person may request the status and receive material help upon return to the country.

7. On Observation of Forced Removals

7.1. General Information

In 2015, the Ombudsman continued execution of the functions stipulated by Section 50.[7] of Immigration Law - observing the forced removals. Within the reporting period the Ombudsman's Office finished development of guidelines for observation of forced removals, that being a part of EDF project. The same way the Ombudsman performed the survey of foreigners to be forcibly removed and inspection of their place of detention, especially paying attention to inspection of ACDF "Daugavpils" and short-term detention centres (hereinafter - STDC), as well as by participating in observation of actual removals. In 2015, a special emphasis was placed on observation of forced removed of vulnerable groups - minor unaccompanied foreigners, persons with reduced mobility, etc.

Within the reporting period the Ombudsman's Office received more than 400 notices of forced removals of foreigners, and it was possible to survey the third part of these persons to be removed.

By surveying the foreigners to be forcibly removed, in 2015 complaints on living conditions were received mostly regarding meals and overcrowding, lack of privacy during the examination by a doctor, and delayed issue of a decision.

Within the reporting period overcrowding of the centre "Daugavpils" was observed, but the responsible institutions tried to solve the problem as much and as quickly as possible by providing accommodations to the foreigners in Daugavpils STDC building by separating the detained foreigners from other detainees, as prescribed by Immigration Law.

When inspecting the centre and reviewing the menu, staff of the Ombudsman's Office did not find that the offered meals would be provided in insufficient amounts or of bad quality. However, similar to the previous reporting period, the observers still found that privacy was not being ensured during the examination by a doctor. The Ombudsman repeatedly drew the attention of State Border Guard (hereinafter - SBG) to the fact that according to provisions of CPT assurance of privacy during medical examinations in the police departments and other institutions of deprivation of liberty shall be observed to the same measure as outside the institutions of deprivation of liberty. Presence of other persons in the room with a patient and medical staff when medical examination is being performed or person is speaking with the medic should be justifiable only in cases when

examination cannot be performed without the aid of interpreter, there is a threat to the life and health of the patient or medical personnel, as well as in other emergency situations when such measures are objectively required.

Within the reporting period complaints were received from several citizens of Vietnam on quality of translation. By looking into the cases of the persons to be removed it was discovered that SBG had ensured the assistance of the interpreter to the foreigners when issuing the decision on removal. The observers cannot examine the fact if decisions on forced removal are fully translated or if only the essence of the decision has been explained to the foreigners to be deported and the most important sections translated. The Ombudsman recommended that SBG would pay attention to the quality of translation ensured by officials of State Border Guard and as much as possible ensure that persons to be removed have understood the translated decision, its consequences and procedure of appeal. Recommendation was given to avoid the practice when decisions to the persons to be deported are translated by inspectors themselves, not an interpreter hired by SBG.

The Ombudsman also recommended that OCMA and SBG would inform the foreigner to be removed in a timely manner both on making the decision about removal and the time of actual removal in order to provide a reasonable time period to appeal the decision if the person would express such a wish.

7.2. Return of Unaccompanied Minor Foreign Nationals to Their Country of Origin

In 2015, within the framework of project by European Return Fund "Development of Mechanisms for Forced Return Monitoring" Ombudsman performed a research on receipt and stay of unaccompanied minor foreign nationals in the Republic of Latvia, as well as their return to the country of origin.

On 7 May 2015, the Ombudsman organised a round table discussion on ensuring rights and interests of minor foreigners in Latvia without accompaniment of legal representatives, as well as possible deficiencies in the legal framework, including Cabinet regulations No. 707 of 16 December 2003 "Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians".

Participants of the discussion acknowledged that Regulations 707 are outdated and do not comply with current requirements. Contradictions between the provisions of these regulations and Immigration Law were also found. By taking into account the special status of unaccompanied minors, and the obligation of our state to especially protect the

rights of every child left without parental care, the Ombudsman asked the responsible institutions to improve the legal framework.

On 22 July 2015, the Ombudsman's Office received a response from the Ministry of Internal Affairs to the letter regarding unaccompanied foreign nationals, and therein the Ministry admitted that it would be useful to make amendments to the regulatory enactments regarding the legal framework on acceptance, maintenance and return to the country of origin of unaccompanied minor foreign nationals, as well as define the procedure for placement, maintenance and transfer of children to Juvenile Prevention Department. The Ministry explained that the problematic issue shall be solved in the context of execution of Governmental Action Plan (Order No. 78 of the Cabinet of Ministers, dated 16 February 2015) by preparing the new project of Immigration Law and improving the procedure for entry, stay, transit exit and detention of foreigners, as well as procedure for detention of foreigners in the Republic of Latvia and deportation thereof.

In 2015, when performing the survey of minors to be returned, as well as after looking into the personal files, it was found that minors are deported without complying with the Article 10, Paragraph 2 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. It stipulates that before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return. This provision is included in Section 50.[8], Paragraph three as well.

Thus, before an unaccompanied minor is deported from the territory of the member state, the institutions of the member state shall ensure that the minor is returned to his or her family member, guardian, or to appropriate reception facilities in the state of return. Otherwise the right of the minor to life, survival, and development, as well as the right to protection from all kinds of exploitation are endangered.

By taking into account the recommendations provided by the Ombudsman, SBG has changed the practice regarding application of Section 50.8, Paragraph three of Immigration Law. It is demonstrated by several examples provided below.

On 7 May 2015, the Ombudsman's Office received a decision of SBG on forced return of a minor - citizen of Russia. It was intended to escort the minor to the border crossing point of the Republic of Latvia - to Terehova I category border crossing point of Ludza Department of SBG and to deport from the country. The interviewed person stated

that they had no means to get from this point to home in Russia. The Ombudsman pointed out that return of this minor is not permissible without ensuring that the minor will be taken to the family member, guardian, or to appropriate reception facilities in the country of return. On 25 June 2015, the Ombudsman received information that on the basis of decision by the Head of SBG Daugavpils Department on forced return No.1, minor shall be deported in compliance with requirements of Section 50.8, Paragraph three of Immigration Law.

The same way, by interviewing several minors, citizens of Vietnam, it was found that SBG asks the minors about the identity of their parents and requests a confirmation that minor shall be met in Vietnam by the legal representative. Minors pointed out that legal representatives are informed and are ready to receive them in Vietnam.

By reading the materials of files of minors, citizens of Vietnam, it was found that these include letters from supposed legal representatives of minors; however, it is not possible to verify the origin of these letters (there is no date, signature and information of how and who has sent it). The Ombudsman indicated that such letters may not serve as a confirmation that minor foreign national shall be transferred to the legal representative in the receiving country.

Republic of Latvia and Socialist Republic of Vietnam have not concluded the agreement of international cooperation that would promote the compliance with requirements prescribed by Section 50.8, Paragraph three of Immigration Law. Ministry of Foreign Affairs provided information that at the beginning of 2015, a suggestion was repeatedly sent to the Socialist Republic of Vietnam with an offer to conclude an agreement on readmission of persons illegally staying in Latvia and the protocol of its implementation. No answer has been provided thus far. After a request of Ministry of Internal Affairs of 25 November 2015, Ministry of Foreign Affairs addressed the party of Vietnam again by sending an improved agreement and the draft protocol of its implementation. Thus, until the conclusion of agreement on international cooperation of the states the competent institutions of Latvia have limited possibilities to ensure transfer of the minor citizens of Vietnam to their family, guardian, or to appropriate reception facilities.

7.3. Accommodation Centre of Detained Foreigners "Daugavpils"

In 2015, the staff of the Ombudsman's Office performed repeated inspections of the centre. The management of the centre had to find a solution to the issue of overcrowdedness due to unexpectedly extensive illegal arrival of foreigners, especially citizens of Vietnam, in the country. The Ombudsman acknowledges that SBG managed to find an operative solution to the problem of accommodation for illegally arrived and detained foreigners by preparing additional detention rooms in Daugavpils STDC.

On 12 June 2015, the staff of the Ombudsman's Office and invited specialist with medical education inspected the centre in order to examine the provision of medical aid to the detained foreigners. Provision of medical aid in the centre was inspected, as well as medical cards of the deported foreigners, in order to ascertain that medical examination of persons to be returned has been performed before deportation.

Specialist invited by the Ombudsman's Office at the end of the visit concluded that health care in the centre "Daugavpils" is ensured according to the regulatory enactments of Latvia - detained persons are ensured initial health examination prescribed by the laws, and Sections 7., 8., 9.2.2., 10 of Cabinet regulations No. 742 of 15 September 2008 "Internal Procedure Regulations of the Accommodation Centre". It was found that entries in out-patient medical cards reflect performance of initial medical examination and further medical events; however convincing entries verifying examination of persons before discharge from the centre could not be found in inspected cards. Information was also verified that medics of the centre perform adequate health care of the persons who have gone on hunger strike; however methodology is necessary for such and other critical situations. The Ombudsman's Office has no basis to question and has no evidence that the medics of the centre do not perform the medical examination of the persons to be removed before deportation, or that it is only formal; however, attention of the infirmary and administration of the centre were drawn to the requirement to ensure on a mandatory basis before the actual removal that health condition of the person to be deported allows it to travel.

After the inspections of the centre, the Ombudsman recommended improving the awareness of detained foreigners on their rights, duties and procedures of the centre, providing various leisure activities, because most of the interviewed foreigners pointed out that they spend their leisure time watching TV or walking in open air. It was also recommended that knowledge of foreign languages, preferably several, as an essential criterion for selection of personnel and to promote learning and strengthening the knowledge of foreign languages.

7.4. State Police Short-term Detention Isolators

By letter No. 6-8/456 of 27 October 2014, the Ministry of Interior Affairs and SBG were informed on conclusions regarding the verification procedure No. 2012-237-5A that provided assessment of return of foreigners. Within the framework of the mentioned verification procedure by evaluating international legal provisions, ECHR practice and CPT standards it was discovered that holding of detained foreigners in police departments is permissible, yet such placement of persons in STDC of State Police must be based on a law, and terms for stay may not be overly lengthy.

From 24 October to 1 November 2014, the staff of the Ombudsman's Office visited nine departments of State Police in order to ascertain the practice of placement in STDC of persons to be returned. During the mentioned visits were inspected STDC of Alūksne and Valka departments of Vidzeme Regional Administration, Bauska department of Zemgale Regional Administration, Daugavpils and Rēzekne departments of Latgale Regional Administration, Ventspils, Saldus and Liepāja departments of Kurzeme Regional Administration, as well as Short-term Detention Bureau of Riga Regional Administration.

While visiting STDC of several departments - Riga, Liepāja, Rēzekne, Bauska, Saldus, and Valka - the staff of the Ombudsman's Office gained confirmation to the information that persons detained according to the procedures of Immigration Law are placed by SBG in STDC of State Police on the basis of interservice agreement. Section 58, Paragraph three of State Administration Structure Law stipulates that the competence of institutions laid down in regulatory enactments may not be delegated or altered by an interservice agreement. It was previously found that law does not provide that foreigners to be deported shall be placed in STDC of State Police. Thus interservice agreement of such content is contrary to the State Administration Structure Law.

During the visits the staff of the Ombudsman's Office found that STDC of the State Police do not have common practice of hygiene requirements and ensuring of order, organising meals and examination of correspondence. Separate STDC ensure more favourable conditions than the minimum prescribed by Law On the Procedures for Holding the Detained Persons, for instance, bedding, towel is issued, and it must be evaluated positively from the opinion of human rights.

On February 2015, the Ombudsman sent to the Ministry of Interior Affairs a report on monitoring visits to the short-term detention centres of State Police by inviting:

- State Police and SBG not to place foreigners detained according to the procedure stipulated by Immigration Law in STDC until respective amendments are accepted in the Law on the Procedures for Holding the Detained Persons;
- in case of acceptance of above mentioned amendments to ensure that foreigners placed in STDC of State Police have an equal amount of rights to what is prescribed by Cabinet regulations No. 742 of 15 September 2008 "Internal Procedure Regulations of the Accommodation Centre";
- to supplement Section 7, Paragraph four of Law on the Procedures for Holding the Detained Persons with a new clause three that would provide ensuring the placed persons with bedding and pillow, as well as an opportunity to receive a towel in case of attending the washing facilities (showers). Thus more favourable living conditions would be ensured to all persons placed in STDC of the State Police;
- supplement the Law on the Procedures for Holding the Detained Persons with a new section that would regulate the permissible length of stay of a person in STDC of State Police.

On 24 April 2015, the Ministry of Interior Affairs provided an answer to the report by stating that a draft law "Amendments to the Law on the Procedures for Holding the Detained Persons" has been developed intending to provide that a foreigner who has been detained according to the procedure of the Immigration Law may be placed in short-term detention centre in special cases and for a short term, except for less vulnerable groups; furthermore, it is intended that foreigners would be kept separately from the persons detained and arrested according to the procedure of Criminal Procedure Law. The draft law also provides that detained foreigners shall be ensured with the same rights as other persons held in STDC of the State Police, that they would have the right to a walk in fresh air lasting up to an hour, if the person is held for longer than 24 hours.

Ministry of Interior Affairs also stated that it is intended to determine delegation to the Cabinet of Ministers to define common requirements of hygiene in all short-term detention centres in order to reduce or eliminate possible harmful effect of environmental factors by guaranteeing environment that is safe and harmless to the health of persons. The amendments to the law are intended to not restrict the time for meeting a representative of diplomatic or consular representation alone and without limitation.

Since the beginning of 2015, the observers have not found that foreigners to be deported were held and accommodated in STDC of the State Police.

7.5. Observation of Actual Removals

In 2015, by participating in two removals the staff of the Ombudsman's Office continued to observe the actual removal of foreigners to be forcibly deported.

Observers of the Ombudsman's Office did not detect violations of SBG officials at the time of actual removals. Regarding the person to be removed and assurance of their rights could be observed professional attitude and individual approach. Communication of SBG officials with the persons to be removed was professional and friendly. Persons to be removed had an opportunity to turn to any of the border guards of the convoy with requests or questions that were heard and ensured as much as possible. Regarding transportation of luggage and travel were applied the same provisions as to the other passengers. No conflict situations or use of force were observed at the time of actual removals.

8. The Right to Freedom

In 2015 the Ombudsman's Office received 19 submissions from persons regarding criminal procedure decisions on application of security means. In most cases the persons were invited to use the mechanism of right protection included in Criminal Procedure Law - to appeal the decision on application of arrest or submit a request to review the necessity of further application of arrest if circumstances have changed substantially. However, in 2015, several verification procedures were processed regarding possible violations of the right to freedom.

Even though already in the report of 2013 emphasis was placed on problems regarding efficiency of periodic control of arrest, also in 2015 were discovered violations regarding this element of the right to freedom. In at least two of the verification procedures circumstances were found to which might be applied insights of ECHR judgment in the case *Urtāns v. Latvia* regarding the obligation of the court to justify the decision made within the framework of periodic control of arrest.

For instance, in verification procedure No. 2015-51-3E by assessing the decisions made in pre-litigation procedure and procedure of first instance court it was found that in the case of periodic control of arrest was not made a thorough examination of circumstances as in the initial decision on administration of arrest. Furthermore, as the relevance of initially discovered circumstances was reduced, other circumstances justifying the arrest were not assessed. Instead, the person was in custody almost for a

year, justifying it in the decision essentially only by the severity of committed criminal offence. From the content of the decisions (reference that basis for administration of arrest is still effective, that terms of administration of arrest were not violated) it may be concluded that the periodic control was performed formally. Argumentation of the decisions was not aimed at observing the presumption in the favour of release. Judgments of the court were made with the presumption that the person is to be held in custody because no circumstances for release were discovered, and not with a presumption that person should be released unless circumstances for keeping in custody are found.

In the specific procedure the terms for periodic control of arrest were also regularly not observed, and in general it pointed to a systemic problem in the work organisation of the respective court, and the report on it was sent to the president of the court.

In the verification procedure No. 2015-52-3D in addition to already mentioned circumstances on inclusion of general phrases in the decisions of the court attention was drawn to the circumstance that previous conviction of the person according to ECHR practice does not mean that there are reasonable doubts that the person shall commit criminal offence repeatedly because the institutions should have available specific information on a specific offence. Furthermore, in the reviewed verification procedure even after the offence of the convict was re-qualified from a very serious offence to a less serious, it was stated in the decision on further administration of security means that circumstances that served as basis for extension of the term of arrest have not changed. Yet the facts available in the case show that these circumstances had changed during the criminal procedure, and thus they should have been assessed especially thoroughly by paying attention to reflecting motivation for the decisions made. It was also discovered in the specific case that maximum term for arrest was violated that could have been administered to the person until the time of being held to criminal liability. This finding was connected with the fact that harmonisation of the prosecutor for extension of the arrest term was not fully established in the materials of the criminal procedure, thus it was not to be considered legal and in compliance with human rights.

In 2015, the issue was also assessed on the fact that after making the judgement of the court of appeal it is impossible to appeal security means - arrest - administered for the first time. In response to the person's submission it was emphasised that both in Criminal Procedure Law and CPHRFF status of the person is taken into account when applying arrest in the pre-litigation process or applying arrest according to convicting judgment of the court, even if it has not yet become effective.

Namely, according to ECHR practice, it is primarily acknowledged that according to Article 5, Paragraph four of the Convention control after making the decision after the first instance court is performed by assessing the administration of the security means in the judgment of the court; this is also confirmed by decision of ECHR of 23 July 2015 in the case *Pancers v. Latvia*. However, it cannot be denied that member states of European Council are eligible to include in its national framework the requirements that intend higher guarantees of human rights than prescribed by ECHR practice when interpreting the content of Article 5 of CPHRFF.

Already in 2008, the Ombudsman provided opinion on draft amendments No. 192/Lp9 to Criminal Procedure Law prepared by the Ministry of Justice by drawing attention to the circumstance that amendments to the Criminal Procedure Law should be supported by determining equal provisions in all court instances for implementation of periodic control of arrest. Also cassation instance would be in need of periodic control of arrest, if case may not be processed within the period of two months since its transfer to the court.

9. Observation of Human Trafficking

In 2015, to the Ombudsman's attention came only one minor who was acknowledged as a victim of human trafficking, yet it does not mean that the relevance of the topic in society has lessened. Victims of human trafficking still do not always report on cases, and it hinders investigation of the offences and punishment of responsible persons according to the criminal procedures. Historically the Ombudsman's Office has had a practice to organise educational activities for combating human trafficking, including implementation of society awareness campaign "Gards kumosiņš" (Delicious Bite) in 2014, and such activities have been planned also in 2016.

In prevention of human trafficking it is important to promote a successful coordination between responsible institutions by ensuring timely identification of victims of human trafficking, effective use of protection mechanisms of the person's rights, and informing victims on availability of protection mechanisms. In 2015 as well the representatives of the Ombudsman's Office have participated in meetings of working group for coordination of implementation of "Framework for Human Trafficking Prevention 2014 - 2020" coordinated by the Ministry of Internal Affairs. Therein it is possible to raise the detected problematic issues among the representatives of responsible

institutions, learn of the experience of other institutions, and search for common solutions for combating human trafficking.

Regarding accessibility of effective protection mechanism for victims in 2015 was detected a problem in the procedure of public procurement organised by the Ministry of Welfare on social rehabilitation and provision of support measures. By the beginning of 2015 the procurement agreement on social rehabilitation and provision of support measures to victims of human trafficking was not yet concluded with the winner of procurement; however, the agreement was already terminated with the provider of previous services. After receiving information in February 2015, the Ombudsman addressed a letter to the Ministry of Welfare asking them to take immediate action in order to ensure necessary services of social rehabilitation and support for all victims of human trafficking in need of it. Even though it was explained that problems were caused by the weighty public procurement procedure, and as a result the procurement agreement was concluded only on 6 March 2015, the Ombudsman emphasises that responsible ministry is obliged to ensure a timely process of procurement procedure in order to prevent recurrence of such a situation in future.

The same way, by performing interviews of persons within the framework of the return process of illegal immigrants, in spring of 2015 the staff of the Ombudsman's Office have identified the mentioned persons as a risk group when assessing the aspects of vulnerability. In connection with detected characteristics, in June of 2015 the Ombudsman invited to the meeting provider of rehabilitation services - resource centre for women "Marta" - and drew the attention of working group for coordination of implementation of "Framework for Human Trafficking Prevention 2014 - 2020" to the detected characteristics. The Ombudsman invited the responsible institutions to pay special attention to identification of possible victims of human trafficking among illegal immigrants and asylum seekers, and to coordination with the provider of rehabilitation services.

Risks of human trafficking can frequently be identified in connection with providing prostitution services, and already at the moment the Criminal Law prescribes liability for souteneurism, involving a person in prostitution, use of prostitution by a minor, or sending a person for sexual abuse. However, adults are not prohibited from providing prostitution services for charge, and the state may only provide restrictions to providing such services by the means of regulatory framework.

At the beginning of 2015, the Ombudsman was invited to provide an opinion on amendments prepared by the Ministry of Interior Affairs to Cabinet regulations No. 32 of 22 January 2008 "Regulations Regarding Restriction of Prostitution". By assessing the draft amendments, the Ombudsman expressed the opinion that currently included restrictions of human rights included in Cabinet regulations should be defined at the level of law and not the Cabinet regulations. On the basis of opinion expressed by non-governmental organisations and the Ombudsman, under the care of the Ministry of Internal Affairs has been formed a working group for development of draft law for restrictions of prostitution.

III. Developments and Problems in the Area of Social, Economic and Cultural Rights

1. The Right to Social Security

Within the reporting period the Ombudsman continued actively to follow the determination of the government to reduce poverty by paying attention to most vulnerable categories of population, such as deprived persons, the disadvantaged, persons in social care centres, and persons with disabilities.

As his task in the protection of social rights the Ombudsman has set the necessity to repeatedly draw the attention of the state government to fundamental elements of social rights - to create such conditions of life and labour for the population that these would ensure to each person a dignified life at least at the minimum level, by placing emphasis on the fact that in the area of social and economic rights individual has no opportunity to receive any reimbursements contrary to how it is in the area of civil and political rights where in order to protect their rights person may turn to ECHR, for instance.

Within the reporting period, the Ombudsman also addressed the State President[127] of Latvia pointing out the most pressing issues: high risk of poverty, inaccessible health care, and infringements of the right to housing. The Ombudsman emphasised: mostly it may be found that ministries of the sector mostly admit the existence of the problem and turn to the government with a respective request for the budget. However, when setting the priorities year after year the government finds other more important sectors to state development than social security, accessible health care, and welfare of population, thus solving the problems of the social area at a minimum level or actually leaving it up to the inhabitants themselves. The Ombudsman pointed out that due to such attitude it is difficult to acknowledge that social justice in Latvia would be implemented not only in word, but also in deed.

[127] Letter No. 1-12/5 of the Ombudsman dated 14 July 2015, to the prezident of the Republic of Latvia. Available: http://www.tiesibsargs.lv/sakumlapa/tiesibsargs-nosuta-vestuli-par-socialo-taisnigumu-valsts-prezidentam

1.1. Amendments to Law "On State Funded Pensions"

During the reporting period the Ombudsman continued to follow the verification procedure No. 2011-276-17AA[128] processed in the first half of 2014 on execution of recommendations given regarding the negative impact of the insurance contribution wage index on retirement pensions (hereinafter also - capital index)

In the opinion the Ombudsman concluded that effect of negative capital index on retirement pensions is unfair and non-compliant with Sections 1, 91, 105, and 109 of the Constitution. Thus, the Ombudsman recommended:

1) to the Saeima: make amendments in Section 12 of the Law on State Funded Pensions by supplementing it with a new paragraph in such wording: "If annual insurance contribution wage index is lower than number "1", the pension capital of the insured person shall be updated with index "1"", and Section 13 of transitional provisions of the Law on State Funded Pensions supplemented by a new paragraph in such wording: "If annual insurance contribution wage index is lower than number "1", the initial pension capital of the insured person shall be updated with index "1"", thus providing that in future the amount of pensions will not be affected by negative capital indices.

2) to the Cabinet of Ministers - develop a compensating mechanism in order to prevent the consequences created by the negative capital indices on pensioners whose fundamental rights are currently restricted due to implementation of the respective index.

Already in the report of 2014 of the Ombudsman it was indicated that the Cabinet of Ministers undertook[129] in May 2014 to change the legal framework of negative capital indices by 1 January 2016 and to obtain recalculation of pensions by 1 January 2016.

By taking into account the commitment of the government, on 9 December 2014, the Ombudsman sent a request to the Cabinet of Ministers asking them to provide information on the course of implementation of recommendations. In the session of 13 January 2015, the Cabinet of Ministers viewed the request[130] of the Ombudsman and in a response article stated that Ministry of Welfare is working on amendments to the Law on State Funded Pensions intended to solve the issue of effect the negative capital indeces have on amount of pension. The government made a commitment to submit the mentioned amendments to the State Chancellery by 30 March 2015.

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[128] Full text of the opinion is available on the internet website of the Ombudsman's Office: http://www.tiesibsargs.lv/files/content/atzinumi/Atzinums_Pensiju_kapitala_indekss_02042014.pdf

[129] Available: http://www.mk.gov.lv/lv/mk/tap/?pid=40319394&mode=mk&date=2014-05-13

[130] Available: http://tap.mk.gov.lv/lv/mk/tap/?pid=40342668&mode=mk&date=2015-01-13

On 19 February 2015, at the meeting of State secretaries (VSS-148) was announced a draft law[131] "Amendments to the Law on State Funded Pensions" that provided specific solutions to the problematic situation analysed in the opinion. Cabinet of Ministers discussed this draft law in the time period from 5 May 2015 to 19 May 2015. Coalition of the government assessed these amendments in the context of the state budget for 2016 and further years[132]. As a result, the government supported changes provided in the draft law "Amendments to the Law on State Funded Pensions" by the Ministry of Welfare regarding prevention of negative capital index in future, yet did not support the necessity of recalculation of retirement pensions for persons whose pensions are affected by the negative capital index by postponing the decision on this issue to the third quarter of 2015, namely, to the time when the state budget for 2016 would be assessed.[133]

Regardless of this decision on the part of the government, discussions on changes provided in the draft law "Amendments to the Law on State Funded Pensions" regarding the necessity of recalculation of retirement pensions for persons whose pensions are affected by the negative capital index were continued in the Saeima.[134]

As a result, on 18 June 2015, law "On Amendments to the Law on State Funded Pensions"[135] was accepted (entered into force on 1 July 2015), supplementing the transitional provisions of the Law on State Funded Pensions with the following provision: "Pensions of persons whose retirement, service or survivor's pensions were granted or recalculated according to this law from 1 January 2010 to 31 December 2015, shall be reviewed by recalculating the initial capital of the pension and the capital of the pension according to provisions of Section 12, Paragraph four of this law by observing the following provisions:

1) pensions shall be recalculated beginning with 1 January 2016;

2) pensions to be reviewed in specific years, and provisions of review shall be determined by the annual state budget law and medium-term budget framework law, taking into account the budget context.

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[131] Draft law and annotation available: http://tap.mk.gov.lv/lv/mk/tap/?pid=40348566

[132] Available: http://tap.mk.gov.lv/lv/mk/tap/?dateFrom=2014-07-01&dateTo=2015-07-01&text=Par+valsts+pensij%C4%81m&org=0&area=0&type=0

[133] Extract of the protocol of the Cabinet of Ministers, draft law submitted to the Saeima, and its annotation. Available: http://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/C31CBED7BAE8551BC2257E50002625A0?OpenDocument

[134] See more on the course of the review of the draft law. Available: http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/webSasaiste?OpenView&restricttocategory=265/Lp12

[135] Available: http://likumi.lv/ta/id/274899-grozijumi-likuma-par-valsts-pensijam-

3) when recalculating the initial capital of the pension and capital of the pension, in updates the insurance contribution wage indices for 2009, 2010, and 2011 shall be replaced with number "1" and in the following years the indices calculated for pension capital updates that exceed number "1" shall be replaced with index "1" up to the year when the multiplication of negative indices of previous years and following positive indices exceed number "1". In that year for update of pension capital shall be applied insurance contribution wage index formed by multiplication of negative indices of previous years and positive indices of following years;

4) amount of the pension after recalculation shall not be smaller than amount of previously received pension.

From the mentioned legal provision it may be concluded that, firstly, beginning with 1 January 2016, the state shall gradually begin recalculation of retirement pensions for persons whose pensions were affected by the negative capital index. Secondly, the amount and procedure for recalculation shall be additionally regulated by the annual state budget law and medium-term budget framework law, taking into account the budget context. It means that issue on calculation of retirement pensions for the mentioned persons every year shall be harmonised with the state budget.

It must be acknowledged that by amendments to the Law on State Funded Pensions the state generally eliminated the deficiencies in retirement pension system regarding prevention of negative capital index in future and pointed out in the opinion of the Ombudsman. At the same time it should be emphasised: even though by these amendments the state has undertaken to recalculate the retirement pensions for persons whose pensions are affected by negative capital index, a fact that may be evaluated positively from the viewpoint of legitimate expectations; however, by these amendments the legitimate expectation has not been defined clearly enough, namely, a clear term has not been set for the period when recalculation of retirement pensions shall be performed, and there is no procedure clarifying the persons whose pensions shall be recalculated first, and whose pensions shall be recalculated later. The mentioned issues are subject to traditional excuse of the state budget context.

Furthermore, in order to attain acceptance of amendments to regulatory enactments essential to the population of Latvia and in order for the recommendations of the Ombudsman to be implemented in the legal provisions, it took one and a half years. It should be added that currently relevant is the issue of quality and legitimacy of these amendments because according to application of twenty members of parliament of 12th

Saeima (Application No. 151/2015)[136] on 24 September 2015, the Constitutional Court has initiated the case "On compliance of Section 12, Paragraph one of the Law on State Funded Pensions as far as it provides use of index lower than "1" for update of pension capital, and Section 65.2 of transitional provisions to the first sentence of Section 91 of the Constitution, as well as Sections 105 and 109".

1.2. On Access to Social Rehabilitation Services

In verification procedure the Ombudsman analysed a situation when Social Integration State Agency did not ensure the person an opportunity to receive a social rehabilitation course due to long queues. The person reached the age of retirement, thus automatically followed exclusion from the queue. Furthermore, the person was not able to find out his/her number in the queue.

The Ombudsman pointed out that rehabilitation course for the person was not ensured in a reasonable term after submission of necessary documentation to agency, namely, due to limited financial means of the state, not because of the person's fault. The Ombudsman drew attention to the fact that issues of queue procedures and access to services have been viewed by the Ombudsman's Office before. Thus, according to the opinion of the Ombudsman, when solving issues of ensuring rehabilitation and technical aids, it is necessary to provide appropriate funding and thoroughly evaluate the necessity and efficiency of provided services. By denying the possibility to receive necessary aid or social rehabilitation service in a timely manner, the person's health only worsens and social integration of the person into society is delayed.

The Ombudsman drew attention to the fact that State Administration Structure Law provides formation of such state administration system and procedure that would be easily accessible and understandable to a private person, especially regarding the protection of rights and interests of the private person. In addition, the Ombudsman pointed out that "in order to be able to judge if people are satisfied with the activity of state administration, there must be possibilities to safeguard the rights of the population, i.e., the rights of a citizen to turn to the state authority with various complaints and requests indicating to deficiencies of existing procedures."[137] The Ombudsman emphasised that the current system that person does not receive information on its place in the queue on the basis of

[136] Available: http://www.satv.tiesa.gov.lv/upload/lem_ierosin_2015_21.pdf
[137] Commentary on the Constitution of the Republic of Latvia. Chapter VII. Fundamental Human Rights. Latvijas Vēstnesis. 2011. Riga. p. 451.

possible increase of complaints is advantageous and convenient to the Agency and not to the private person who is placed in the mentioned queue and would like to receive information regarding themselves. Thus, the current system is not open, accesible and clear to the private person.

The Ombudsman also emphasised the fact that according to first sentence of Section 10, Paragraph three of the State Administration Structure Law, state administration acts in the interests of the society. Thus, argument about the increase of the number of complaints is not correct and corresponding to the principle of good governance. The Ombudsman stated: if institution of state administration makes decisions or actions that are legal and corresponding to the regulatory enactments, there is no basis to deny the private person the right to information that would explain and justify the actions of the institution of state administration taken regarding the specific private person.

The Ombudsman made the following recommendations to the Agency:

1) in cooperation with the Ministry of Welfare to provide the opportunity for the persons to receive social rehabilitation services within a reasonable term in the time when it is necessary;

2) provide an opportunity for its clients to find out their place or number in the queue.

Ministry of Welfare informed that in 2015 the average time of waiting in the queue for receipt of social rehabilitation services was 2 years and 3 months. On 1 September 2015, the Cabinet of Ministers reviewed the conceptual report prepared by the Ministry of Welfare and made a decision to assign additional funds amounting to 754,792 euro in 2017 in order to ensure social rehabilitation services to 1140 persons. The mentioned financial means are intended in order to annually provide additional social rehabilitation services to 855 persons with functional disabilities who have requested the rehabilitation service for the first time; for 114 persons with functional disabilities who have requested hte services repeatedly; and to 171 politically repressed persons and Chernobyl nuclear power plant accident relief participants and victims of the accident. Ministry of Welfare believed that the above mentioned measures would ensure gradual execution of the recommendation given by the Ombudsman.

Ministry of Welfare also noted that Agency has provided an opportunity for its clients to find out their number in the queue because in the information system it is possible to follow the queue number in the form of report that shows the current information at the moment of its viewing. The report may be saved manually, and it is

also automatically saved on the first date of every month, thus providing an opportunity to inform the persons (clients) of their movement in the queue at any time.

The Ombudsman shall continue to follow the accessibility of social rehabilitation services.

1.3. On Municipal Public Procurements in Order to Ensure Social Services

On the basis of submissions wherein the clients of the state social care centre (hereinafter SSCC) "Riga" branch "Ezerkrasti" and their relatives expressed objections against being transferred to other social care centres in Latvia, the Ombudsman's Office initiated a verification procedure on possible violation of the principle of good governance by not observing the interests of the person, not providing a service in long-term social care and social rehabilitation institution.

The Ombudsman found that currently formed system provides that local governments provide long-term social care and social rehabilitation services in municipal social care centres. In cases when the local government does not have its own social care centre or it doesn't have enough places, it has a right to conclude an agreement with other providers of social services for provision of long-term social care and social rehabilitation services and payment (In Riga City Local Government - general agreement). Local government concludes such agreements on the basis of procurement procedure, finding the provider of the best and financially feasible service. Moreover, the local government has a right to conclude the agreement for the maximum term of three years.

Action of the local government in choosing provider of long-term services appropriate to its clients is limited by provisions of Public Procurement Law and Law on State Budget (for respective year)".

As a result it is possible that a certain provider of the service does not win in the next tender, and the clients have to go to a different institution or the one that has won the tender. Since transfer of the clients from one institution to another is justified only by financial reasons, then regardless of the fact that such system complies with currently effective regulatory framework, in the view of the Ombudsman it should not be supported. When providing long-term social care and social rehabilitation institutional services to persons of retirement age and persons with disabilities, the primary focus should be on the interests of the client - the opportunity to keep the initial service providing institution, and thus the usual environment, peers and emotional wellbeing.

The Ombudsman invited the Ministry of Welfare as the leading state administration institution in the area of social protection policy to evaluate with responsibility the possibility to amend the provisions of Public Procurement Law and, if required, also of the Law "On State Budget (for the respective year)" so that the clients regarding whom is concluded a general agreement would be able to keep their place in the initial institution and would not be subject to transfer to another institution in case when general agreement expires, and within the period of six months from the day of sending of opinion in cooperation with the Ministry of Finances as the leading state administration institution in the area of financial policy development submit to the Saeima amendments to the respective regulatory enactments.

In response to the recommendation of the Ombudsman, Ministry of Finances stated that Section 15, Paragraph five of the Law "On State Budget (for respective year)" includes exceptions and defines that local governments are eligible to assume long-term liabilities according to Section 22, Paragraph two of the Law "On Budgets of Local Governments" regarding also provision of long-term social care and social rehabilitation services. It means that hereinafter the local governments may conclude the agreement on provision of long-term social care and social rehabilitation services for unlimited period of time.

1.4. On Amendments to "Social Services and Social Assistance Law"

At the beginning of the reporting period the Ombudsman submitted to the Saeima several suggestions for the draft law "Amendments to Social Services and Social Assistance Law".

The Ombudsman's Office regularly receives oral complaints of individuals and reports of non-governmental organisations on insufficient amount of social assistance and limited access to social services for persons who have been granted subsidiary status. Especially relevant is problem of provision of place of residence because neither state benefit nor income from other sources after termination of state benefit payment are not sufficient in order for these persons to be able to pay rent of apartment and utility services on their own. At the same time night shelters and shelters are not an adequate and long-term solution for place of residence for this group, especially for families with minor children. Service of crisis centre also may be only as a temporary solution because it is intended for a temporary overcoming of crisis situation.

Thus, the Ombudsman invited to supplement Section 3, Paragraph five in order to provide that in a situation when in case of a person with a subsidiary status due to functional restrictions and lack of social skills services of shelters and night shelters are not applicable to solving social problems of the person and his or her family members, municipal social service is eligible to use other types of social services that are more appropriate for solving the respective problem or grant the apartment benefit.

The same way the Ombudsman urged to supplement Section 2 of the law in order to provide that every child who is a victim of violence has a right to receive social rehabilitation regardless of the legal status and term of stay in the country. The Ombudsman emphasised that according to provisions of the UN Convention on the Rights of the Child the state is obliged to provide the rights safeguarded by the Convention to every child in the jurisdiction of the state without any discrimination. Thus, the right to receive state social rehabilitation must be ensured to every child who is a victim of violence regardless of the legal status of the child and the term of stay in the country.

The mentioned suggestions of the Ombudsman were taken into consideration; and on 26 November 2015, the Saeima accepted the law "Amendments to Social Services and Social Assistance Law", having respectively become effective on 2 December 2015.

In addition the Ombudsman drew attention to the fact that since 2009 a provision is in place that if a person is in a long-term social care institution (children left without the parental care, orphans, and clients of social care centres), it is obliged to participate in covering its expenses by paying up to 90% of pension or benefit. Previously the amount had been set to 85%. Thus, a person has left only 10% of income to cover the personal needs, which is an average of 6.4 to 17 euro per month.

Regardless of the fact that a client of long-term social care institution while staying there is fully or partially cared for by the state, the financial means remaining for the personal needs of the person in the opinion of the Ombudsman are humiliating to the dignity and by no means promote the independence of the person. Therefore, the Ombudsman invited the Saeima to amend the provision of the Law regarding the financial means that are left to the person after settlement of the co-payment. Draft law is in the process of review before the 2nd reading.

1.5. Social Protection of Chernobyl Nuclear Power Plant Accident Relief Participants and Victims of the Accident

In 2011, the Ombudsman turned to the Constitutional Court regarding social protection of Chernobyl nuclear power plant accident relief participants and victims of the accident. Even though the Constitutional Court closed the case stating that fundamental rights of the person are possibly restricted by another legal provision and not the one under question, it clearly and explicitly indicated that the Saeima upon receipt of the Ombudsman's suggestions on necessity to make amendments to regulatory enactments, it shall assess such amendments as to the substance or provide an augmented opinion on why it is not being done.[138]

Senate of the Higher Court in the decision of 4 July 2013 regarding the case No. SKA-304/2013 concluded that compensation for harm is additional social guarantee for Chernobyl nuclear power plant accident relief participants and victims of the accident who have lost their abilities to work, and it shall be assigned also when the person already receives a state pension - retirement or disability pension that has been calculated in the amount equal to compensation.

The Ombudsman has found that after the mentioned decision State Social Insurance Agency decides to assign compensation in addition only when it has been prescribed by a court judgment and not due to systematic assessment of all cases when circumstances of the case are similar. In the view of Ombudsman, this way the principle of equality is violated and administrative and court resources are used inexpediently.

In addition, in order to promote the principle of equal treatment in assignment of social support to nuclear power plant accident relief participants and victims of the accident who are disabled, at the beginning of 2014, Ministry of Welfare had developed a draft law "Amendments to the Law of Social Protection of Chernobyl Nuclear Power Plant Accident Relief Participants and Victims of the Accident of Chernobyl Nuclear Power Plant Accident". Unfortunately the mentioned draft law has not been processed further neither at the end of 2014, nor in the reporting period.

2. Rights of Persons with Disabilities

2.1. Monitoring of UN Convention on the Rights of Persons with Disabilities

[138] Decision of the Constitutional Court of 1 March 2012 regarding termination of proceedings in the case No. 2011-12-01. Available: http://www.satv.tiesa.gov.lv/upload/2011-12-01_Lem%20par%20tiesved%20izb.pdf

On 31 March 2010, in the Republic of Latvia came into force UN Convention on Rights of Persons with Disabilities of 13 December 2006. Liabilities prescribed by it are coordinated by the Ministry of Welfare, but the Ombudsman ensures monitoring of its implementation according to Section 2 of the Law "On Convention on Rights of Persons with Disabilities" and Article 33, Clause 2 of the mentioned Convention.

In 2014, within the framework of monitoring, the Ombudsman performed survey of persons with disabilities regarding assessment of implementation of the said Convention, and survey of society on attitude against persons with disabilities. From September 2014 to January 2015 the Ombudsman collected data from local governments of Latvia regarding implementation and realisation of the Convention. Information was obtained from all 119 local governments. Data summary and analysis was done in 2015. For data summary was used desk-based research, meaning that truth of the provided data was not tested on location. For the summarisation of the data the Ombudsman cooperated with the foundation *"Baltic Institute of Social Sciences"*.[139]

Questionnaire questions of survey for local governments were divided in eight groups according to UN Convention, for example, information availability to persons with disabilities, environment accessibility, employment.

In addition, local governments were asked to provide information on examples of good practice, as well as specify the priority areas of the local government regarding improvement of welfare of persons with disabilities, as well as areas that in the opinion of local governments are sufficiently developed.

Local governments were asked to provide information on reporting period from 31 March 2010, being the effective date of UN Convention in Latvia, to 31 December 2013, being the period regarding which Cabinet of Ministers has provided a report on implementation of the Convention.

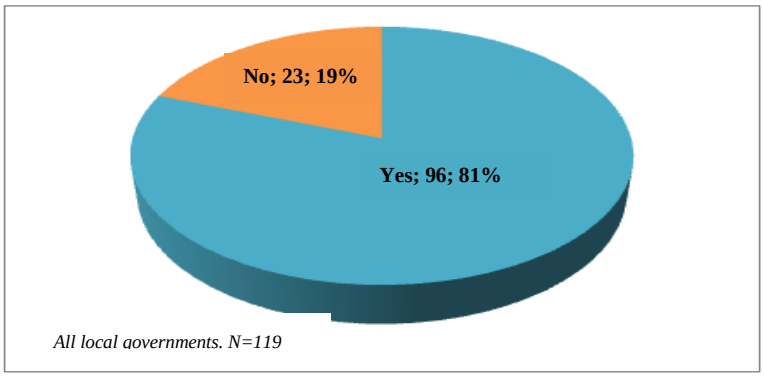
Local governments were grouped according to their categories regarding statistical regions (Riga, PIerīga, Vidzeme, Kurzeme, Zemgale, Latgale statistical regions), as well as according to population type (cities under state jurisdiction, municipalities with rural territory, municipalities with city territory).

Hereinafter is provided report on results obtained in the survey.

[139] Survey results are available on the website of the Ombudsman: www.tiesibsargs.lv.

Thus, as may be concluded, regulatory enactments in most local governments[140] have prescribed special advantages or benefits for persons with disabilities and for families with a child with disabilities.

Figure 1. Do regulatory enactments of the local governments prescribe special advantages, support measures or benefits for persons with disabilities or families with a child with disabilities?



As shown by information provided by local governments, current regulatory enactments provide various benefits for the persons with disabilities, for instance, for acquisition of clothing, provision of care or nursing care, prevention of emergency situations (natural disaster), payment for treatment and medical services, coverage of utility payments of residence or acquisition of firewood, provision of meals in schools, pre-schools, or for purchase of food, provision of social rehabilitation, ensuring transportation services, and other purposes.

Regulations of local governments provide an opportunity for persons with disabilities to receive tax rebates and deductions on fares for public transport, as well as guarantee from local governments for receipt of study or student loan.

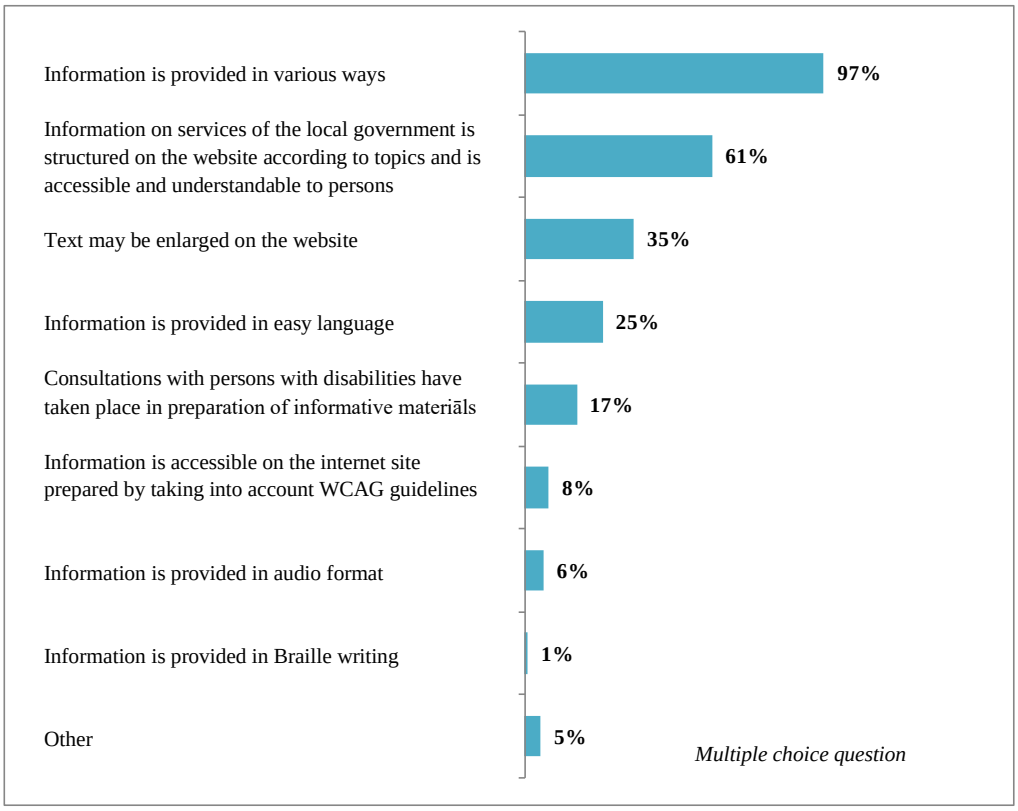
One of the most important principles of Convention is provision of information to persons with disabilities, including provision of information by using alternative means and methods.

As it may be concluded from information provided by local governments (Figure 2), they mostly provide information on services in various ways (97%), yet only in 17% of cases while preparing informative materials local governments have consulted with the

[140] Here and further the source of information „Monitoringof the UN Convention on the Rights of Persons with Disabilities 2010-2014. Results of the Survey of Local Governments." Foundation „ *Baltic Institute of Social Sciences"*.

persons with disabilities, and only in 8% of cases internet websites of local governments are formed according to guidelines for content availability of websites.

Figure 2. How do local governments ensure availability of information on provided services to persons with disabilities?



As may be seen in Figure 3, over the reporting period - from 31 March 2010 to the end of 2013 - only 5% of local governments according to the words of representatives have received complaints on availability of information.

Representatives of only few local governments have informed about the number of received complaints over this period, for instance, Aluksne municipality received 30 oral complaints, Skrīveri municipality - two complaints, and Kārsava municipality - one complaint.

Figure 3. Did the local government received complaints on availability of information over the reporting period?

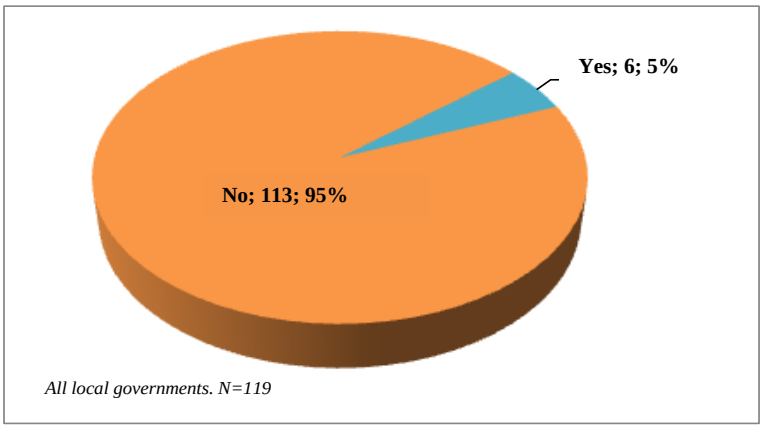
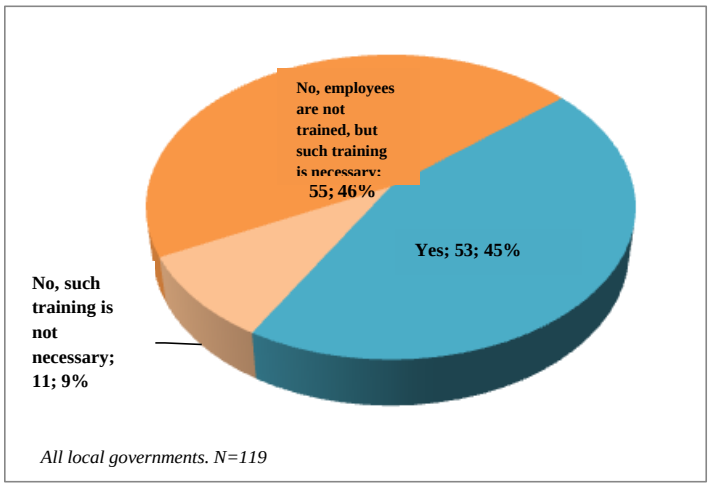


Figure 4. Are employees of local governments who provide consultations to inhabitants trained for work with persons with disabilities?



It is important to add that representatives of local governments have understood in various ways the question on readiness of employees to work with persons with disabilities. A part of representatives of local governments have expressed their evaluation regarding readiness of all employees of local government, but others have assessed the readiness of social staff only. At the same time also interpretation of provided variants of answers is differing. When providing the answer that employees are trained or admitting that they are not trained, employees of the local governments referred to higher education received by social service staff, since the mentioned education includes training for work with persons with disabilities.

55% of representatives of local governments believe that employees of the local governments are not trained for work with persons with disabilities. At the same time

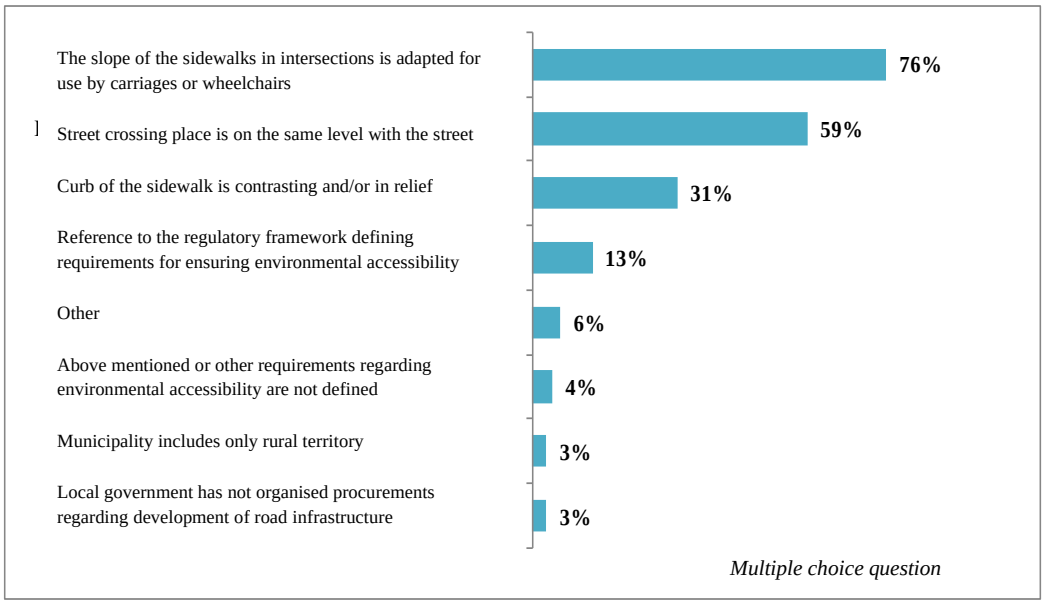
opinion on necessity of special training differs - 46% of local governments training would be necessary, but in 9% - not.

In several cases representatives of local governments have stated that even if social service staff are trained for work with persons with disabilities, such training would be necessary also to other employees of local governments, for instance, specialists of public relations, record keepers, etc.

Ensuring availability of environment is yet another very essential aspect. As seen in Figure 5, in 76% of local governments a requirement exists to make sure that slope of sidewalks in intersections should be adapted for the use by baby carriages or wheelchair. In 59% of local governments there is a requirement that crossing point of the street should be level with the street, but in 31% of local governments - that the kerb should be contrasting and/or in relief.

The above mentioned requirements to be observed when developing a technical specification for public procurement regarding development of road infrastructure are mostly noted by cities under state jurisdicture and representatives of municipalities with city territory.

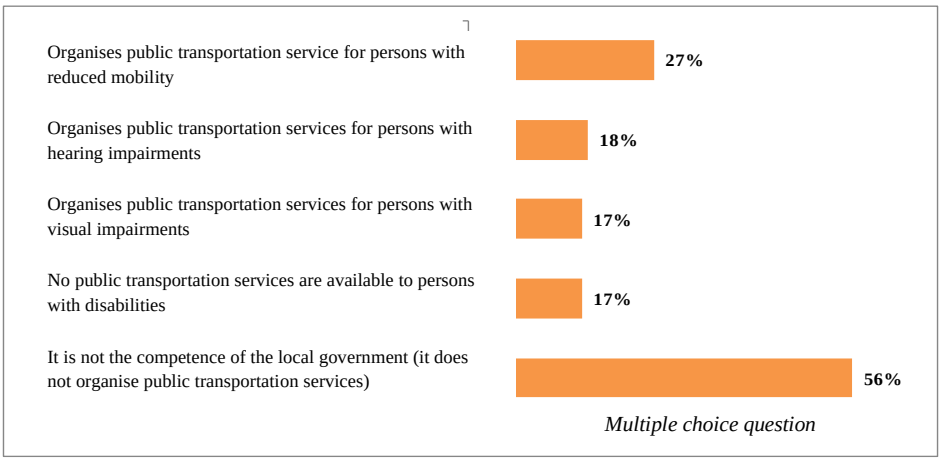
Figure 5. What requirements for ensuring availability of environment are stipulated by the local government when developing the technical specification for public procurement regarding development of road infrastructure?



Availability of public transport is one of the criteria for availability of environment. More than half of local governments (56%) indicate that do not ensure these services because it is not included in the competence of local governments (see Figure 6). At the

same time, 27% of local governments according to the words of representatives organise public transport services for persons with reduced mobility; 18% of local governments - for persons with hearing impairments; and 17% of local governments - to persons with visual impairments. Thus it may be concluded that there is greater understanding about the needs of persons with reduced mobility, and less so of persons with visual or hearing impairments.

Image 6. Types of public transport organisation by local governments in order to make the public transport available to persons with disabilities.



Employment is one of the main conditions for inclusion of persons with disabilities in society. Thus, local governments were asked to provide answers to several questions regarding area of employment.

By summarising answers of the local governments on support regarding employment of persons with disabilities, it may be seen that most of the local governments (70%) do not provide support for development of subsidised work places/special workshops for persons with disabilities, and thus such support is provided only by 30% of local governments (see Figure 7). Such support is mostly provided by municipalities with city territory (43%), less often - cities under state jurisdiction (22%), and rural territory municipalities (15%).

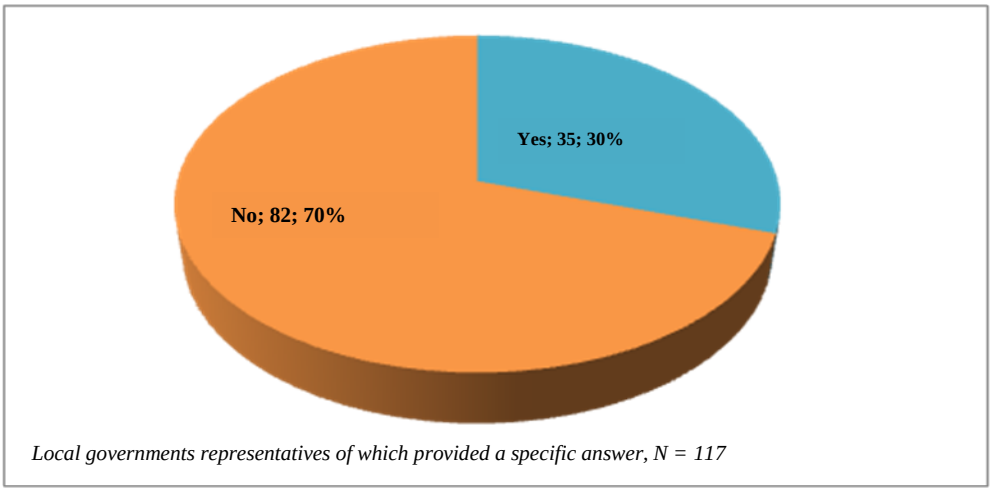
Considering the regions, development of subsidised work places/special workshops is supported by Riga local government, and more often local governments of Latgale (40%) and Kurzeme (35%) regions. Thus, local governments of other regions provide support less often: Vidzeme local governments - 31%, Zemgale - 24%, Pierīga - 21%.

Local governments supporting development of subsidised work places/special workshops for persons with disabilities mostly do it in cooperation with State Employment Agency (subsidised work places or paid temporary community work), non-

governmental organisations (for instance, they provide facilities; cover monthly expenses for mandatory payments of state social insurance), or form subsidised work places in their institutions, for example, in museum, special workshops in the day centre, in territory improvement.

One local government that would be willing to support development of subsidised work places/special workshops, and several local governments that noted that they don't provide support, admitted that thus far there has been no demand for such work places.

Figure 7. Support by local governments to development of subsidised work places/special workshops for persons with disabilities



When filling in questionnaires, local governments were asked to specify three areas they primarily work in regarding persons with disabilities (adults and minors). Four areas most often mentioned by the local governments are: environmental accessibility75%), social rehabilitation services (42%), benefit system (34%), and social participation (29%). One fourth of the local governments indicated also availability of information and inclusive education.

Less often local governments indicated such areas as participation in decision-making regarding the life of the child (14%), interest education (13%), medical services (13%), transport availability (12%), etc. Local governments that had chosen the option "other" as a priority provide assistant services to persons with disabilities, paid temporary community work, services of housing adaptation and day centre.

Similar to previous question, local governments had to indicate three areas that, in their opinion, have been covered by a developed required regulatory framework, have been assigned appropriate financial resources, and compliance with the rights of persons

with disabilities has been ensured. Three most often mentioned areas in this question coincide with previously discussed priority work areas in ensuring the rights of the person with disabilities, only sequence is slightly different. Therefore, in this case most often mentioned area is benefit system 56%), followed by social rehabilitation services (36%) and environmental accessibility (28%). The fourth most often mentioned area is inclusive education (23%) and interest education (23%), but less often are mentioned medical services (19%), social participation (18%), transport availability (15%), information availability (13%), and other. Local governments that chose the option "other" mentioned assistant services and available shower and laundry washing facilities.

2.2. Aspects of UN Convention on the Rights of Persons with Disabilities in Latvia

On 3 December 2015, on the international day of persons with disabilities, the Ombudsman in cooperation with association of persons with disabilities and their friends "Apeirons" and National Library of Latvia hosted a conference "Aspects of UN Convention on the Rights of Persons with Disabilities in Latvia".

Conference included three panels.

Within the framework of the first panel "Action of UN Convention on the Rights of Persons with Disabilities in Latvia in the View of Persons with Disabilities" spoke a representative of the Ombudsman's Office and presented results of the research "Monitoring of UN Convention on the Rights of Persons with Disabilities. 2010.-2014. Survey of Persons with Disabilities".

Survey of persons with disabilities consisted of several sections in order to gain understanding on how in the view of persons with disabilities they are treated by various groups of society; how persons with disabilities evaluate possibilities of participating in social life, quality of life, solutions of accessibility and infrastructure.

Thus, persons with disabilities believe that most support they receive from family (85%), while also pointing out that most do not know where to turn in case of violations of discrimination prohibitions. Considering that essence of UN Convention is to change the view seeing persons with disabilities as persons who need constant assistance to seeing them as persons who are subjects of human rights, the survey included questions on if and how persons with disabilities participate in social activities. The results of the survey showed that persons with disabilities mostly are members or interested parties of non-governmental organisations for persons with disabilities (34%), yet almost as many

(28%) said that they do not participate in any social activities by mentioning as a reason financial considerations (52%), and there are no such activities in the municipality that would interest them (23%). 13% of respondents indicated that they do not participate in social activities because they are not interested in them.

Persons with disabilities have emphasised that medical services, benefit system and subsidised work places are areas in need of urgent improvement when thinking of adults with disabilities. But considering children with disabilities, benefit system, area of medical services and medical rehabilitation services should be urgently improved.

I.Balodis, the Chairman of the Board of Association of persons with disabilities and their friends "Apeirons" noted that implementation of UN convention does not take place smoothly, but most often becomes lodged in various consultative boards, working groups and meetings. It was also stated that non-governmental organisations for persons with disabilities would need to cooperation with each other more in order to reach joint goals as soon as possible.

N.Pīlips, Deputy Chairman of the Central Board of the Latvian Society of the Blind stated that since implementation of the UN Convention the choice of available technical aids has improved, yet the progress should not stop there, and it would be necessary in the future to diversify technical aids for persons with visual disabilities.

E.Vorslovs, the representative of the Latvian Association of the Deaf pointed out as the main benefit the change of understanding regarding persons with disabilities included in the Convention, that is, transfer from a medical model emphasising inability of the person and dependence on other people to the model of human rights with the focus on the rights and independent life, and active participation of the person with disabilities in social processes. As the main factor was mentioned accessibility of sign language and sign language interpreters that ensure communication with persons with hearing impairments.

I.Leimane-Veldmeijere, Director of resource centre for persons with mental disabilities "Zelda" drew attention to reform of institution of legal capacity as the greatest success since the Constitution became effective in Latvia. Reform of institution of legal capacity (effective since 1 January 2013) includes future authorisation, temporary guardianship, restrictions of legal capacity in certain areas except non-material rights of the person. Positive tendencies in the reform of institution of legal capacity were noted: full legal capacity is not possible; regulatory framework is comparably flexible; person has the right to participate in the court hearing; and the principle of objective investigation

is applied. In addition, negative tendencies were pointed out, for example, restriction of legal capacity often is the only not the last resort, and it is not clear what is included in personal non-material rights, and joint and separate opportunities of decision-making offered by the legal framework are not fully used; and the court proceedings are not friendly to persons with mental disabilities. In addition to implementation of Convention the process of de-institutionalisation has begun, yet tremendous resistance on the part of many involved parties is of concern, as well as the expressed view that it would be better if persons with mental disabilities lived in institutions.

Second panel of the conference "UN Convention on the Rights of Persons with Disabilities and Society" was opened with a presentation of the Ombudsman on survey "Monitoring of UN Convention on the Rights of Persons with Disabilities 2010 - 2014. Survey of Latvian Population regarding the Rights of Persons with Disabilities".

Separate questions of the survey were provocative in order to obtain assessment of attitude that would be as accurate as possible. Survey consisted of several categories of questions, for example, regarding participation of persons with disabilities in social life and the right to family, children, work, and education. All answers reflect that persons with mental illnesses and intellectual development impairments are excluded from society the most. At the same time variety could be seen in attitude, for instance, if among the person's family, friends or colleagues was a person with disability, such a person is more open and more favourably disposed towards the person with disability. Thus, informative measures are necessary in order to promote tolerance of society towards persons with mental illnesses and intellectual development impairments, as well as towards the persons with disabilities in general.

A.Lūse, Docent of Communication Faculty of Riga Stradiņš University drew attention to understanding of health, ill health and illness in Latvia and the world, mentioning illnesses specific to culture, for instance, Syndrome of Persian Gulf in the United States of America, Canada and the Great Britain, "nerves" as illness in Soviet Union. Information was also provided on the spectrum of mental diagnoses that from seven units of nomenclature in 1880 has increased to more than 300 units in 1994. In addition it was noted that society holds a stereotype that mental illness is connected with violence, and there are four times more such stories in media than positive stories. At the same time it was emphasised that greater part of obstacles faced by persons with mental or physical disabilities every day appear due to discrimination and prejudices of the

society towards these persons, and not due to persons with physical disabilities or functional limitations.

I.Stabulniece, Personnel Manager of SIA "RIMI Latvia" informed of a good practice in SIA "RIMI Latvia" in promoting employment for persons with disabilities and stated that one of the seven fundamental principles for activity of the company is to value diversity of employees and promote development. In 2015, SIA "RIMI Latvia" received a special award - the company most open to diversity, as well as appreciation from Association of people with disabilities and their friends "Apeirons" for "Human Approach to Persons with Special Needs". Namely, SIA "RIMI Latvia" in 2010 employed 70 persons with disabilities, and in 2015 - 183 persons, being 3.2% of the total number of employees. Persons with disabilities are employed in the following positions: shop assistants, cashiers, senior cashiers, commodities specialists, manufacturing employees (bakers, confectioners, etc), warehouse employees, examiners of goods, members of shop's management team.

E.Bernāte, Special Education Teacher of Cēsis 2 Primary School also informed on the good practice in Cēsis 2 Primary School in providing inclusive education to a child with disabilities. By 2005, the right of the children with disabilities to education in Cēsis municipality local government were ensured in a special pre-school education institution, special boarding school or homeschooling. From 2006, grades for children with special needs were formed in comprehensive education institutions. Yet, upon beginning the inclusive education, several problems were discovered, for instance, living conditions were not appropriate for children with reduced mobility (children lived on the top floors without elevators), and the vehicle for transporting children was not adapted for the needs of children with disabilities. In 2006, the local government built a social home where families who had a child with reduced mobility were assigned apartments on the ground floor; a new, adapted vehicle was acquired; and in 2011, a rehabilitation day centre for persons with disabilities was formed.

In addition to the above, international project Sweden - Latvia - Russia „Integration of Children with Special Needs" was implemented, and within its framework representatives of Cēsis city council and leadership of the school were involved in activities of the project; training of specialists took place; as well as ensuring environmental accessibility and development of rehabilitation work. Project "Be my Friend" was also realised, and it promoted understanding of the type of social service, "friend - assistant", for children with special needs, while providing social integration and

reducing social exclusion of children with special needs, for instance, school, extracurricular measures, participation in class, school, extracurricular events, attending social activities in the free time, work of learners at school, summer day camp.

Third panel of the conference "UN Convention on the Rights of Persons with Disabilities and Society in the View of Local Governments" began with the presentation of the Ombudsman's Office on research "Monitoring of UN Convention on the Rights of Persons with Disabilities. 2010 - 2014. Survey of Local Governments". Main conclusions of presentation were that persons with disabilities note that information on services is not sufficient; however, only separate local governments have received complaints on unavailability of information. Thus, persons with disabilities should mention more actively that information is provided in a format that is not accessible to them. Training on how to work with persons with disabilities should be provided to employees of municipal institutions who are not social service staff. Issue of environmental accessibility is also an issue to be focused on more, since currently it may be observed that local governments have more understanding about the needs of persons with reduced mobility, while understanding of needs of persons with a different type of disabilities is less.

J.Zilvers, Deputy Chairman of the Sigulda Municipality Council, informed regarding the good practice of Sigulda municipality in ensuring provision of alternative services in municipality. Namely, Social Assistance Administration of the Sigulda Municipality assessed offers of social services and in 2005 concluded an agreement with societies "Cerību spārni" (Wings of Hope) and "Aicinājums Tev" (Calling for You) in procurement of rehabilitation services received by families with children with disabilities, as well as persons with disabilities. Society "Cerību spārni" provides ten various services, for instance, art therapy, sand therapy, canistherapy, etc. Society "Aicinājums Tev" ensures activity of the day centre for persons with mental disabilities "Saulespuķe" (Sunflower), organising various classes and creative workshops.

M.Caune, Deputy Chairperson of Salaspils Municipality Council in social and sports affairs, informed on good practice of Salaspils municipality local government in improving welfare of persons with disabilities. Salaspils municipality local government once a year pays benefits to persons with group I and II disabilities, as well as provides benefit for measures in adaptation of home environment for persons with functional disabilities. Salaspils municipality local government also has formed a day centre for persons with functional disabilities, and provides services of special transport. Persons

with disabilities are also offered services of reittherapy, animal therapy and art therapy, gym, and organised and supported sports games for persons with disabilities. Persons with disabilities may receive rebates for real estate taxes. Future vision of Salaspils Municipality local government is to develop a unique specialised gym, specially adapted for persons with disabilities. No other local government of Latvia has such a gym.

In the conclusion spoke I.Balgalve, Deputy Chairperson of the Board of Social Services Managers of Latvian Local Governments, and she informed on future challenges in the work of social services as implementation of Convention is continued. I.Balgalve mentioned several aspects, for example, necessity to provide support to family, relatives; to develop accessibility of society-based services in local governments; provide accessibility of environment and technical aids; promote understanding of society about the needs of persons with disabilities, as well as improve welfare of persons with disabilities.

Within the framework of the conference were organised two more events: contact exchange of non-governmental organisations, and award ceremony of competition "Annual Award for Support of Persons with Disabilities".

2.3. Ensuring Assistant Services to the Person with Disabilities

The Ombudsman's Office initiated a verification procedure on possible violation of the principle of good governance in activity of social services of local governments when providing assistant services for leisure for persons with group I disability who have been assigned a care benefit, and possible violation of the right of person with disability to inviolability of private life.

The Ombudsman found that persons with assigned group I disability and necessity for special care and who receive care benefit, and persons who have been assigned group I disability but without the necessity for special care are not in similar comparable circumstances since each of these groups have different needs for special care. Thus, a differing legal framework is permissible in order to ensure receipt of assistant services to persons with Group I disability who have been given a care benefit.

At the same time the Ombudsman found that social services of the local governments have no common approach to defining what confirmation documents or certificates are to be submitted to the social service, thus with the existence of equal actual and legal conditions differing decisions are made. Since persons with group I disability who receive care benefit and live in various municipalities are in similar and according to

definite criteria comparable conditions, when assigning the service of assistant social services are obliged to comply with uniform criteria. In its turn, Ministry of Welfare is obligated to develop a uniform practice for ensuring the receipt of assistant service.

The Ombudsman also found that obligation to submit receipts with specified personal data, certifications of event organisers, relatives and friends, and other documents that would help social service to be sure that assistant has provided the service, is not defined neither by the law, nor regulations of Cabinet of Ministers. Moreover, such collection of personal information is disproportionate and burdensome, and significantly affects person's freedom of speech and action, as well as the right to private life.

In the opinion of the Ombudsman, assurance that assistant has provided the service to the person with disability to such extent as they require to be paid for, is possible in a different way that is less burdensome and offensive to the person with disability and assistant, for example, by using a uniform template tables for listing the work time.

The Ombudsman recommended:

1) Ministry as Welfare as a leading state administration institution in the area of policy for equal opportunities for persons with disabilities should ensure a uniform practice regarding assistant services;

2) Ministry of Welfare should improve the procedure for administration and assignment of assistant services in social service, thus facilitating the administrative procedure of receiving the assistant service;

3) determine the way to certify the provision of assistant service, as social services of local government should comply with inviolability of the right to private life of persons with disabilities.

Regarding the execution of recommendations the Ministry of Welfare explained: in order to develop uniform practice for providing assistant services in the local government, Ministry has already placed in its website an extended explanation on application of Cabinet regulations No. 942 of 18 December 2012 942 “Procedure regarding Assignment and Financing of Assistant Services in Local Governments". Ministry also summarised and placed in the website the most successful examples of documents and forms used by social services in order to ensure the assistant services. On a daily basis Ministry provides consultations and explanations to social services and employees of local governments, assistants, persons with disabilities, and organisations representing their interests in order to ensure common understanding about the purpose of assistant services and implementation practice of legal acts.

At the same time Ministry mentioned that social service of the local government is responsible for ensuring the service to the person with disability and effective and purposeful use of budgetary funds assigned to provision of assistant services. Ministry cannot define to the social services one specific way or indicate the most appropriate way of how to verify execution of contractual liabilities and legal use of state budget funds taking into account that requirements in each individual case may be different.

In addition, on 13 October 2015, amendments were made to the respective regulations of Cabinet of Ministers and became effective on 1 January 2016. Amendments to regulations cancel the differing approach to procedures of submission of reports, thus making the procedure easier. At the same time it should be noted that in relation to provision of assistant services it is intended to develop a new system oriented towards individual needs of the person.

2.4. On Observance of Equality Principle Regarding the Public Official (Judge) Providing Assistant Service to a Child with Disabilities

In the reporting period the Constitutional Court initiated the case No. 2015-10-01 "On compliance of Section 7, Paragraph three of law "On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia" and invited the Ombudsman to express the opinion in written form regarding issues that, according to his view, might have importance in the mentioned case, especially commenting upon case circumstances from the aspect of priority of the rights of a child with disabilities.

Public officials, including judges, mentioned in Section 7, Paragraph three of the Law On Prevention of Conflict of Interest in Activities of Public Officials are permitted to combined the position of public official only with aforementioned positions and jobs, for instance, educator, scientist, work of a professional sportsman or creative work, work in trade unions and societies, etc. Yet the mentioned provision prohibits the person (judge) to provide assistant services to their child and receive respective payment for it.

By evaluating compliance of Section 7, Paragraph three of Law on Prevention of Conflict of Interest in Activities of Public Officials with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia, the Ombudsman found that restriction for a judge, as well as other public officials mentioned in Section 7, Paragraph three of the Law on Prevention of Conflict of Interest in Activities of Public Officials to

provide the assistant service receiving the payment for it infringes upon the rights and interests of the child, especially the rights of the children with disabilities to special protection, and thus the contested provision does not comply with Section 110 of the Constitution.

The same way the Ombudsman concluded that the contested position places the children of the judges in a more unfavourable situation than children whose parents are not judges, and thus, in the opinion of the Ombudsman, the contested provision does not comply with the first sentence of Section 91 of the Constitution.

On 23 November 2015, the Constitutional Court made a judgment in the case No. 2015-10-01 "On compliance of Section 7, Paragraph three of law "On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Section 91 and Section 110 of the Constitution of the Republic of Latvia" and acknowledged that the provision that prohibits the judge to be assistant to his own child with disability does not comply with the first sentence of Section 91 of the Constitution.

Constitutional Court concluded that the Saeima has not provided arguments why exactly provision of assistant services to his child would position the judge in a situation of conflict of interest or would subject the independence of the judge to greater risk than combining the office of a judge with types of activity permitted by the contested provision.

2.5. On Application of Minimum Personal Income Tax to Persons with Disabilities

Several persons with disabilities who perform economic activities, for instance, crafts, repeatedly complained to the Ombudsman that Section 19, Paragraph 2.1 of the Law on Personal Income Tax is too burdensome for persons with disabilities because the annual income often reaches the same amount or even less than stipulated minimum personal income tax payment.

When reviewing the submissions of persons regarding minimum personal income tax payment of 50 euro prescribed by Section 19, Paragraph 2.1. of the Law on Personal Income Tax, the Ombudsman recognised that such a payment is legal.

On his initiative the Ombudsman turned to the Ministry of Finances with a request to provide an opinion if it would be permissible that Law on Personal Income Tax would provide exclusion that Section 19, Paragraph 2.1. of the law would not be applied to persons with disabilities, considering that the indicators of their employment are not

high.[141] The Ombudsman held a view that such exclusion might promote employment of persons with disabilities.

In August 2015 Ministry of Finances provided the answer that the suggestion of the Ombudsman shall be assessed when next amendments to the Law on Personal Income Tax would be developed. After a repeated request to provide information on further movement of the Ombudsman's suggestion, in November 2015 the Ministry of Finances informed that it understands the relevance of Ombudsman's suggestion; however, provisions for a separate exclusion are not supported by taking into account the tax optimisation risks. Ministry of Finances drew attention to the fact that currently regulatory enactments provide several tax rebates for persons with disabilities who perform economic activity. These persons should use the provided rebates according to the specific situation. Ministry of Finances also made a commitment to assess other variants of personal income tax payments in the context of the suggestion initiated by the Ombudsman regarding persons who perform economic activity and are with a disability, as well as provide a more appropriate mode for personal income tax payment.

2.6 On Limitation of Rights of Persons with Disabilities in State Social Care Centre

Within the framework of the verification procedure in relation to an individual case, the Ombudsman has detected that a client of the State Social Care Centre (SSCC) “Zemgale”, branch “Ziedkalne”, has been unreasonably held in the boiler-house of the abovementioned centre and afterwards taken to a State Police precinct for interrogation.

The Ombudsman considered that taking of the client to the police precinct and interrogation have been disproportionate. The situation could have been solved also by other means. Within the framework of the verification procedure, the Ombudsman did not find any confirmation of the fact that interrogation of the person had to be provided immediately, namely, along with the initiation of criminal proceedings. The Ombudsman pointed out that police officials were entitled to hand out a summons for interrogation visit to the State Police later on, thus, allowing for the concerned person to consider, whether to testify in the presence of an employee of the SSCC “Zemgale”, branch “Ziedkalne”, or a lawyer.

The Ombudsman concluded that the police officials have violated the right to liberty and security of a person, guaranteed by Article 94 of the Constitution of the Republic of

[141] Research of State Employment Agency of 2014 „Discrimination in the Employment Market of Latvia”. Available: http://www.nva.gov.lv/docs/30_53217f16241943.63850296.pdf

Latvia (Constitution) and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

At the same time, the Ombudsman concluded that administration of the SSCC "Zemgale", branch "Ziedkalne" has not provided the necessary support for the client, thus violating the principle laid down in Paragraph 28 of the Cabinet of Ministers No. 291 "Requirements for Social Service Providers" – support shall be provided for a client of the adult care institution in solution of his/her problems.

Furthermore, failing to comply with the requirements of regulatory enactments, administration of the SSCC "Zemgale", branch "Ziedkalne" had failed to manage, coordinate and control actions of the responsible social work professionals of the institution in relation to the client and to provide reflection of information in the client's documentation, thus failing to provide appropriate social care for the client pursuant to the principles laid down in the Social Services and Social Assistance Law.

2.7 Discrimination on the Grounds of Disability

2.7.1 Regarding accessibility of the services provided by a body governed by private law

During the reference period, the Ombudsman reviewed a verification procedure regarding prohibition of discrimination on the grounds of disability, within which the submitter indicated on limited access to the services provided by the bank. Namely, the bank required to the person with vision disability witnesses or notarially certified Power of Attorney confirming authenticity of a signature to perform transactions within the respective person's bank account.

The Ombudsman pointed out that, pursuant to Section 1 of the Notariate Law, the oversight of notarial issues shall be entrusted, under the supervision of judicial institutions, to sworn notaries in accordance with the procedures laid down in this Law. This Law shall govern the professional and corporate activities of sworn notaries. Whereas, pursuant to Section 2 of the Notariate Law, sworn notaries are persons belonging to the court system, who are assigned to regional courts and perform duties laid down to them in law. The Ombudsman paid attention to the fact that bank officers were not persons belonging to the court system, who are assigned to regional courts. Therefore, there are no grounds to consider that the Notariate Law governs professional and corporate activity of the bank according to Section 1 of the Notariate Law. Thus, the bank may not apply legal provisions of the Notariate Law, including Section 94. Thereby, the

bank has no grounds to require presence of two witnesses, if persons with vision disabilities want to perform a transaction in the bank.

Additionally, the Ombudsman pointed out at Article 5, Paragraph 2 of the UN Convention on the Rights of Persons with Disabilities prohibiting any discrimination on the grounds of disability, as well as Article 12, paragraph 5 thereof, providing for rights for persons with disabilities to control their financial affairs. Thus, the Ombudsman detected an impairment of the prohibition of discrimination. Furthermore, the Ombudsman encourage the use of ways and means of alternative communication to make sure that a person with disability, including visual disability, is able to perform the necessary transactions in the bank.

The Ombudsman recommended the following:

1) to prevent discriminating treatment of the submitter, correspondingly offering bank services in a way accessible to a person with disability;

2) to change the current practice of the bank in relation to persons with visual disabilities;

3) the bank should notify its branches of the Ombudsman's opinion, in order to avoid impairment of the prohibition of discrimination against persons with visual disabilities in the future.

During the course of implementation of the given recommendations, the bank informed that the submitter has been provided quality of service, which is equal to one provided to other clients. Besides, the bank is currently developing and implementing improvements of client service processes, which will make service for the clients with visual disability in the bank's branches even more accessible, at the same time providing retention of the client's secret laid down in the Credit Institutions Law and reducing possible risks. Furthermore, the bank provided information on the way of provision of services to persons with visual disabilities after reception of the Ombudsman's opinion.

2.7.2 Regarding accessibility of the services provided by a state administration institution and treatment of persons with disabilities

During the reference period, a person with visual disability addressed the Ombudsman's Office, indicating on rude and intolerant treatment at the Office of Citizenship and Migration Affairs (OCMA), when the person wanted to deal with the necessary formalities for a passport, including being photographed with glasses on.

OCMA informed that on 7 January 2015, when the submitter arrived at Riga 1st Division, this person was accompanied by a person, whom the office staff regarded as a guide of the submitter. As it was stated in the letter, this person was the submitter's wife. The office staff assumed that the submitter's wife would act as a guide, help in communication, inform on the amount of state fee, discounts and such.

The Ombudsman pointed out the following:

1) persons with visual disabilities are able to communicate with other persons by themselves, therefore, assumption of the OCMA that additional person for communication with such person is required, is not acceptable;
2) the OCMA is obliged to inform clients on the amount of state fee, discounts and other circumstances related to execution of functions of the office, and not an assistant or a guiding person. Therefore, the officer of the OCMA was supposed to make sure the person with disability has been informed on the abovementioned.

Additionally, the Ombudsman recommended training of the OCMA staff regarding necessity of special treatment, providing the services of the officer to persons with disabilities.

2.7.3 Regarding accessibility of the services provided by a state capital company and treatment of persons with disabilities

During the reference period, on the basis of a submission of a person, the Ombudsman detected that not all offices of the State Joint Stock Company (SJSC) "Latvijas Pasts" are accessible to persons with disabilities. Post office can forward the parcel to some other office, which is accessible to persons with disabilities, subject to additional charge.

The Ombudsman paid attention of the SJSC "Latvijas Pasts" that, pursuant to Article 91 of the Constitution, Section 3^1 of the Consumer Rights Protection Law and the UN Convention on the Rights of Persons with Disabilities, binding to the Republic of Latvia, persons with disabilities are entitled to receive commodities and services the same way as every resident of Latvia. Frequently, implementation of this duty is related to active, respectful action including selection and adaptation of premises, which are accessible to everyone.

First sentence of Article 9 of the UN Convention on the Rights of Persons with Disabilities stipulates: "To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to

ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas." Whereas, the European Parliament and European Council Directive 97/67/EC (Postal Services Directive) stipulates that the provision of the universal service must meet the fundamental need to ensure continuity of activity, whilst at the same time remaining adaptable to the needs of users as well as guaranteeing them fair and non-discriminatory treatment.

If the premises are not accessible to everyone, expenses related to forwarding of parcel to a post office accessible for clients should be undertaken by the SJSC "Latvijas Pasts", because the person with disability is not able to receive the parcel at the post office closest to his/her place of residence as every resident due to omission and discriminatory treatment the SJSC "Latvijas Pasts".

SJSC "Latvijas Pasts" argued that 20% of all post offices are located in immovable property owned by the company itself. Therefore, these offices can be adapted to the requirements of environmental accessibility. In the opinion of the SJSC "Latvijas Pasts", adaptation of other post offices to the requirements of environmental accessibility would be a useless waste of funds.

The Ministry of Transport informed that the SJSC "Latvijas Pasts" cooperated with the organization of people with disabilities and their friends "Apeirons" to provide adaptation of the places for the provision of postal services to the needs of persons with disabilities.

3 The Right to housing

During the reference period, similarly with the previous years, majority of submissions in relation to the rights to housing contained persons' requests to the Ombudsman to resolve civil issues. Majority of submissions contains complaints about payment items for utility or management services included in the bills issued by the management institutions, in the opinion of the submitters, unreasonably, as well as failure to provide accurate information, actions of neighbours and such.

Frequently, residents point out at inability of the residents of multi-apartment houses to take unified position in relation to renovation works of houses and usefulness thereof and call the Ombudsman to engage in settlement of the dispute.

The Ombudsman has explained his lack of powers to engage in settlement of such disputes, because relations between residents of houses and the administrator (manager) are subject to private law, regardless of the ownership of the housing fund. Submitters have been explained the situation and provided advice regarding possible actions to be taken in the particular situation according to the applicable law.

3.1 On Quality and Accessibility of Housing Offered by Local Governments

In 2014, the Ombudsman's verification procedure was commenced regarding accessibility and quality of the housing provided by local governments. The Ombudsman's purpose was to determine condition of the residential spaces offered by the local governments to residents and compliance thereof with the criteria describing a premises fit for living defined by the law.

During the verification procedure, information regarding vacant municipal apartments, condition thereof and number of persons registered in the municipal assistance register regarding apartment matters was obtained from 105 municipalities of the Republic of Latvia. At the same time, on-site inspections of the vacant housings was carried out in random order by visiting apartments in 22 municipalities. Additionally, monitoring of separate residential spaces was carried out on the basis of the received information regarding conditions unsuitable for living.

Upon completion of the verification procedure, the Ombudsman provided a report[71]on quality of the housings provided within the assistance of municipalities. Conclusions of the report highlighted tendencies related to:

1) insufficient funds for maintenance or addition of municipal housing fund;

2) insufficient state support;

3) insufficient work of municipalities in relation to disrespectful tenants, who directly and negatively affect condition of the residential spaces owned by the municipality (damage of spaces, failure to provide regular cosmetic repair and such);

4) explicit persons' wish to rent housings located at a closer distance to the city centre, as well as housings with lower costs for utility services, i.e., wood firing;

5) unclear regulatory framework, including free choice of municipalities to interpret legal provisions in relation to the criteria describing premises fit for living.

In the Republic of Latvia, many municipalities face difficulties related to provision of sufficient housing fund or limited funds to maintain and put in order the current residential spaces, furthermore, state support is insufficient. For example, in 2014, 10 258

persons entitled for housing assistance were waiting in the queue for municipal housings (including the persons waiting for housings protractedly), while number of vacant housings was just 2412. In regard to the vacant housings, many municipalities admitted these housings were not suitable for living due to the reason related to necessity of cosmetic or even major repair, which the municipalities are not able to pay for.

The Ombudsman has pointed out that sometimes the requirement set for a resident to provide cosmetic repair in the housing at his/her own expense should be recognized as disproportionate, taking into consideration that residential spaces are being mainly provided within the assistance measures to specially protected groups of residents, orphans, persons with disabilities and low-income families, which are not able to afford any investments in repair of housing due to material conditions.

Largely, this type of assistance should be described as a lottery, because municipal housing funds are in various technical and visual condition, however, in general, the residential spaces inspected during the monitoring were in satisfactory or bad condition (with some exceptions); this applies particularly to houses for collective living, resided by various social groups and equipped with common-use auxiliary rooms, which are morally outdated and fail to comply with contemporary requirements, as well as are hard to manage.

It was concluded during the verification procedure, that frequently compliance of spaces with the criteria describing premises fit for living defined by the law is formal, however, not in all cases these spaces are suitable for long-term human accommodation and for placing of household items. Therefore, the Ombudsman recommended to the municipalities to interpret legal provisions according to sense and purpose thereof, refraining from narrowed interpretation of legal provisions, in order to avoid formal assistance.

3.2 On Definition of "Premises Fit for Living"

Definition of a premises fit for living has been stipulated in Section 16, Paragraph 3 of the Law On Assistance In Solving Apartment Matters and Section 28^2, Paragraph 5 of the Law On Residential Tenancy, providing for that residential premises fit for living shall be a lighted, heated room suitable for long-term human accommodation and for placing household items and shall comply with the construction and hygiene requirements specified in the Regulations of the Cabinet of Ministers.

In relation to the indication "comply with the construction and hygiene requirements laid down in the Regulations of the Cabinet of Ministers", specified in the provision, the Ministry of Economics has explained that no separate regulations governing these matters have been issued on the basis of the Law On Assistance In Solving Apartment Matters. Besides, reviewing Section 38^1 of the Epidemiological Safety Law providing for hygiene requirements, it should be concluded that the Regulations of the Cabinet of Ministers issued on the basis of the abovementioned provision stipulate requirements for objects of increased risk and places for swimming. However, there are no such requirements in relation to residential spaces. Whereas, in relation to the construction requirements specified in the provision, one must stress that, pursuant to Section 1, Clause 12 of the Construction Law, construction is designing of all types of structures, and construction work.

Taking into consideration the abovementioned, the Ministry of Economics pointed out that Section 16, Paragraph 3 of the Law On Assistance In Solving Apartment Matters contains incorrect indication on construction and hygiene requirements, since the construction standards approved with the Regulations of the Cabinet of Ministers regarding designing of structures or performance of construction works lay down no technical requirements for exploitable residential spaces.

Thus, every municipality can interpret this legal provision differently, and this was confirmed also during the monitoring, for example, while, in the opinion of the Ministry of Economics, the criterion "lighted" should mean possibility to consume electricity inside the residential space, a representative of Salaspils District municipality indicated that "lighting" can be interpreted also as "provided with daylight", i.e., without supply of electricity.

Therefore, the Ombudsman recommended to the Ministry of Economics to improve regulatory framework, which currently contains incorrect references to non-existent regulatory enactments. In this regard, the Ombudsman received a letter of reply within the set time limit that a draft "Amendments in the Law On Residential Tenancy" was prepared at the beginning of 2015. The abovementioned amendments provided for exclusion of "construction and hygiene requirements specified in the Regulations of the Cabinet of Ministers" from Section 28^2, taking into consideration that reference to compliance of the residential space with the "provided construction and hygiene requirements" has been taken over from the Latvia SSR Apartment Code without any evaluation of the different

purposes set in the Law On Residential Tenancy and the Latvia SSR Apartment Code, respectively.

However, as the Ministry of Economics pointed out during discussions with specialists of the respective area and representatives of non-governmental organizations, it was concluded that circle of the issues to be included in the developed draft law is too narrow and fails to resolve several significant issues in relation to the currently applicable regulation. Thus, the previously proclaimed draft "Law On Residential Tenancy" was updated for clarification and improvement purposes.

3.3 On the Right to Receive Assistance from the Local Government within a Reasonable Period of Time

In 2014, the Ombudsman, on the base of a person's submission, initiated a verification procedure regarding the action of Sigulda District Council, protractedly failing to assign residential space to a person waiting in the queue for apartments since 1987. Under these circumstances, it was concluded that the person was limited rights to housing, because waiting in the queue of municipal assistance register for 27 years without receiving any rental offer of a municipal apartment is a disproportionately long time for the provision of such assistance. The Ombudsman's Office called the Council to find a reasonable solution within limits in the housing matter of the submitter.

Responding to the Ombudsman's recommendation, in 2015, Sigulda District Council pointed out that the matter regarding assistance possibilities in solution of the housing matter is in progress for the persons, who are registered in the Assistance register's general provision group. Amendments of the Council's binding regulation No. 34 of 29 December 2010, which would stipulate determination of other category of other persons (for example, persons, who have been in the assistance register for 25 years or more) and procedures for the offer of vacant residential spaces for this category of persons are under review as one of the options.

Draft decision in relation to amendments of the binding regulation was adopted by Sigulda Council, but the Ministry of Environmental Protection and Regional Development did not support such amendments, explaining that the municipality was not authorized to determine categories of persons, which are subjects to any priorities regarding assignment of apartments, provided that these persons are not low-income persons.

3.4 On Negligent Actions in Management of a Residential House

Verification procedure regarding partial collapse of the house located at Buru Street 9, Riga (consisting of two buildings) was initiated at the initiative of the Ombudsman, taking into consideration that 16 apartments out of 29 are owned by Riga City municipality.

Fire broke out in both buildings at Buru Street 9 on 18 August 2015, and restoration thereof, most likely, will be impossible.

Both, Housing and Environment Department of Riga City Council, and Riga City capital company LLC (SIA) "Rīgas namu pārvaldnieks" denied their responsibility for the incident, with the latter accentuating that residents of the house had previously decided to refrain from accumulation of funds for the management of the building and requested to remove this item from the house maintenance estimate.

The Ombudsman pointed out within the framework of the verification procedure that, pursuant to Section 17, Paragraph 2 of the Law on Residential Properties, when voting in the meeting of apartment owners, municipality shall have 50 per cent of the votes of all votes of apartment owners. Thus, legally, Riga City municipality was entitled and obliged to engage in determination of the issues related to the management of house, so that housing fund owned by the municipality was maintained appropriately, once serious problems were identified in correspondence between "Rīgas namu pārvaldnieks" and during inspection of the buildings. Complaints of residents regarding management quality show that problems were already back in 2012, whereas, the municipality transfers the entire responsibility prima facie to the manager LLC (SIA) "Rīgas namu pārvaldnieks", indicating that, in the course of implementation of the entire complex of management works, the manager was supposed to convene a meeting of apartment owners to adopt decision on improvement of technical condition of the house and attraction of funds.

Without any questioning that "Rīgas namu pārvaldnieks" and the responsible structural unit of Riga City Council has tried to resolve the problems in the area of management of both houses located at Buru Street 9, however, one must conclude that transfer of responsibility is taking place between the parties, and mutual communication between "Rīgas namu pārvaldnieks" and the Housing and Environment Department of Riga City Council or inability to process previously obtained information regarding the same object – residential house – is not clear.

At the same time, “Rīgas namu pārvaldnieks” was not able to provide to the Ombudsman justifiable explanation, why it sent the decision to refrain from accumulation of funds for the repair works, which was adopted by the residents of the house and not apartment owners, in the general meeting on 3 November 2012 and legally unbinding, since, legally, there is no such a legal institution (“general meeting of residents”), to the Housing and Environment Department of Riga City Council in 24 March 2015, when the residential house was partially collapsed, furthermore, administrator of the building reviewed it on the substance and accepted for execution. It arises from the explanations that it was allegedly done due to the fact that this decision to refrain from the repair works of the residential house offered by the manager and accumulation of funds can be declared invalid by the court, on the basis of an application of an apartment owner, if the decision or adoption procedure thereof shall contradict with legal provisions.

Under such conditions, the Ombudsman paid attention to two significant circumstances. First, apartment owner, which owns more than a half of residential properties, did not know anything of existence of such a decision, but “Rīgas namu pārvaldnieks” was obliged to notify. Second, reference to Section 16, Paragraph 4 of the Law on Residential Properties is incorrect, because court may recognize invalid a decision adopted by the community of apartment owners, on the basis of an application of an apartment owner, if the decision or adoption procedure thereof shall contradict with provisions of the abovementioned law. In this case, decision adopted on 3 November 2012, was not a decision adopted by the community of apartment owners of the residential house. Thus, negligent action can be found in the work of “Rīgas namu pārvaldnieks” in this situation, which has significantly affected technical condition of the residential house in long term. It is not acceptable that administrator of the house as a capital company of Riga City municipality, operating in the area of management, has made significant violations. In this case, it should be also admitted that “Rīgas namu pārvaldnieks” has not performed the task of administration with the highest degree of diligence, as provided by the concluded administration contract.

According to the public information provided by Valdis Gavars, councillor of Riga City Council, the main debtors for the management of the house at the amount of approximately 21 thousand euro out of the total amount of 23 thousand euro are tenants of the five apartments owned by the municipality. Thus, one should conclude that the municipality has protractedly failed to cope with tenants of its own apartments, while all

residents, including the tenants and apartment owners acting in good faith and honestly, suffered due to this situation.

Furthermore, it should be added that the last time a residential space was rented out at Buru Street 9, Riga, within the framework of the municipal assistance measures, was 26 July 2012 or during the time, when there were management problems in the residential house and, in fact, the bad technical condition of the building was known, although, official technical conclusion was composed a couple of months later. Thus, action of the Housing and Environment Department of Riga City Council should be evaluated as contrary to the principle of good governance, because a person, who was registered in the queue for apartments and, possibly, would receive assistance several years later, had been rented out a residential space in a house in pre-emergency state, and, thus, the Department was aware that the person would soon lose the freshly assigned housing. Thus, the municipality has provided formal assistance, and not on the substance.

3.5 On Matching Rights of Houseowners and Tenants

In the middle of 2014, the long-term problem situations in the relations between houseowners and tenants had raised. The Ombudsman received alarming submissions from residents, who pointed out at unlawful methods applied by houseowners, creating conditions unsuitable for living, namely, by not providing fundamental services and disconnecting sewerage system, heating, for a part of the apartments – supply of electricity, not providing hot and cold water supply, sufficient waste collection and other.

Episodes described in several submissions, for example, replacement of lock or door without providing a set of keys, nailing up (welding) of the tenant's door and installation of a padlock is on the verge of arbitrariness and violation of a person's rights to inviolability of his/her home. Frequently, residents have complained that the abovementioned actions have resulted in denial to access their personal belongings, documents, medication and cash. Several episodes include a pet locked inside the apartment or replacement of door with the tenant staying inside the apartment. Thus, in fact, tenants are being evicted from the housing without a court judgment, they are forced to spend night on the street, in a shelter, staircase or look for a shelter with their acquaintances. The abovementioned actions were taken purposefully to force the residents out of the house to vacate apartments.

In the opinion of the Ombudsman, actions, which are aimed at violation of the fundamental rights stipulated by Constitution, are not allowed, at the same time, it should

be noted that the Ombudsman is not authorized to engage in solution of private disputes on the substance. In the context of the abovementioned situations, ability of the state for operative response in situations, when houseowners endanger tenants' rights, is crucial, since the dispute settlement mechanism through court action, laid down in the Law on Residential Tenancy is not sufficiently effective. Namely, in cases, when house-owners endanger rights of tenants, the fundamental tenants' rights guaranteed in the Constitution are being limited for disproportionately long time – up to the moment of adjudication of the case in the court, which may result in situation of the tenant's inability to use his/her residential space.

At the same time, it should be admitted that all problem situations could not be evaluated unambiguously. Frequently, information on manipulations performed by tenants themselves, for example, execution of fictive rent contracts, rent contracts with retroactive effect, rent contracts without rental fee, rent contracts for non-residential space, which are not protected by the Law on Residential Tenancy, is being received within such disputes. All the abovementioned shows, that there are frequent cases, when former owners of houses (apartments), being unable to settle the undertaken obligations in relation to a creditor, apply any possible methods, in order to make themselves or their relatives fictive owners of the property shortly before auction thereof and to stay in their former property as long as possible. In such a situation, the only possible lawful way for the owner to protect his/her interests is a lengthy court proceeding.

After engagement of the Ombudsman, updating of this matter took place in the Saeima (Parliament of the Republic of Latvia) Human Rights and Public Affairs Committee. Several discussions have taken place and resulted in the implementation of new, alternative temporary mechanisms for the protection of tenants' rights, however, they do not fully resolve the situation on the substance. Namely:

1) On 2 October 2014, the State Police developed guidelines for the police officers to provide protection of tenants against unlawful action of house-owners, restore the tenants' rights to deal freely with their movable property, as well as to provide inviolability of their home. Police official is obliged to provide restoration or restitution of the rights of tenants, which are understood as creation of conditions, under which a tenant, who has suffered from unlawful action taken by the possessor, is able to exercise his/her rights to inviolability of his/her home and to deal freely with his/her movable property. In such a situation, a police officer is obliged to provide with his/her presence public order and impeded tenant's entry into his/her housing without any physical actions, for

example, door breaking, moving of belongings etc. So far, these guidelines have been successfully implemented for a year, because the number of complaints related to violations of the tenants' rights has significantly decreased.

2) Ministry of the Interior has developed amendments in the Civil Procedure Law, foreseeing legal framework in relation to temporary protection in cases of violations of use of residential space, thus providing temporary protective mechanism for the protection of the tenants' rights. The Ombudsman has supported the wording of the abovementioned draft law.

3) Ministry of Economics has commenced work on the clarification and improvement of the draft "Law on Residential Tenancy" (VSS-2127), which was proclaimed in the meeting of state secretaries on 19 December 2013, aimed at provision of equal volume of duties and rights for the tenants and renters, as well as improvement of other issues related to tenancy rights, in the application of which problems have been detected at the moment.

3.6 Challenges Regarding Management of Residential Houses

During the reference period, the Ombudsman kept receiving submissions regarding issues affecting administration of residential houses. In 2015, a significant tendency appeared related to embezzlement of the payments paid by the apartment owners for the utility services by the administrator, without transferring of those payments to the service providers, as laid down by the law. In these situations, the Ombudsman has explained the rights protection mechanism developed within the state and relating to selection of a new administrator, if action of the current one shall be dissatisfactory, as well as to bringing action to the court through the general civil procedure, if the administrator has caused losses to the apartment owners, as well as the possibility to address the police regarding the fact of embezzlement. It is worth to note, that, most frequently, police does not find constituent elements of a criminal offence, and criminal proceedings are not being initiated, however, rights protection mechanism provides for possibilities of appeal in the public prosecutor's office.

When evaluating submissions regarding dishonest administrators, it must be admitted that administrators, including the dishonest ones, have been included in the register of administrators under the Ministry of Economics, which is solely informative mean, though. Within the meaning of Section 18 of the Law on Administration of Residential Houses, main function of the register of administrators is provision of up-to-

date information on persons, who administer or who want to administer residential houses and comply with the criteria for the administration work laid down in the law. The law stipulates no negative legal consequences, if the administrator has failed to register himself/herself with the register. Thus, entries of the register of administrators of residential houses do not affect validity of administration contract or volume of the administrator's responsibility laid down in the law.

At the same time, regulatory enactments do not stipulate any rights or duties for the Ministry of Economics to evaluate repeatedly compliance of the administrator's qualification, but information regarding violations of professional activity of the administrator shall be entered in the register on the basis of a court adjudication.

Pursuant to Section 16, Paragraph 1 of the Law on Administration of Residential Houses, administrator shall be responsible to the residential house owner for the fulfilment of the administrative tasks assigned to him or her in accordance with this Law, The Civil Law and the provisions of the administration contract entered into. Claims arising from management of the property of other persons are governed by Sections 2289 – 2346 of the Civil Law. Disputes arising from the legal relations of administration of residential houses, shall be resolved in the court pursuant to the procedures laid down in the Civil Procedure Law.

In general, it should be admitted that there are no quick and simple solutions in situations, when house owners have happened to select a dishonest administrator. Even in cases, when the dispute is being solved according to criminal or civil law, owners of the residential house shall be obliged to pay repeatedly for the provided services relying on possibility to recover the money someday from the dishonest administrator.

3.7 Efficiency of Rights Protection Mechanism in Cases when Owner Does Not Provide Basic Services in a Residential House

In relation to non-provision of fundamental services – water, heat, waste collection –in the rented property, the Ombudsman has concluded that the currently applicable rights protection mechanism (imposition of administrative fine) is not sufficiently effective to make the house owner to restore provision of fundamental services, because imposition of fine can hardly ever guarantee resumption of provision of fundamental services (in administrative violation cases). Majority of the decisions adopted by the administrative commission on non-provision of fundamental services, especially in cases, when large fines are imposed, is appealed in the court. Many renters (legal entities, which are subjects

to private law) are liquidated in the result of insolvency procedure before the end of the trial, therefore, recovery of the imposed fine is impossible. In case of successful recovery or voluntary payment of fine, solvent renters try to collect the respective amount from tenants (by including the in the rent), considering the fine a result of complaint. Whereas, insolvent renters by paying the imposed fine lose funds for further maintenance of the house and provision of services.

The Ombudsman pointed out in his report of 2012 that one of the solutions could be establishment of the institute of the assigned administrator expanding powers thereof, but this provision has been excluded from the Law on Administration of Residential Houses since 15 January 2014.

The Ministry of Economics agrees with the Ombudsman that the imposed administrative fine itself does not prevent situation, when tenant of residential space is not provided with fundamental service. Besides, the ministry agrees with the opinion of Riga City Council that imposition of administrative fine on the renter for the fulfilment of contractual obligations undertaken on the basis of a civil contract does not stimulate protection of tenants' rights. Furthermore, the concept of development of administrative fine system, approved by the Cabinet of Ministers, specifies that the administrative violation must be referred to public legal relations, but administrative fines for civil-law violation should further be retained in exceptional cases only.

In relation to the restoration of the institute of the appointed administrator, the Ministry of Economics has pointed out that the administrator assigned by the municipality should be appointed in cases, when, due to lack of administration or inappropriate administration, damage has occurred or may occur to the environment or society, and not to the owners of the property themselves, who are obliged to administer their property, and the users, who may rent or lease premises in some other property. Furthermore, source of funding for the application of the institute of the appointed administrator is unclear. During the time, when the institute of the appointed administrator was still valid, the Ministry of Economics received information both from Riga City municipality and the Latvian Association of Local and Regional Governments regarding problems related to financing of the appointed administrator, pointing out that the abovementioned caused disproportionate burden to the municipal budget, since the municipality was entitled to select the person to be performing duties of the assigned administrator, initially covering all the expenses related to appointment of the assigned administrator and simultaneously foreseeing duty for the owner of the residential house to reimburse these expenses to the

municipality later on. However, also in this situation, several impediments, which prevented municipality from recovery of the invested funds, could have been foreseen, namely, if the house owner is not able to reimburse expenses to the related municipality, recovery could have been directed to immovable or movable property or money. However, in cases, when recovery can be directed to immovable property only, recovery of expenses may become impossible, because the residential house has been pledged, and value of the pledge is higher than the property's sales value in auction.

Whereas, during the implementation of the draft "Law on Administration of Residential Houses", prohibition to the assigned administrator to lodge other tenants in the residential space was justified by the consideration of disproportionate limitation on the owner's rights and resemblance of the administrator in such cases with the property rights, whereas, owner of the residential house would therefore have no rights to deal with his/her own property.

4 The Right to Health

In relation to the right to health, majority of submitters have complained of quality of the received healthcare service and unkind attitude of health professionals during the reference period. Highest number of complaints have been submitted for the actions taken by and treatment of healthcare professionals or quality of the service provided by the LLC (SIA) "Rīgas Austrumu klīniskā universitātes slimnīca".

Since the Ombudsman is not able to evaluate quality or conformity of the provided medical service, the Ombudsman can only explain the options stipulated by the rights protection mechanism established nationwide, calling the respective person to address complaint to the Health Inspectorate, Ethics Commission of the Latvian Medical Association or to submit a claim in the Medicine Risk Foundation.

However, in separate cases, the Ombudsman considered it useful to carry out a separate verification by addressing directly a medical institution, especially, in cases, if the patient has indicated on unethical and degrading treatment of a medical professional, as well as violations of the patients rights.

During the reference period, the Ombudsman has commenced a study on compliance of the minimum of medical aid guaranteed by the state of Latvia with the human rights standard, as well as continued the verification procedure regarding the nationwide established system of compensated medicines.

5 The Right to Work

During the reference period, the Ombudsman has provided opinion to the Constitutional Court of the Republic of Latvia in case No. 2015-03-01 "Regarding compliance of Section 2 of the law "Amendments in the Insolvency Law" of 25 September 2014 and the law "Amendments in the law "Law On Prevention of Conflict of Interest in Activities of Public Officials"" of 30 October 2014 with Article 1 and the first sentence of Article 106 of the Constitution of the Republic of Latvia".

Submitters of the application considered that, upon adoption of the contested legal provisions, the principle of legitimate expectations laid down in Article 1 of the Constitution has been violated, but the right to freely choose employment and workplace according to abilities and qualifications laid down in Article 106 of the Constitution has been limited. Submitters ground impairment of their fundamental rights on the previously arisen legitimate expectations that, additionally to the work of sworn advocate, finance (tax) or commercial activity adviser and an office in a Board of a commercial company, submitters of the application will be able entitled to work as administrators of insolvency proceedings also in the future. Whereas, pursuant to the Advocacy Law, persons may not be admitted as sworn advocates if they are employed in a direct or indirect state administrative institution, derived public person, other state institution or state (local) government capital company.

Furthermore, the Law On Prevention of Conflict of Interest in Activities of Public Officials stipulates a number of limitations and duties, which would apply also to the administrators of insolvency proceedings, for example, limitation on combining the offices, limitation on the obtaining of income, limitation on commercial activities, limitation on entering into contracts, including prohibition to be a representative and advertise, and duty to submit the declaration of a public official, which must specify information regarding the work-performance contracts and authorisations, data of the person giving the authorization and amount of transaction.

In the opinion of the submitters of the application, such limitations and duties are incompatible with the work of sworn advocate, finance (tax) or commercial activity adviser and an office in a Board of a commercial company.

The Ombudsman pointed out that amendments in the regulatory enactments governing insolvency proceedings are conceptually necessary and should be supported.

Besides, the Ombudsman pointed out that the contested legal provisions do not violate the principle of legitimate expectations protected by Article 1 of the Constitution and that the person's right to freely choose employment and workplace according to abilities and qualifications protected by the first sentence of Article 106 of the Constitution also are not impaired, provided that additional legal framework on procedures for combining the offices and submission of declarations shall be developed during the transition period.

It should be added that on 21 December 2015 the Constitutional Court of the Republic of Latvia adopted judgment in case No. 2015-03-01 "Regarding compliance of Section 2 of the law "Amendments in the Insolvency Law" of 25 September 2014 and the law "Amendments in the law "Law On Prevention of Conflict of Interest in Activities of Public Officials"" of 30 October 2014 with Article 1 and the first sentence of Article 106 of the Constitution of the Republic of Latvia." and recognized the contested legal provisions as incompatible with the first sentence of Article 106 of the Constitution.

6 The Right to Property

6.1 On Limitations of Property Rights Prescribed by the Law on Control of Aid for Commercial Activity

In 2015, the Ombudsman has provided opinion to the Constitutional Court of the Republic of Latvia in case No. 2014-36-01 "Regarding compliance of Section 8, Paragraph 1 of the Law on Control of Aid for Commercial Activities with Article 105 of the Constitution of the Republic of Latvia".

Namely, Section 8, Paragraph 1 of the Law on Control of Aid for Commercial Activities stipulates: "If a commercial company facing financial difficulties shall receive support payment pursuant to regulatory enactments governing aid for commercial activities, then, pursuant to provisions stipulated in the decision adopted by the European Commission or in a national law on assignment of aid and regardless of the pending legal obligations of the commercial company, from the moment of assignment of support payment for commercial activities until the end of provision thereof, the commercial company shall be prohibited to fulfil the subordinated obligations (including prohibition to repay a loan, calculate, accumulate or pay interest or any other remuneration for such a loan), regardless of the moment of establishment of the subordinated obligations".[142]

Taking into consideration the cognitions of the Constitutional Court and provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Ombudsman admitted that the legislator had a large freedom of action depending on the current social, economic and political processes in the state to determine limitations of property rights, which affect the individual. The Ombudsman detected the legislator's intention to include limitations of property rights in the contested legal provision on the basis of the second and third sentences of Article 105 of the Constitution.

The Ombudsman admitted that the limitation stipulated in the contested legal provision has been set by law with a legitimate purpose – not to allow that commercial companies with subordinated obligations, which have received or plan to receive support, which is being assigned to commercial companies facing financial difficulties, to

[142] Section 8, Paragraph 2 of the Law on Control of Aid for Commercial Activities explains that, within the meaning of this section, subordinated obligations mean the rights and duties, which were caused to the commercial company by the loan (regardless of the type of the concluded transaction), and which, pursuant to the concluded transaction with the commercial company, entitles the lender to demand early repayment of the loan only in case of insolvency or liquidation of the commercial company and after repayment of claims detected by all other creditors, however, before repayment of claims detected by partners or shareholders.

primarily fulfil their subordinated obligations instead of repayment of the received support payment, which is in conflict with the public and taxpayers' interests.

Upon evaluation, if the mean for limitation of property rights selected in the contested legal provision is suitable for the achievement of legitimate purpose, the Ombudsman indicated that such a mean was suitable and complying with the European Union law binding to the Republic of Latvia.

The Ombudsman agreed to the opinion of Saeima, that the legitimate purpose may not be achieved by any other means for limitation of property rights – by unilateral withdrawal from the subordinated obligations. Such a solution would result in the company's insolvency, thus failing to recover the funds invested by the state, as well as causing tighter limitations for the interests of private persons (investors).

Besides, the Ombudsman admitted that the benefit provided by the contested legal provision to the society is larger than losses caused to an individual, since the respective industry of commercial activity is being protected from the shock of economic crisis with the state support, thus, correspondingly, preventing occurrence of unfavourable consequences in relation to the entire society in general.

Having regard to the abovementioned considerations, the Ombudsman considered that the contested legal provision complies with Article 105 of the Constitution.

At the same time, the Ombudsman indicated: since the European Union law should also be applied in this particular case, for the purpose of decision of the case comprehensively, completely and objectively, the Constitutional Court should also consider necessity to ask the questions mentioned by Saeima to the European Court of Justice. The Ombudsman justified such a necessity with the fact that a case C-526/14[143] has been initiated in the European Court of Justice at the request of the Constitutional Court of the Republic of Slovenia to provide preliminary ruling, inter alia – on issues affecting compatibility of the state aid rights governed by the European Union Law with the guarantees for property rights laid down in Article 17, Paragraph 1 of the Charter of Fundamental Rights of the European Union.

It should be added that with the judgment of 13 October 2015 the Constitutional Court recognized Section 8, Paragraph 1 of the Law on Control of Aid for Commercial Activities as compatible with Article 105[144] of the Constitution.

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[143] Information on the initiated case. Available on: http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30ddb839c33cafc0421bba42fd44327256b0.e34KaxiLc3qMb40Rch0SaxuPb3z0?docid=162405&mode=req&pageIndex=7&dir=&occ=first&part=1&text=&doclang=LV&cid=557129

[144] Available on: http://www.satv.tiesa.gov.lv/upload/spriedums_2014-36-01.pdf

6.2 On Losses to Be Compensated to the Public Transport Carrier

Following the request of the Constitutional Court, in June of 2015, the Ombudsman provided opinion in case No. 2015-07-03 "Regarding compliance of Paragraph 3 of the Regulations of the Cabinet of Ministers No. 341 "Procedures for the Determination and Reimbursement of Losses and Expenses Related to Provision of Public Transport Services and for the Determination of Tariffs for Public Transport Services" of 15 May 2012 with Articles 1 and 105 of the Constitution of the Republic of Latvia."

In relation to impairment of the legitimate expectations upon adoption of the contested legal provision, the Ombudsman admitted that no legitimate expectations could have arisen to the submitters of the constitutional complaint and they had no grounds to consider that, after conclusion of contracts for provision of public transport services, legal relations would remain unchanged for the entire validity period of the contract. The Ombudsman pointed out that, first, such a term was not provided in the abovementioned contracts. Second, it must be taken into consideration that the applicants are professional merchants in the area of public transport services, who are obliged to know and be aware of all the possible risks, which may arise during the validity period of the contract and which may be unfavourable to the applicants, including risks involving change of regulatory enactments.

Having evaluated, whether the contested legal provision complies with Article 105 of the Constitution, the Ombudsman admitted that:

1) the contested legal provision was adopted in an appropriate manner;

2) legitimate purpose of the contested legal provision (limitation) was limitation of expenses of public transport service providers or limitation of constant growth thereof, thus, preventing the risk of excessive compensation. Overarching purpose of this purpose is stimulation of well-being of society and protection of the interests of other persons;

3) evaluating compliance of the contested legal provision with the principle of proportionality, the used mean is applied for the achievement of legitimate purpose. Analysing other alternative means indicated within the case, legitimate purpose may not be achieved by applying other means, affecting rights and legitimate interests of an individual at lesser extent. Benefit provided for the society is larger than losses caused to an individual.

In the opinion of the Ombudsman, the fact that the regulatory enactments changed the order, which existed before adoption of the regulations No. 341, is in the public

interest. Order, which provided compensation of 100% losses, was not in the public interest, since in fact it ignored the public interest in efficient direction of budget funds to the area of public transport services, as well as there was no mechanism, which would stimulate the carriers to engage in making the structure of expenses more efficient.[145]

Second, the public interest in efficient direction of budget funds to the area of public transport services was based on consideration that the remaining budget funds may be directed to other interests, which are crucial for the society, for example, in the area of public transport services, for example, providing non-closing of certain routes, not decreasing number of runs, retaining or expanding support to certain categories of passengers.

Third, it is important to take into consideration that the contested legal provision does not prevent the carriers from gaining profit, thus, respectively, balancing interests of the individual (merchant) in relation to the public interest.

Having regard to all the abovementioned considerations, the Ombudsman admitted that the contested legal provision complied with Articles 1 and 105 of the Constitution.

With the judgment of 8 December 2015, the Constitutional Court recognized Paragraph 3 of the Regulations of the Cabinet of Ministers No. 341 "Procedures for the Determination and Reimbursement of Losses and Expenses Related to Provision of Public Transport Services and for the Determination of Tariffs for Public Transport Services" of 15 May 2012 as compliant with Articles 1 and 105 of the Constitution.[146]

6.3 On Fixed End Tariff of Natural Gas Trade

During the reference period, the Ombudsman has provided opinion to the Constitutional Court in case No. 2014-35-03 "Regarding compliance of Paragraph 54.1 of the Regulations of the Cabinet of Ministers No. 221 "Regulations Regarding Electricity Production and Price Determination upon Production of Electricity in Cogeneration" of 10 March 2009 with Articles 1 and 105 of the Constitution of the Republic of Latvia and Section 28, Paragraph 2 of the Electricity Market Law".

Contested provision of the Regulations of the Cabinet of Ministers stipulates: "The final tariff for the trade of natural gas approved by the Regulator indicated in Sub-paragraphs 53.1, 53.2 and 54.2 and Annex 7, Note 4 of this Regulation, without value

[145] In this respect, it must be admitted that, to certain extent, state has, possibly acted inefficiently by failing to introduce a system limiting the reimbursement of losses, for example, due to the reason of non-compliance of the corresponding system with the principles laid down in the Regulation No.1370/2007.
[146] Available on: http://www.satv.tiesa.gov.lv/upload/spriedums_2015-07-03.pdf

added tax, according to the actual calorific value of the natural gas (EUR/thousand n.m^3) shall not exceed the sum that has been calculated if the trade price of natural gas is 277.46 EUR/thousand n.m^3." The contested provision changed the formula, on the basis of which the price of electricity paid to the cogeneration unit for the electricity produced within the framework of the mandatory procurement and which was valid up to the moment of entry into force thereof is being calculated. Prior to entry into force of the contested provision, price of the mandatory procurement of electricity changed in direct relation to the price of natural gas and the market fluctuations thereof.

The Ombudsman admitted that compliance of the contested provision with the principle of legitimate expectations included in Article 1 of the Constitution shall be evaluated in conjunction with Article 105 of the Constitution. While analysing the constitutional complaint on the substance, the Ombudsman concluded that there were grounds to consider that the contested provision limited the property rights of the applicant during the particular period of time, however, the Ombudsman concurrently indicated on his inability to evaluate significance of the limitation due to lack of experts of the respective area at his disposal, furthermore, this is economical and financial, but not legal issue.

The Ombudsman admitted that the limitation has been provided by a law, and concluded that the contested provision was not in contradiction with Section 28, Paragraph 2 of the Electricity Market Law.

The Ombudsman admitted that the contested legal provision had a legitimate purpose – well-being of society and protection of the interests of other persons, manifesting as limitation of growth of the total electricity price, promotion of competitiveness of national economy and efficient absorption of renewable energy sources. Evaluating proportionality of the contested legal provision, the Ombudsman concluded that it was suitable and necessary for the achievement of the legitimate purpose and that the benefit provided for the society is larger than the possible limitation of the applicant's rights in the future.

Thus, the Ombudsman provided opinion that Paragraph 54.1 of the Regulations of the Cabinet of Ministers No. 221 "Regulations Regarding Electricity Production and Price Determination upon Production of Electricity in Cogeneration" of 10 March 2009 would comply with Articles 1 and 105 of the Constitution and Section 28, Paragraph 2 of the Electricity Market Law, if the contested legal provision would be recognized as the most merciful mean and urgency regarding adoption thereof was justified.

Failing to find any impairment of fundamental rights, the Constitutional Court dismissed the legal procedure in case No. 2014-35-03.[147]

6.4 Municipality Levy on Maintenance and Development of its Infrastructure in Riga

In 2015, the Ombudsman provided opinion to the Constitutional Court in case No. 2015-13-03 "Regarding compliance of the first sentence of Paragraph 24 of Riga City Council Binding Regulation No. 211 "Regarding Municipal Duty for Maintenance and development of Municipal Infrastructure in Riga" of 19 February 2013 with Article 105 of the Constitution of the Republic of Latvia".
The contested legal provision stipulates: "If a construction permit shall be cancelled (annulled and such), the paid instalment of the Levy shall not be returned, but, on the basis of submission of the initiator of construction conception, it shall be accrued as the paid instalment of the Levy upon reception of other construction permit for a new construction process within the same immovable property." Thus, the contested legal provision stipulates prohibition to repay the paid levy for maintenance and development of municipal infrastructure, however, allowing accrual thereof as a part of the following levy provided that construction permit for the implementation of construction conception within the same immovable property shall be received.

The Ombudsman concluded that the contested provision has been set as a limitation by the law, and purpose of the levy along with purpose of the contested provision is provision of well-being of society by providing sustainable, stable planning of the territory development in public interest and that the legitimate purpose can be achieved with the contested provision. However, at the same time, it was concluded that the contested provision failed to comply with one of the proportionality criteria – necessity of legal provision, because, under individualized procedures for the calculation of levy, as well as the condition that the levy is being calculated for the development of infrastructure of a particular territory (measurable by particular dimensions), it is inadequate to provide imperative measures regarding repayment (recalculation) of a part of the levy in all cases, when the construction permit is being cancelled (annulled etc.).

In the opinion of the Ombudsman, legitimate purpose can be achieved by applying a mean less limiting the person's rights, namely, by foreseeing an individualized procedures

[147] Available on: http://www.satv.tiesa.gov.lv/upload/lem_izb_2014-35-03.pdf

for the repayment (recalculation) of part of the levy in case, if the construction permit is being cancelled (annulled etc.). Thereby, it was indicated that, in the opinion of the Ombudsman, loss caused to the addressee of the unused construction permit by applying the contested legal provision, is disproportionate as compared with the benefit gained by society.

Accordingly, the Ombudsman expressed his opinion that the first sentence of Paragraph 24 of Riga City Council Binding Regulation of 19 February 2013 No. 211 "Regarding Municipal Duty for Maintenance and development of Municipal Infrastructure in Riga" does not comply with Article 105 of the Constitution, since it fails to observe the principle of proportionality.

6.5 On Alienation of Real Properties in Zvārde Parish

Within the framework of the verification procedure, which was initiated on the basis of the open letter by the society "Vienoti Zvārdei" regarding *non-transparency* in the alienation of immovable properties located at Zvārdes Parish, Saldus District and possible violation of the principle of good governance, the Ombudsman concluded that local population was concerned because of the Order issued by the Minister for Agriculture to the Joint Stock Company "Latvijas Valsts meži" (hereinafter referred to as – LVM) regarding priority of the purchase of land at Zvārdes Parish, in the territory of former Zvārde military training area due to high concentration of explosive objects.

This document was compared to a conceptual decision on implementation of a project necessary for the society needs, which, pursuant to Section 8, Paragraph 1 of the Law on Alienation of the Immovable Property Necessary for Public Needs, shall be adopted by the Cabinet of Ministers.

Furthermore, uncertainties regarding lawfulness and validity in the purchase process of lands were caused by the fact that buying up of the particular plots of land was implemented by the LLC (SIA) "Latio" under the order of LVM, so that the Ministry of Defence could clear the territory from explosive.

Within the framework of the verification procedure, it was concluded that property rights of the residents of Zvārdes Parish – owners of immovable properties were not impaired in this problem situation, because the properties were alienated according to obligations rights on the basis of a legal transaction. However, the Ombudsman admitted that the Ministry of Defence, Ministry of Agriculture and LVM have failed to explain

properly the reasons and goals of their acts the owners of immovable properties located at Zvārdes Parish.

Besides, the Ombudsman concluded that action taken by the Ministry of Defence and the Ministry of Agriculture in this problem situation should be recognized as compliant with the provisions of regulatory enactments, however, violation of a principle of good governance was made, which should not be evaluated as significant, because buying up of lands at Zvārdes Parish was suspended after the visit of the Ministers for Defence and Agriculture to Zvārdes Parish.

6.6 Confiscation of Property as Additional Punishment

During the reference period, the Ombudsman has provided opinion to the Constitutional Court in case No. 2014-34-01 "Regarding compliance of Section 36, Paragraph 2, Clause 1, Section 42 and the words "with or without confiscation of property" of Section 177, Paragraph 3 of the Criminal Law with the second and third sentences of Article 105 of the Constitution of the Republic of Latvia".

Constitutional complaint contested suitability of the limitation of property rights laid down in the Criminal Law – confiscation of property – for the achievement of legitimate purpose, as well as compliance with the principle of proportionality. Submitter of the application objected against the confiscation of property due to several considerations, the two main ones of which are the following – legislator has not determined the maximum amount of the property to be confiscated, furthermore, legitimacy of obtaining of the property is not being evaluated upon the confiscation of property, namely, special confiscation of property or confiscation of property derived in criminal activities has not been provided for.

The Ombudsman admitted that the issue – whether to be or not to be in relation to the confiscation of property as a criminal punishment – is a subject to political decision. At the moment, the state of Latvia has made its choice, namely, admitted that the confiscation of property as a criminal punishment is necessary. From the viewpoint of human rights, there are no grounds for discussion, whether replacement of the confiscation of property by fine of increased amount was more proportionate mean for the protection of rights laid down in Article 105 of the Constitution, therefore, it is a matter of penal policy, which is competence of legislator.

The Ombudsman considered – the fact that the confiscation of property refers to the property obtained by the person by legal means, allows for manifestation of the

confiscation of property as the penalty reinforcement function of additional penalty, as well as for provision that the convicted and other persons comply with law and refrain from commitment of criminal offences. It should be evaluated from the viewpoint of human rights, whether there is a mechanism within the system established nationwide, within which it is possible to provide proportionate imposition of this penalty. In case of lack or obvious inefficiency of such a mechanism, there are grounds to discuss non-compliance of the contested provisions with Article 105 of the Constitution.

Since the courts are obliged to follow the principle of individualization of criminal law repression, proportionality of the confiscation of property as additional penalty should be evaluated by stressing the freedom of action for the courts in relation to application thereof, namely, the freedom of action to evaluate necessity of the confiscation of property, possibility of application and efficiency in the particular case.

The Ombudsman pointed out that the judicial system is the mechanism, which provides proportionality of application of the confiscation of property. Namely, courts evaluate in each particular case, whether the particular additional penalty is necessary and at what extent by following the principles of application of criminal penalties (administration of justice).

Furthermore, the Ombudsman pointed out that, besides the abovementioned, legislator has determined also the means, by which the courts may implement the application of the principle of proportionality by applying the confiscation of property. First, all sections of the Special Part of the Criminal Law, providing for the confiscation of property as additional penalty, allow for application or non-application of this additional penalty, at the court's discretion.

Second, the Criminal Law does not provide for general or absolute confiscation of property. Annex 4 to the Law "On the Procedures for the Coming into Force and Application of the Criminal Law" provides the list of property not to be confiscated for the convicted person or his or her dependants. Lack of the maximum amount of the property to be confiscated allows for the courts to evaluate character of the particular criminal offence, as well as other considerations in the particular case and to order such additional penalty, which would help to achieve purpose of the penalty.

Having regard to the abovementioned considerations, the Ombudsman considered that the confiscation of property as additional penalty *per se* should not be considered utmost disproportionate or obviously inhuman. The confiscation of property as additional penalty complies with the second and third sentences of Article 105 of the Constitution.

The Constitutional Court admitted in the judgment of 8 April 2015 in case No. 2014-34-01 that the contested legal provisions complied with the second and third sentences of Article 105 of the Constitution.[148]

6.7 On Unfounded Impairment of Economic Interests by Setting Unequal Rules for Client Identification for Cash Transactions in Foreign Currency

The Ombudsman has provided opinion to the Constitutional Court in case No. 2015-11-03 "Regarding compliance of Articles 19 and 20 of the Regulations No. 141 of the Bank of Latvia of 15 September 2014 "Requirements for Anti-Money Laundering and Prevention of Terrorism Financing in Purchase and Sale Cash Transactions of Foreign Currency" with Articles 1 and 64 and the first sentence of Article 91 of the Constitution of the Republic of Latvia".

Substance of the complaint was in the circumstance that the Regulations issued by the Bank of Latvia referring solely to the capital companies providing foreign currency cash exchange transactions, included a mandatory requirement to identify the client, if the transaction amount ranged between 2000 and 7999.99 euro. Whereas, such requirement has not been applied to the credit institutions, where client can perform identical transaction without his/her identification.

First of all, the Ombudsman pointed out that, taking into consideration the threat caused to the stability of finance sector by money laundering and organized crime, mechanism for the identification of client and true beneficial owner included in the contested provisions is necessary and should be conceptually supported in currency trade transactions.

The Ombudsman found no violations of Articles 1 and 64 of the Constitution, without questioning that the Bank of Latvia as an independent institution had been legally delegated to set legally binding requirements to third parties in the area of activity thereof, as well as found no excess of the extent of delegation. As it was specified by the Ministry of Justice, it was significant that currently rights of separate autonomous institutions regarding issuance of external regulatory enactments have been recognized in the legal

[148] Available on: http://www.satv.tiesa.gov.lv/upload/spriedums-2014-34-01.pdf

system of Latvia through the interpretation of the Constitution, provided that such an authorization has been laid down in law.[149]

Following the formula for the control of legal equality principle recognized within the practice of the Constitutional Court of Latvia, a situation including one or several common signs with the situation under verification must be selected for comparison. The decisive factor is, whether several groups of persons are linked by common important sign referable to all of these groups, and in the particular case the common sign is a financial service, purchase – sale of foreign currency cash ranged between 2000 and 7999.99 euro, which is offered to the consumer both by capital companies as currency exchange points, and credit institutions. Therefore, in the opinion of the Ombudsman, the groups of persons to be compared are credit institutions and capital companies providing foreign currency cash transactions.

Although the Bank of Latvia had indicated on a number of considerations, why both groups of persons should not be considered comparable: different layout, working hours, availability, organizing structure, business regulation, supervision system, total range of services, proportion of service within the range of offered products, fine system, internal control procedures and different qualification of staff, in the opinion of the Ombudsman, considerations regarding the reasons, why capital companies and credit institutions are not operating in equal and comparable conditions, are not founded. Location and availability of capital companies and credit institutions, as well as difference in the operational risks of a merchant and procedures for supervision shall not be referable to the circumstances causing differences of the groups of comparable persons in the opinion of the legal aspects regulated by law.

The case under adjudication did not contain any dispute regarding unequal treatment, namely, the requirement set for the currency exchange capital companies to identify the client for the purpose of a legitimate purpose – anti-money laundering and combating of terrorism. However, taking into consideration that the client can receive equal service in a credit institution without identification, in the opinion of the Ombudsman, the legitimate purpose may not be achieved through such an unequal treatment, since such a treatment, possibly, causes inconvenience for the client, however, it does not prevent possible money laundering.

Taking into consideration the abovementioned considerations, in the opinion of the Ombudsman, through the approval of the contested provisions, a legal situation has

[149] Informative report of the Ministry of Justice of 11 January 2011 on subjects entitled to issue external regulatory enactments, page 20-21.

arisen, including violation of the principle of equality laid down in the first sentence of Article 91 of the Constitution in relation to a group of persons, particularly – to the capital companies operating in the area of purchase and sale of currency cash.

6.8 On Limitation to Use Property Due to Deficiencies in Regulations

During the reference period, several apartment owners of a residential house addressed the Ombudsman's Office with a complaint regarding disconnection from all communications – water supply, sewerage, heating and supply of electricity due to dismantling of the building next door.

Communications for the apartment-house were provided through the communications of the building located next door. Since the house located next door was demolished, connection of the residential house with city sewerage and water-supply network broke up, furthermore, supply of electricity was disconnected. Heating of this house was also provided with the help of the boiler-house, which was located next door and under demolition.

During the verification, the Ombudsman concluded that the regulatory enactments, which were applicable at the moment, when communications of the house were disconnected, did not provide for harmonization of the design of the building to be demolished with the final consumer of electricity, water supply and sewerage services – owners of the multi-apartment house.

The Ombudsman pointed out that such a situation is not acceptable, and this was admitted also by Riga City Construction Board. Besides, the Ombudsman expressed his opinion that, in order to recognize a person's rights protection mechanism as efficient, taking into consideration the duty to provide lawfulness of construction process in the administrative territory thereof imposed on the municipality, it is essentially to achieve situation, when possible threats to the interests of third parties, which might be caused by the implementation of construction conception, are prevented at the stage of harmonization of the design, which should be the responsibility of municipality.

However, taking into consideration the fact that the situation described within the framework of the verification procedure was eliminated (apartment owners of the house built a heating boiler and connected supply of electricity to the house anew at their own expense), as well as, having regard to the fact that this situation occurred during the period of validity of the previous construction regulation, the Ombudsman did not evaluate the possible solution for the situation pursuant to the new regulation of

construction sector, since it stipulates different procedures for the implementation of construction conception.

6.9 On Termination of Compulsory Divided Property

Back in 2011, the Ombudsman updated the challenge related to divided property. If only the house was standing on land owned by other persons, apartment owners of multi-apartment residential houses mainly indicated in their submissions on too high land rent, unreasonably imposed duty to compensate the immovable property tax additionally to the land rent, unreasonably large plot of land functionally necessary for the residential house, as well as the historical injustice made through the land reform, which may result in loss of housing in the long-term.

Responsible sectoral ministry – the Ministry of Justice admitted existence of the problem and formed a working group for the solution of problems related to the compulsory divided property at the beginning of 2012.

It should be detected that, although slowly, solutions for the problem are being sought. Namely, amendments in the regulatory enactments were adopted in 2014 resulting in cancellation of the duty of the apartment owners of residential houses to compensate the land-owners' immovable property tax payment, as well as rights for the apartment owners and land-owners to address municipality to initiate reviewing of the plot of land functionally necessary for the residential house were stipulated.

Additionally, in September of 2015, a draft "Law for the Termination of Legal Relations of Compulsory Divided Property in the Privatized Multi-apartment Houses" was transferred for review in the Saeima, assigning unilateral rights to the apartment owner to buy out the land for the cadastral value multiplied by the coefficient 1.8 and including rights to pay the total amount in ten years. Whereas, participation for the state and municipality in the process pf termination of divided property is planned for the covering of administrative costs, for example, costs related to re-registration of property rights or determination or reviewing of the plot of land functionally necessary for the house.

7 The Right to Live in a Favourable Environment

7.1 On Efficiency of Training and Certification of Security Guards

After the tragic incident on 21 November 2013 in the supermarket “Maxima”, located at Zolitūde, opinion was expressed that one of the possible reasons for the fatalities was non-professional action of security guards. Mass media published information that, according to the instructions, security service working for “Maxima” commenced evacuation only after finding of the source of alert.

Having analysed the regulatory enactments, the future security guards are being familiarized with in the process of training, the Ombudsman detected that:

1) regulatory enactments do not provide for direct duty of a security guard to provide immediate evacuation from public premises occupied by people in case of activation of alarm;

2) action of a security guard in case of activation of alarm is basically provided for by the internal rules of the protected facility;

3) regulatory enactments provide for large freedom of action to a security guard in relation to evaluation of situation, for example, to decide, whether safety of visitors and participants of the event is under risk in case of alarm and whether immediate evacuation is necessary.

The Ombudsman admitted that such a training process is, first of all, in contradiction with the purpose of security activities defined in the Law on Security Activities – provision of safety of a person and society.

Necessity to evaluate the situation in case of activation of alarm cannot be denied, however, this matter is subordinated and should be solved after the elimination of risk caused to human health and safety, namely, after the evacuation from public premises. Otherwise, the meaning of alarm within the context of human safety is being detracted, and the procedure is being evaluated higher than safety of humans.

Second, such a position during the training process fails to create unified and unequivocal understanding among security guards regarding actions to be taken in case of activation of alarm, thus, it fails to create unified and unequivocal understanding about the overarching purpose of the activities of security guards and rights of humans to live in a favourable and safe environment.

The Ombudsman recommended the following:

1. The Ministry of the Interior should evaluate possibility of direct strengthening of the duty of security guards in regulatory enactments to provide immediate evacuation in case of alert (activation of alarm) in public premises occupied by people.

2. The State Police in cooperation with the Ministry of Interior and the State Fire and Rescue Service should evaluate possibility of improvement of content of the programme "Security Work"; class "Security Tactics", sub-topic "Action of Security guard in Extreme Situations".

3. State Education Quality Service should provide preventive inspections in the educational institutions implementing the professional improvement programme "Security Work".

Opinion was sent also to the Cabinet of Ministers and the Saeima Human Rights and Public Affairs Committee, Defense, Interior and Anti-corruption Committee and the so-called Zolitūde Tragedy Parliamentary Investigation Committee.[150]

In March of 2015, the Ombudsman explained his conclusions also in the Zolitūde Tragedy Parliamentary Investigation Committee. Within the Final Report thereof[151], deputies agreed with the opinion expressed by the Ombudsman that clear and uniform action of security guards in case of alert in public premises occupied by people must be stipulated in regulatory enactments, and that security guards would be obliged to provide immediate evacuation.

Executing the Ombudsman's recommendation, the Ministry of the Interior informed in October of 2015 on preparation of a draft "Civil Protection and Catastrophe Administration Law" stipulating that, in case of risk, owner or legal possessor of the infrastructure, shall provide timely warning of people and information on action, as well as evacuation from the infrastructure.

Besides, the Ministry of the Interior has prepared a draft Regulations of the Cabinet of Ministers "Fire Safety Regulations" (VSS-1078) stipulating a person's duty to evacuate in case of sounding of fire alarm or upon discerning of fire.

Regarding the recommendation related to improvement of training of security guards, the Ministry of the Interior pointed out that these issues are rather competence of educational institutions, State Education Quality Service, and security companies. The Ministry of the Interior informed that the State Police and the State Fire and Rescue Service would provide supervision over the issues included in the educational programme.

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[150] Full title of the commission: "Parliamentary Investigation Committee Regarding Action of the State of Latvia in Evaluation of Reasons of the Tragedy Taken Place on 21 November 2013 at Zolitūde and Further Actions Performed for the Settlement of Regulatory Enactments and Activity of State Administration and Local Governments, In Order to Prevent Repetition of Similar Tragedies, as well as Regarding Actions for the Elimination of Consequences of the Abovementioned Tragedy".

[151] Sub-clause 21.7 of the Final Report. Available on: http://zolitude.saeima.lv/galazinojums

The State Police informed the Ombudsman that his recommendation was non-executable, since the professional improvement programme "Security Work" developed by the Ministry of the Interior was invalid since 1 January 2015.

State Education Quality Service has carried out inspections in several educational institutions in October of 2015. These inspections have revealed several deficiencies in the activity of these institutions and the implementation of education process: number of hours for the classes indicated in the licensed education programme was not complied with; education and professional qualification of the pedagogues involved did not comply with the requirements of regulatory enactments etc. State Education Quality Service has ordered to eliminate the deficiencies found and plans post-inspections.

Following the task on the Ombudsman's opinion, which was assigned in the resolution of the Prime Minister, the Ministry of Education and Science in cooperation with the State Education Quality Service has identified education problems in the area of security activities, coming to conclusion that the most significant deficiency is invalidity of the professional improvement education programme "Security Work", approved by the Minister for Interior, thus, leaving the issue regarding education and professional qualification of the pedagogues involved unregulated. The State Education Quality Service initiated the following on behalf of the Minister for Education and Science:

1 The Ministry of the Interior should take the initiative in solution of issues related to training of qualified security guards (including professional standard, education programmes, requirements set for the pedagogues and students), formation of a working group involving specialists of the interested parties – the State Police, the State Fire and Rescue Service, the National Centre for Education etc.

2 The Ministry of the Interior should approve a new template of the professional improvement education programme "Security Work" before 1 June 2017.

In general, it should be concluded that currently there is no programme to follow for the education institutions. They have large freedom of action, when implementing the professional improvement education programme. At the best, they can keep implementation of the preliminary professional improvement education programme "Security Work" or follow only the topics developed by the State Police and to be acquired before the examination.[152] Examination questions No. 256, 257, and 258 provides examination of knowledge on action of a security guard in case of activation of alarm.

[152] Available on the State Police homepage: http://www.vp.gov.lv/?id=357&said=357

The Ombudsman admits that the problem still has been left systemically unsettled, since there are no unified standards determined for the education institutions, which would determine the content to be taught to the future security guards. It arises from the letters of reply of the State Police and the Ministry of the Interior that these institutions are detaching themselves from solution of this problem, considering that security companies should agree on professional standard. However, the Ombudsman considers that the State Police and the Ministry of the Interior should engage in the development of professional standards more actively and regulate the requirements to be set for the security education up to the moment of entry into force of the professional standard.

Taking into consideration the public importance of the matter, the Ombudsman will follow the progress thereof.

7.2 On Efficiency of Noise Prevention Mechanism

In September of 2014, at the initiative of the Ombudsman, a verification procedure regarding efficiency of control and prevention mechanism of disturbing noises within the context of Article 115 of the Constitution (rights to live in a favourable environment).

Solution of the abovementioned problem was included in the work strategy of the Ombudsman for 2014-2016 as one of priorities of the social, economical and culture rights. The set priority was based on the problem situation, updated year on year, regarding the hazardous impact of social acoustic noises (playing of music, shouting etc.) in cities and legal means for the prevention thereof without disproportionate impairment of rights of other people, for example, rights of merchants to gain profit from economic activity related to organization of entertainment events in the resided areas of a city.

On 19 February 2015, the Ombudsman received a letter from the Ministry of Environmental Protection and Regional Development notifying of the intention to form a working group for the improvement of regulatory enactments related to noise, inter alia – asking to delegate a representative of the Ombudsman's Office.

The Ombudsman recognized delegation of a representative of his Office for the working group as useful, taking into consideration the fact that this area is a complicated one, since it affects many sectors (environment, health, rights of municipality and other), therefore, engagement in the working group is the most efficient way for the Ombudsman to express the information provided by the residents' complaints, as well as to provide his evaluation of the problem and proposals for the solution thereof within his competency. Due to this reason, the Ombudsman's verification procedure was dismissed.

The working group has developed possible amendments in the Latvian Administrative Violations Code (LAPK), which would prevent social noisiness, however, these amendments have not been harmonized with all involved institutions. The Ombudsman's representative keeps working in the abovementioned working group.

7.3 On Development of Cemetery in Ķemeri National Park

During the reference period, the Ombudsman has reviewed verification procedures regarding the action taken by Engure District, planning the development of cemetery at Ķemeri National Park, natural conservation area.

Pursuant to the regulation of regulatory enactments, Ķemeri National Park is a specially protected natural territory of European interest, included in *Natura 2000* network. Entire territory of Ķemeri National Park in fully covered by forest. According to Section 3^1 of the Law on Forests, territory of cemeteries shall not be regarded as forest, therefore, in case of development of cemetery, the respective unit of land should be a subject to land transformation. Since development of cemetery is not related to habitat restoration, restoration of natural flow of rivers, and the natural hydrological regime of the territories adjacent to water courses and water bodies, furthermore, in the particular situation, change of the type of use of forest land is not allowed pursuant to the Regulations of the Cabinet of Ministers No. 236 "Regulations for Individual Protection and Use of Ķemeri National Park" of 18 June 2002 and Law on Forests, Engure District Council had no legal grounds to foresee development of cemetery at Ķemeri National Park, natural conservation area in Engure District Council territorial planning for 2013-2025, which was approved by Engure District Council Binding Regulation No. 19 "On Approval of the Graphical Part of Engure District Territorial Planning and the Territory Use and Construction Regulations" of 20 November 2012.

At the same time, it was detected that the decisions adopted by Engure District Council on 22 July 2014 and 23 September 2014, respectively, providing for separation of at the area of 6.2 ha a land unit from the immovable property "Ķemeri National Park" for the development of new cemetery, were unlawful due to non-compliance with the requirements of territorial planning regarding the area of newly established land unit.

Evaluating actual circumstances of the verification procedure regarding development of cemetery at Engure District, Ragaciems, Ķemeri National Park, natural

conservation area, the Ombudsman took into consideration the opinion provided by the expert of protection of species and habitats that development of new cemetery in the planned territory would irreversibly destroy specially protected habitat – 2180 Maritime wooded dunes at the area of 6.2 ha, since character of the planned activity cannot be compatible with the preconditions for the existence of this habitat.

The Ombudsman indicated in his opinion that, by planning (allowing) development of cemetery at Ķemeri National Park, natural conservation area, Engure District Council has acted contrary to the principle of good governance, and called Engure District Council to provide corresponding amendments in the territorial planning, evaluating possibility to opt for the development of a new cemetery elsewhere.

7.4 On Unwarranted Construction

In 2015, after review of a verification procedure, the Ombudsman has provided opinion on possible violation of principle of good governance made by Riga City Construction Board in relation to sustained failure to prevent unwarranted construction.

The submitter has indicated on sustained operation of a stone processing plant in an immovable property located in the territory of mixed building with residential function, resulting in exposure of the submitter and residents of the surrounding houses to impact of dust and noise.

Pursuant to Section 15, Paragraph 1, Clause 14 of the Law On Local Governments, one of the autonomous functions of a local government is to ensure in their relevant administrative territory the lawfulness of the construction process.

It was detected within the framework of the verification procedure that action of the Construction Board in the solution of particular problem situation complied with the requirements of regulatory enactments, taking into consideration the fact that administrative procedure within an institution is time-consuming, however, it includes the rights of the owner and leaseholder of the immovable property, stipulated in the Administrative Procedure Law.

While reviewing the verification procedure, the construction board has submitted a proposal regarding amendments in Riga City Council Binding Regulation No. 197 “On Immovable Property Tax in Riga” of 18 December 2012, stipulating that the immovable properties, where unwarranted construction has been detected, shall be subject to three per cent immovable property tax rate of the cadastral value, in order to discipline the owners,

who protractedly ignore the decisions adopted by the construction board on elimination of consequences of unwarranted construction.

On 9 June 2015, Riga City Council has adopted binding regulation No. 148 “On Immovable Property Tax in Riga”, stipulating that the immovable property or a part thereof, which is not being maintained pursuant to the procedures paid down in regulatory enactments, shall be subject to three per cent tax rate.

It was concluded within the framework of the verification procedure that action of the Construction Board in the problem situation should be recognized as lawful and compliant with the provisions of regulatory enactments and the principle of sound administration.

8 On Violation of Prohibition of Discrimination Regarding Access to Commodities and Services

During the reference period, the Ombudsman has detected a violation of the prohibition of discrimination within the framework of the verification procedure in relation to an incident involving young people (three girls and two boys, three persons with darker colour of skin), who went to club, however, were not admitted, because security guard pointed at a sign “Private party”. At the same time, local residents were admitted into the club immediately.

The abovementioned incident was recorded on video, which was submitted to the Ombudsman by LNT news service. Video has not been edited, and it shows that, after non-admittance of the abovementioned young people, several other persons entered the club. Afterwards, a journalist of LNT news service entered the club and bought cigarettes. Security guards made no limitations regarding access of the journalist into the club.

Management of the club did not admit the fact of prohibition of discrimination, indicating that the video of LNT news service was an instigation. The Ombudsman pointed out that LNT news service performed a situation test. Situation test is the most frequently used instrument to prove the fact of discrimination. Purpose of situation tests is creation of a situation, in which the person incurs and may discriminate other persons without any knowledge of the ongoing surveillance.[153] Mostly, situation tests are being

[153] Rorive I. “Situation tests in Europe: Myths and realities,” European Anti-Discrimination Law Review, 2006, issue No. 3, p.33.

used in relation to nightclubs, for example, persons of foreign origin are systematically being refused entrance into a club, while persons of local origin, who arrive before or after the foreigners, can enter into the club without any hindrance.

Situation tests as evidence of a discrimination fact are usually being carried out by the representatives of Ombudsmen, non-governmental organizations or journalists.[154] Thus, the Ombudsman pointed out that there was no reason to consider that LNT news service had made an instigation.

Representative of the club indicated that clients under influence are not being admitted into the club. *Dress-code* or corresponding style of clothing, including festive clothing, is also being observed in the club, while persons in beach outfit, sports shoes and such are not being admitted.

Taking into consideration the abovementioned, the Ombudsman paid attention that the club's website contains no information on the allowed clothing style. Therefore, there is room for various criteria to be applied for the club's clients. Additionally, the Ombudsman indicated that the situation described by the representative of the club regarding non-admittance, if a person is dressed in sports shoes, does not comply with practice, since the video shows that two persons dressed in jeans and sports shoes are allowed into the club, and also the journalist of LNT news service, who carried out the situation test and entered the club, was dressed in sports shoes. Thus, the Ombudsman recognized the club's arguments unfounded.

Thus, it should be concluded that the grounds mentioned by the club are not sufficient to make sure that the fact of prohibition of discrimination has not happened. Thus, the Ombudsman detected a violation of the prohibition of discrimination on grounds of ethnicity and race.

Upon completion of the verification procedure, the Ombudsman recommended:

1) to eliminate violations of the prohibition of discrimination in the club on grounds of ethnicity and/or race;

2) to publish on the club's website information on the allowed clothing style;

3) to find a way to apologize to the submitter.

Management of the club submitted to the Ombudsman a draft letter of apology addressed to the submitter. At the same time, a draft internal rules were submitted, including insufficient details regarding the clothing, which is not allowed. Additionally, the Ombudsman detected a violation of equal treatment to persons with disabilities, which

[154] Ibidem.

manifested as requirement to report their arrival in advance and the rule that persons with disabilities may arrive only accompanied by a guide, who is responsible for the compliance of persons with disabilities with the internal rules. The Ombudsman indicated that the club is obliged to comply with the prohibition of discrimination on grounds of disability pursuant to the UN Convention and Section 3^1 of the Consumers Rights Protection Law. Thus, the Ombudsman additionally recommended exclusion of discriminatory clauses related to persons with disabilities from the club's internal rules.

During a similar situation test, the Ombudsman detected a violation of the prohibition of discrimination within the framework of the verification procedure in relation to an incident involving young people (three girls and two boys, three persons with darker colour of skin), who were asked to pay 240 euro for the table or equal amount for being included in a VIP list and admitted to the club, while local residents were not charged at all.

Non-edited video prepared by LNT news service was submitted along with the submission. Video shows that initially five girls are admitted into the club, but then, the submitter and her four friends arrive to the club. Security guard commences a conversation with her and her friends. Two more girls (according to the submitter – Germans) arrive to the club.

After a lengthy conversation with the club's security guard, the submitter and her friends, as well as both German girls leave. Five men exit the club. Six or seven young people arrive to the club's entrance, and security guard admits them inside.

The abovementioned video additionally shows that sometimes women, who are not residents of Latvia, are being admitted, while foreign men are being required to pay for the table or champagne even up to 240 euro.

The club explained to the Ombudsman that there is no entry fee for both visitors from Latvia and foreign states. *Friend card* and *VIP card* cannot be purchased, they are being issued to loyal club clients and occasionally provide discounts to their holders, when buying drinks and snacks or free entry to some of the concerts. Admittance into the club is possible also without VIP cards or invitations, unless private parties take place there. There was none on the evening concerned.

The club operates the globally known bottle service, which means – if the client wants to sit by a table, he/she orders a bottle of alcoholic drink from the standard list, and, most frequently, it does not cost 250 euro.

The Ombudsman paid attention that the following information was provided on the club's website – the club operates *face-control* and *dress-code.* The abovementioned website separately indicated no entry fee or information regarding admittance of holders of both abovementioned cards. Besides, the club indicated there was no entry fee. Thus, the Ombudsman detected that action of the security guard of the club by demanding payment from the young people at the amount of 240 euro was not founded.

The club indicated that the particular incident can be explained by excess of the capacity thereof in cases, when people must stand in the queue up to the moment, when space in the club or by the table becomes available. Whereas, holders of the VIP cards are entitled to priority of admittance, if space becomes available. Club employees mentioned the respective amount to build the picture regarding approximate average expenses, if several people together opt for sitting at a table.

The Ombudsman pointed out that the club has provided no evidence confirming that the club's capacity was excessed on the evening concerned, furthermore, no information has been provided on how the security guards of the club evaluate excess of the club capacity. At the same time, the submitter indicated that the security guard did not indicate on excess of the club capacity, however, informed on necessity to pay specific amount as entrance fee.

The Ombudsman paid attention that, pursuant to Section 3^1, Paragraph 1 of the Consumers Rights Protection Law, prohibiting differential treatment based on sex, race, ethnic origin, when offering commodities or services, as well as pursuant to Section 3^1, Paragraph 5 of the abovementioned law, provider of a service has a duty to prove that the prohibition of discrimination is not violated, if receiver of the service pays attention to the abovementioned. Thereby, in the opinion of the Ombudsman, grounds provided by the club are insufficient to make sure that the prohibition of discrimination has not been violated. Thus, the Ombudsman detected violation of the prohibition of discrimination based on ethnic origin and race.

The Ombudsman recommended to the club to eliminate these violations of the prohibition of discrimination, as well as to apologize to the submitter. The Ombudsman has not received any information from the club on implementation of recommendations, though.

IV Compliance with the Principle of Good Governance

1 Promotion of the Principle of Good Governance in State Administration

1.1 Opinion on Legal Aspects of Assessing CPCB (KNAB) Director

At the beginning of 2015, the Director of Corruption Prevention and Combating Bureau (hereinafter referred to as – CPCB) had expressed his doubts regarding legal grounds of his evaluation and asked the Ombudsman to provide his opinion on the following issues:

1) Are the Regulations of the Cabinet of Ministers No. 494 "Regulations On Evaluation of the Work Execution of the Employees of Direct State Administration Bodies" of 10 July 2012 attributable to the CPCB Director?

2) Are the Regulations No. 494 compatible with a higher-ranking regulatory enactment – Law On Corruption Prevention and Combating Bureau?

3) Does the Law On Corruption Prevention and Combating Bureau provide for the evaluation of the CPCB Director?

Taking into consideration that Section 11, Clauses 3 and 4 of the Ombudsman Law stipulate that the Ombudsman shall evaluate and promote the compliance with the principle of good governance in the state administration, as well as discover deficiencies in the legislation and the application thereof, as well as promote the rectification of such deficiencies, as well as, having regard to the fact that unequivocal application of legal provisions has significant role in provision of the principle of good governance, the Ombudsman provided his opinion on the abovementioned issues.

After analysis of the applicable legal framework, the Ombudsman concluded that the Law On Corruption Prevention and Combating Bureau *expressis verbis* does not regulate assessment of the CPCB Director, however, Regulations No. 494 can be applied to him/her as far as it affects pay organization of the CPCB Director, and, in this aspect, these regulations comply with the Law On Corruption Prevention and Combating Bureau.

Besides, the historical analysis of legal provisions of the Law On Corruption Prevention and Combating Bureau show that, upon introduction of a new legal framework in relation to the evaluation of the CPCB Director, the legislator has not provided internal coordination and harmony of the legal system, which has resulted in unambiguous and even inconsistent understanding of legal provisions.

Besides, the Ombudsman admitted: it should be concluded from the regulatory enactments that the current system for the wage setting of the CPCB Director poses risk to weaken independence of the CPCB Director.

1.2 Opinion on Draft "Law on CPCB"

Upon deciding on the matter regarding direction of the draft "Law On Corruption Prevention and Combating Bureau", the CPCB Public Advisory Council has asked for opinion on this draft law within the competence laid down in the Ombudsman Law.

Taking into consideration that the issues regarding corruption prevention and combating are crucial to the entire society, the Ombudsman evaluated the draft "Law On Corruption Prevention and Combating Bureau" from the aspect of the principle of good governance and the derived principles.

The Ombudsman stressed that the principle of good governance has been derived from the provisions of Article 1 of the Constitution, which, inter alia, provide for necessity of clear and efficient state administration, to make the residents sure that:

- the state administration works in the public interests;
- the state administration is efficient,[155]
- the state administration does not undermine public trust in the state.

Upon evaluation of the draft law, the Ombudsman called for analysis thereof from three aspects:

1) what is the current regulation of the activity of CPCB and what consequences are being caused by such a regulation both from the viewpoint of legal clarity, and public interests;

2) how would the activity of CPCB be regulated, taking into consideration the requirements laid down in the international documents;

3) will this draft law improve the current situation in principle and does it take into consideration the international regulation by adjusting it to the peculiarities of the state administration of Latvia.

[155] Efficiency principle has been recognized in the European law and is being used in application of legal provisions more and more frequently. See Šulmane Daiga. Problems and topicality of efficiency of legal provisions in the law sociology of XX and XXI century, material for the Constitutional legal policy seminar 2013, Bīriņi, pages 115 and 116. Notion "efficient" on the substance means something providing the desired results; this is something effective. Efficiency is a sign of quality of certain phenomenon. Efficiency criteria or conditions, upon the meeting of which conclusion on the required and effective results can be made, should be determined on the basis of substance of the specific.

The Ombudsman expressed opinion that, when deciding on direction of the draft law, it is crucial to agree at the beginning, if the draft law can be supported at the level of these principles. The Ombudsman pointed out that there can be discussion regarding a number of deficiencies from the viewpoint of legal technique (doubled content of provisions, which should be clarified, competence of an institution has been confused with the rights, which should be separated; abstract legal notions, for example, the notion included in Section 4 of the draft "substantial consequences" etc.) should be discussed wider, however, these issues have been subordinated to a conceptual decision. They should be solved later on, when it will be recognized that the draft law can be supported at the level of principles.

The Ombudsman noted that so far matter regarding evaluation of the CPCB Director was supposed to be analysed in-depth, although it is seemingly simple from the viewpoint of state administration, however, due to the regulation or lack thereof in the Law On CPCB, a conclusion had to be made it was different. The current Law On CPCB, from the viewpoint of the aspect of good governance, is poor – unclear in substantial issues; ambiguously interpreted, thus, in general, indirectly affecting CPCB independence guarantees and operational efficiency. Thus, the Ombudsman concluded that problems regarding regulation of the activity of CPCB cover much wider context. The Ombudsman pointed out that, from the viewpoint of good governance, such a situation may not arise.

In relation to the draft law, the Ombudsman noted the following aspects. Firstly, draft law in comparison with the current Law on CPCB has been more convincingly directed towards implementation of international obligations and recommendations, thus, strengthening CPCB independence guarantees. From the viewpoint of principle of good governance, it should be evaluated positively, since this will promote interests of residents and the entire society.

Secondly, from the viewpoint of legal clarity and determination,[156] it should be evaluated positively that the draft law clearly determines the matter regarding service legal relations of CPCB officials, preventing previous uncertainties and ambiguous interpretation of law. Constitutional Court has provided its own evaluation on this matter, admitting that CPCB employees are on public service. In should be considered that service relations of CPCB employees should be primarily regulated by public law. This arises also from the public law doctrine.

[156] These principles were derived from the principle of the rule of law; these principles characterize legal framework also from the viewpoint of good governance.

Thirdly, it should be evaluated positively that, unlike the valid Law On CPCB, the draft law separates procedures for the supervision over decisions adopted by the CPCB Director. Thus, supervision boundaries have been defined for the Prime Minister. Possibly, nuances regarding evaluation procedure of the CPCB Director implemented by the Prime Minister may be discussed, however, from the viewpoint of legal certainty and CPCB independence guarantees, such a regulation is important.

Fourthly, in the opinion of the Ombudsman, it is correct that the draft law does not stipulate CPCB Council as a self-government institution. Any head of a public institution is in charge of the institution concerned and activity thereof in general, therefore, the CPCB Director plays decisive role in the adoption of decisions. Competence of the council may be regulated by internal regulatory enactments, providing that strategic issues should be decided upon in the management meetings with the participation of the top officials of CPCB.

The Ombudsman expressed his opinion that direction of the draft law in Saeima should be supported. The sooner the legislator will decide on support of the draft law, the sooner it will be possible to come to understanding of this matter and put this area in order also from the viewpoint of good governance, which is important from the public viewpoint.

2 On Interpretation of Legal Provisions and Good Governance in Administration of Taxes

2.1 On Enforcement of Provisions of Law "On Personal Income Tax"

With reference to the submission of some person, in January of 2015, a verification procedure was initiated, within the framework of which several issues related to good governance and interpretation of legal provisions in the area of tax administration were evaluated.

Namely, the person's submission indicated that tax audit carried out by the State Revenue Service (hereinafter referred to as – VID) resulted in surcharge of personal income tax to the submitter for the income, obtained by selling a immovable property, which was registered in the name of the submitter in the Land Register, when dividing the property within the divorce procedure. Namely, on 11 January 2011, the submitter sold the immovable property, which was registered in her name in the Land Register on 27 July 2007, pursuant to the contract on division of common property, dated 24 May 2006,

which was entered into within the divorce procedure. The immovable property was obtained on 9 August 1996, during the submitter's marriage, and it was registered in the name of the submitter's spouse in the Land Register up to 27 July 2007.

The submitter indicated that the SRS has acted contrary to the principle of good governance from several aspects. Firstly, the SRS has applied wrong legal provisions in this case, furthermore – by interpreting them incorrectly.

Secondly, the SRS has provided correspondence inconsequently, namely, by sending part of it in registered letters, while the other part – with the electronic signature in the SRS electronic declaration system (hereinafter referred to as – EDS). Thirdly, the SRS has reviewed the submitter's contestation submission by violating the deadline set in the regulatory enactments. Finally, fourthly, the submitter wanted to discuss this matter with the Director General of the SRS and applied for appointment, however, the submitter was denied an appointment without significant reason.

Therefore, the submitter asked the Ombudsman to provide an opinion: 1) regarding the action of the SRS by taxing the submitter's income with the personal income tax in the case concerned; 2) whether the interpretation of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax" by the SRS and the Ministry of Finance is in conflict with Sections 89, 90 and 109 of the Civil Law; 3) whether the SRS, by changing the procedure for correspondence notification, has violated the submitter's legitimate expectations.

Having analysed the application of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax", which provides exemption from the payment of personal income tax, if the sold immovable property has been in the ownership of a person for five years and the person has declared his/her place of residence in this immovable property for 12 months within those five years, implemented by the SRS and the Ministry of Finance, the Ombudsman admitted that both institutions apply this legal provision grammatically, without taking into consideration either the actual substance of circumstances, or other legal provisions, of purpose of the applicable legal provision.

The Ombudsman recommended the Ministry of Finance in cooperation with the SRS to change practice in relation to application of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax" in cases similar to the submitter's within six months, as well as to evaluate necessity to amend regulatory enactments for the elimination of ambiguous interpretation of the abovementioned legal provision.

The SRS informed on change of practice in relation to application of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax", for evaluation of the

moment of obtaining of the common property of spouses. However, regardless of the abovementioned, the SRS continues several legal proceedings[157] maintaining the position opposite to the current practice.

Since the Ombudsman found no reasonable explanation to such actions taken by the SRS, he repeatedly called the SRS to act consequently and evaluate termination of the legal proceedings in the cases specified in the letter of the SRS. However, in December of 2015, the SRS explained that it would not withdraw the documents submitted for appeal, but terminate the legal proceedings only after reception of the court's adjudication.

The Ombudsman considers such action to be contrary to the principle of good governance, namely, the SRS knows negative result of the legal proceedings on the substance in relation to the institution, however, it continues impairment of the rights of a private person.

2.2 On Reporting via SRS Electronic Declaration System

Pursuant to Section 7^2, Paragraph 1 of the law "On Taxes and Duties", notification on an administrative provision (including unfavourable administrative provision), other decisions and documents and information issued by the State Revenue System to the taxpayer which is a user of the EDS of the State Revenue Service, shall be made by using the EDS of the State Revenue Service, concurrently transmitting the information to this effect to the electronic email address specified in the taxpayer's EDS.

Evaluating the actions of the SRS regarding inconsequent correspondence with the submitter, the Ombudsman, firstly, indicated that the procedures for notification by using the EDS entered into force on 1 January 2013, with the addition of Section 7^2, of the law "On Taxes and Duties".

It arises from the abovementioned legal provision that, since 1 January 2013, the SRS was obliged to provide correspondence with the users of the EDS via the EDS. Accordingly, the SRS was obliged to send notifications to the submitter by using the EDS as of 1 January 2013, since the submitter has been a user of the EDS since 17 September 2012.

Correspondence between the SRS and the submitter in regard of the tax audit was commenced on 6 December 2012, by sending a notification regarding provision of information. Following the requirements of the regulatory enactments, the SRS has sent

[157] Letter No. 22.1/157478 of the SRS, page 3.

this notification by post in written form. However, the SRS has failed to provide further correspondence between 1 January 2013 and 17 June 2013, when the decision on the audit results was notified, in accordance with Section 7^2, Paragraph 1 of the law "On Taxes and Duties". The SRS provided correspondence by post. Whereas, the SRS has sent the decision of the Director General of the SRS, dated 17 September 2013, by using the EDS.

The Ombudsman considered: although it is not disputable that the submitter as a user of the EDS is obliged to comply with and respect the law "On Taxes and Duties", including provisions of Section 7^2, and to be aware of consequences, duty of the SRS to comply with the same legal provision and the principle of good governance, is not disputable at the same extent. Actions not corresponding to the principle of good governance include the actions taken by the SRS manifesting as failure to provide correspondence by using the EDS since the beginning of 2013, thus, not only violating the legal requirement, but also misleading a taxpayer that all the further correspondence, probably, would be conducted by post also in the future.

The Ombudsman admitted: although formally the SRS could have sent the decision of the Director General of the SRS, dated 17 September 2013, by using the EDS, however, from the viewpoint of good governance, under the respective circumstances, the action could have been corresponding to fair procedure and the submitter's interests, if the decision concerned was sent by post. If the principle of legitimate expectations requires from and institution the following: 1) lawful action and 2) consequent action, then, in this particular case, it should be concluded that the SRS has complied with none of these conditions.

In this regard, the Ombudsman called the management of the SRS to notify the structural units implementing tax control measures on uniform and consequent procedures for the notification of documents within six months, in order to avoid impairment of taxpayers' rights and legal interests because of inconsequent and illegal actions in the future.

2.3 On Non-compliance with Review Deadline for Contestation Submissions

During the reference period, when evaluating actions taken by the SRS, violating the deadline set for the review of contestation submissions in the regulatory enactments, the Ombudsman concluded – data conformity audit included different procedures for the calculation of late payment interest in comparison with the calculation for tax audit purposes.

The Ombudsman found no reasonable explanation for such a different legal framework and considered – it shall not be acceptable that, upon inspection of the same matter regarding taxation by using various tax control methods, the taxpayer is being exposed to unequal and disproportionate consequences in relation to the calculated late payment interest.

In the opinion of the Ombudsman, within the framework of the data conformity audit, late payment interest should be calculated similarly, as laid down for the tax audit purposes, therefore, the Ministry of Finance in cooperation with the SRS was recommended to conduct amendments in the provisions of Section 23, Paragraph 5^1 of the law "On Taxes and Duties", foreseeing similar procedures for the calculation of late payment interest, as laid down in Section 32, Paragraph 8 of the law "On Taxes and Duties" for the tax audit purposes.

Additionally, the Ombudsman detected that the information provided by the clients of the Ombudsman's Office leads to conclusion – delays of the deadlines set for the review of contestation submissions are systemic in the SRS. Such action is not compatible with good governance.

The Ombudsman pointed out that, from the viewpoint of state administration principles, any violation of a regulatory enactment, including procedural violations, is an unlawful action. Position that unlawful action causes no legal effects regardless of the effects caused to the decision adopted by the institution, may not be compatible with the principle of lawfulness. Therefore, the Ombudsman called the SRS to pay greater attention to delays of deadlines related to review of contestation submissions and implement measures, which would prevent continuation of such practice.

The letter of reply from the SRS specified several measures planned for the prevention of the problem regarding delays of deadlines related to reviews of contest (appeal) submissions both, in the cases of audits, data conformity audits, and cases of administrative violations. However, the response provided no notion regarding the planned efficiency from these measures, namely, the deadline planned for the review of submissions, the deadline of which already has been delayed. As it was concluded within the framework of the verification procedure, delay of the deadline related to review of contest (appeal) submission itself should be considered an unlawful action, furthermore, in this particular case, it causes significant impairment of rights to the private persons.[158]

[158] Ombudsman's opinion No.2015-3-27K of 20 April 2015, pg. 15–17.

In the opinion of the Ombudsman, unforeseeable continuation of such a situation is not compatible with the principle of lawfulness. According to the principle of good governance, actions of an institution must be lawful and foreseeable, thus, providing legitimate expectations to private persons regarding compliance with their rights and legal interests. Therefore, the Ombudsman asked for updated information regarding the number of submissions currently outstanding in the SRS and with delayed deadline for contest (appeal): in audit cases, data conformity audits and administrative violation cases. Besides, the SRS was asked to specify the time limit, within which review of the abovementioned submissions was planned.

The letter of reply from the SRS provided information that, by 15 December 2015, there were outstanding submissions /complaints with delayed deadline for contest in 25 audit cases, two data conformity audits and 62 administrative violation cases. The SRS indicated on plans to review these cases up to 1 February 2016.

The Ombudsman will keep following the actions taken by the SRS on this issue, since it significantly affects the rights and legal interests of private persons.

In relation to the recommendation – the Ministry of Finance in cooperation with the SRS should conduct amendments in the provisions of Section 23, Paragraph 5^1 of the law "On Taxes and Duties", foreseeing similar procedures for the calculation of late payment interest, as laid down in Section 32, Paragraph 8 of the law "On Taxes and Duties" for the tax audit purposes – the SRS and the Ministry of Finance informed the Ombudsman that the amendments have been developed pursuant to the Ombudsman's recommendations, however, further direction thereof is unknown. The Ministry of Finance informed on the intent to direct the abovementioned amendments concurrently with other significant amendments.

The Ombudsman will keep following the direction of the abovementioned amendments.

2.4 Informing Private Persons within the Framework of Tax Control

In 2015, while reviewing submissions of persons regarding the actions taken by the SRS, the Ombudsman detected the following situation. Upon commencement of a data verification audit, the SRS, inter alia, asked the taxpayer in the notification to submit a tax declaration. The Ombudsman has detected that in cases, when a taxpayer submits the respective tax declaration, agreeing with the considerations specified in the SRS

notification, the SRS adopts decision on termination of the data verification audit, pursuant to Section 63, Paragraph 1, Clause 4 of the Administrative Procedure Law.

During the analyse of the situation, the Ombudsman admitted that, from the legal viewpoint, such a decision is not an administrative act[159] and it must not be drawn up pursuant to Section 67 of the Administrative Procedure Law. Section 63, Paragraph 1, Section 4 and Paragraph 2 of this Section stipulates that, after detection of the required facts and hearing of the participants of the administrative procedure, the institution shall immediately consider the circumstances and issue a decision on termination of the matter on the basis of lack of facts or unsuitability, if the case has been initiated at the initiative of the institution, including – on the basis of information (complaint) received from other private person. The institution shall notify of the decision on dismissal of the case and motivation thereof to the submitted, as well as other participants of the administrative procedure, who were called to provide their opinions.

Thus, the abovementioned legal provisions stipulate cases, when the administrative case should be terminated (i.e., in case of lack of facts or if continuation of the matter is unsuitable and if the matter has been initiated at the initiative of the institution). Besides, the abovementioned legal provisions stipulate necessity to indicate grounds for the termination. The law does not oblige the institution to indicate any additional information in the decision.

The Ombudsman detected that frequently data conformity audits are being terminated due to the fact that continuation thereof is not unsuitable due to the submitted tax declaration. Thereby, decisions contain sufficient grounds from the viewpoint of Section 63 of the Administrative Procedure Law. However, the Ombudsman has observed that the SRS indicates in the abovementioned decisions also information, which is not required by law. For example, one of the decisions on termination of data conformity audit, which was addressed to a natural person and which is at the disposal of the Ombudsman, contains the SRS's indication on "additional notification of the rights to decide on necessary to conduct a taxpayer's tax audit, if new evidence regarding non-compliance of the taxpayer's transactions with the requirements of regulatory enactments will become known or available", pursuant to Section 23 of the law "On Taxes and Duties". In case of a tax audit, the taxpayer will be notified pursuant to Section 18, Paragraph 1, Clause 10 of the law "On Taxes and Duties".

[159] Comments of the Administrative Procedure Law. Part A and B. Prepared by a group of authors. Scientific wording of Dr.iur. J.Briede. – Riga: Courthouse agency, 2013, Page 599.

The Ombudsman admitted that, from the viewpoint of good governance, provision of additional information itself should be evaluated positively, because the taxpayer is being notified of possible other consequence of the decision beyond the legal requirements. However, in the opinion of the Ombudsman, upon deciding to provide additional information in a decision, the institution should carefully consider significance and necessity of such information, as well as find out, if provision of some other information, crucial to the taxpayer and aimed at promotion of rights and legal interests thereof , would also be useful.

Analysing content of the quoted information, the Ombudsman indicated that such information describes possible additional control measures for the taxpayer. On the substance, it is an information of repressive character. If the SRS has decided to indicate additionally such information, regardless of the fact that regulatory enactments do not require to do so, it is not clear, why the SRS cannot additionally indicate in the corresponding decision information, which would promote rights and interests of taxpayers, for example, information on procedures and deadlines for the payment of taxes, account information etc. The taxpayers' complaints, which have been received at the Ombudsman's Office, mostly regard to the SRS's failure to provide such information in separate documents addressed to a taxpayer.

Since a template can be developed for such decisions and similar procedural documents, the Ombudsman called the SRS to improve the content of the decision on termination of data conformity audit, by adding it with practical information, aimed at payment of the tax (including late payment interest). The Ombudsman indicated: there was no doubt that, upon implementation of the principle of good governance, the SRS may provide additional information, which is not directly foreseen to be indicated in regulatory enactments also in other separate documents within the framework of the administrative procedure, as long as such information would provide encouraging treatment and stimulate compliance with the rights of a private person.

The Ombudsman called to review also templates of other procedural documents of similar character, considering necessity to add them by information, which would promote protection of the rights and interests of taxpayers.

2.5 On Proper Informing of Taxpayers

Report of the Ombudsman for 2014 indicated that, analysing the Regulations of the Cabinet of Ministers No. 635 "Procedures for the Survey and Determination of the Area

of the Uncultivated Utilised Agricultural Land and the Provision of Information Thereof" of 13 July 2010, the Ombudsman detected that, for the purpose of application of Section 3 of the "Law On Immovable Property Tax", the Rural Support Service (hereinafter referred to as – RSS) commences survey of agricultural lands from 1 September, and it must be completed up to 20 November of the current year, by sending the acquired information to the municipalities for the calculation of additional rate.

While surveying the agricultural lands, the RSS failed to inform a private person regarding the fact that the land owned thereby has been recognized as not well-kept. The private person became aware of this fact by receiving a statement on payment of the immovable property tax (hereinafter referred to as – IPT) from the municipality, i.e., between 1 January and 15 February, next year. Thereby, the person was able to contest the RSS survey results solely by contesting and appealing the statement on payment of the IPT or, at the latest – after 15 February, next year.

The Regulations of the Cabinet of Ministers No. 635 provided that, contesting the statement on payment of the IPT, a person shall be entitled to request the municipality to ask the RSS for repeated review of the information obtained during the survey, and, if necessary - for repeated survey of the uncultivated land. The Ombudsman concluded that, in fact the person can ask the RSS to conduct a repeated survey of land in the winter or under conditions, which, objectively, mostly are not identical to the actual conditions, as they were up to 20 November.

Having regard to the abovementioned, the Ombudsman admitted: although, by contesting the statement on payment of the IPT, the person has possibility to ask for repeated survey, using all the available information on the particular unit of land, time of the survey should be objectively recognized as unsuitable for the acquirement of information with highest possible degree of credibility.

In this regard, the Ombudsman recommended to the RSS and the Ministry of Agriculture to consider necessity of amendments in the Regulations of the Cabinet of Ministers No. 635 within six months, by adding these regulations, for example, with a provision that the RSS shall send the information regarding negative survey results – a fact on detected uncultivated utilised agricultural land – to the owner of the land concurrently with sending thereof to the respective municipality. The Ombudsman did not rule out also other solutions on how the persons could be notified, for example, through the respective municipalities, etc.

On 9 June 2015, the Cabinet of Ministers adopted amendments[160] in the Regulations No. 635, stipulating that the RSS shall submit information on uncultivated utilised agricultural land units to the municipality until 20 November of the current year (Annex), as well as publish it on their website *www.lad.gov.lv*. Thus, the recommendation of the Ombudsman was implemented fully.

2.6 Comprehensiveness and Proper Execution of Administrative Case Review

During the reference period, two private persons addressed the Ombudsman's Office, indicating that the SRS had conducted data conformity audit regarding income gained from the sale of immovable property, which was a common property.

The SRS had admitted that provisions of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax", which provides exemption from the annual taxable income and taxation the income from the alienation of immovable property, which has been in the ownership of the payer for more than 60 months (from the day when the relevant immovable property was registered in the Land Register) and has been the declared place of residence of the person (which has not been declared as an additional address of the payer) for at least 12 months until the day of the entering into the alienation contract.

The SRS had detected that the sold immovable property had been in the ownership of the submitters for more than 60 months, however, address of the alienated immovable property did not match with the declared place of residence of the submitters, thus, the SRS concluded that the submitters did not have the declared place of residence in the alienated immovable property for 12 months within the last 60 months until the day of the entering into the alienation contract.

Whereas, the submitters expressed their opinion that, contrary to the conclusions by the SRS, the submitters had declared their place of residence in the alienated immovable property for more than 13 years, thus, conforming to the provisions of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax". The submitters considered that the decision was adopted by the SRS on the basis of mistakenly detected fact regarding the period of declaration of the place of residence of the submitters.

Although the Ombudsman was not able to resolve the particular case involving the submitters (the deadline for contest of the SRS decision was missed), however, the

[160] Available on: http://likumi.lv/ta/id/274697-grozijums-ministru-kabineta-2010-gada-13-julija-noteikumos-nr-635-kartiba-kada-apseko-un-nosaka-neapstradatas-lauksaimnieciba-i...

Ombudsman did not rule out a possibility that the problem described by the submitters can exist and affect other private persons. Thus, in order to verify, whether actions taken by the SRS contain systemic deficiencies, the Ombudsman considered it necessary to find out fairness of the information provided by the submitters and asked the SRS to provide information regarding circumstances of the data conformity audit of the submitters.

After reception of the Ombudsman's request, the SRS obtained additional information regarding the case involving the submitters, and, after analysing of this information, initiated the administrative procedure anew and, pursuant to Section 85, Paragraph 1 of the Administrative Procedure Law, adopted decision on repeal of the results of data conformity audit of the submitters.

The Ombudsman approved the action of the SRS, repealing executable SRS's decisions on the results of data conformity audit. Besides, the Ombudsman admitted that such an action complied with the principle of good governance. However, in the opinion of the Ombudsman, this case involving the submitters showed that, before the adoption of the decision on repeal, the action of the SRS has been formal; therefore, the Ombudsman initiated a verification procedure regarding comprehensiveness of the SRS's data conformity audit and execution of the file of data conformity audit.

It was detected within the framework of the verification procedure that no additional information is being acquired within the data conformity audits, within which provisions of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax" are being evaluated in case of identifiable doubt regarding credibility thereof. The Ombudsman concluded that the SRS relies on the fairness of data posted in public databases (in Tax information system with online connection with the Population Register, and in the State Unified Computerized Land Register), at the same time, being aware that these databases may contain erroneous information. The Ombudsman concluded that such instructions are included in the internal regulatory enactments of the SRS.

The Ombudsman admitted that such a position was formal, since it did not promote lawful, fair and efficient adjudication of the matter. Similarly, the Ombudsman indicated that the SRS was obliged to apply the principle of objective investigation in data conformity audits.

In order to improve the process of data conformity audits and prevent recurrence of cases similar to the one involving the submitters in the future, the Ombudsman recommended to the SRS to improve internal regulatory enactments.

Additionally, the Ombudsman detected that the SRS had no uniform procedures for the execution of file of data conformity audit. The Ombudsman concluded that SRS not in all cases organize a file, i.e., there is no separate folder for the insertion of documents obtained or developed within the framework of the process of preparation of administrative act.

The Ombudsman admitted that failure to create a separate document folder (regardless of the form-paper or electronic etc.) may limit the person's rights to familiarize himself/herself properly with the file of the data conformity audit, as well as to verify procedural and legal aspects of the audit carried out by the SRS.

The Ombudsman recommended to the SRS to develop procedures for the execution of file of the data conformity audit, once it is not being regulated by the SRS's internal regulatory enactments.

In November 2015, the Ombudsman received a letter of reply from the SRS, in which the institution expressed its position that internal regulatory enactments do not have to be amended, since the case detected within the framework of the verification procedure was an exception from the general procedures, which, according to the information provided by the SRS, has never recurred. Besides, the SRS indicated that procedures for the execution of files of the data conformity audits do not have to be improved at the moment, since internal regulatory enactments provide sufficient legal framework.

The Ombudsman may agree that, possibly, there is no need to improve internal regulatory enactments of the SRS providing necessity to clarify additionally the obviously unclear circumstances of the administrative case, according to Section 59 of the Administrative Procedure Law, however, the recommendation was based on the consideration that executors of the data conformity audits follow the guidelines laid down in the internal procedures, ignoring requirements of the abovementioned law. This was unequivocally confirmed by the case of the verification procedure, as well as the position taken by the SRS within the framework of this procedure.

In relation to necessity for the improvement of procedures for execution of files of the data conformity audits, the Ombudsman disagrees that the information obtained in the taxpayers system should not be reflected in the file of the administrative case. Such information must be included in the administrative case, which may be drawn up in electronic or paper format, because otherwise a private person shall not be provided rights to familiarize himself/herself with the matter file properly, as well as causes grounds to question objectivity of the administrative procedure. In the opinion of the Ombudsman,

position of the SRS that such information should not be included in the administrative case, is not only a violation of the Administrative Procedure Law, but also fails to comply with the principle of good governance.

3 Validity and Proper Execution of Decision, Action and Response of Institution

3.1 On Reasonable Enforcement of Legal Provisions and Justification of Decision in Activity of Procurement Monitoring Bureau

On the basis of a submission of private persons, the Ombudsman has provided opinion on application of Section 269 of LAPK, as well as a violation of the principle of good governance.

Namely, Section 269, Paragraph 1 of LAPK stipulates that a case of administrative violation shall be adjudicated according to the place of the commitment of the violation. Accordingly, the private persons asked the Procurement Monitoring Bureau to adjudicate the initiated cases of administrative violation according to the place of the commitment of the violation – in Rēzekne or according to the place of residence of the private persons.

The Procurement Monitoring Bureau refused to do so and adjudicated the case at its own location – in Riga, on the solely basis of Section 215^{11} of LAPK, stipulating the competence of the Procurement Monitoring Bureau.

The Ombudsman admitted that Section 269, Paragraph 1 of LAPK regulates general provisions on institutionally territorial jurisdiction for adjudication of the case of administrative violation. Namely, the notion “according to the place of the commitment of the violation”, included in the abovementioned legal provision, shall mean that the case of administrative violation shall be adjudicated by the authorized institution, which provides the control provided for by the law in the relevant territory of the commitment of the administrative violation.

Such an interpretation corresponds with the provisions of Section 288, Paragraph 1 of LAPK, stipulating that the decision adopted by the institution within the case of an administrative violation may be appealed in the district (city) court according to the place of the commitment of the administrative violation. Just like Section 269, Paragraph 1 of LAPK, the abovementioned legal provision contains the notion “according to the place of the commitment of the violation”. Unlike the regulation of Section 269, Paragraph 1 of

LAPK, Section 288, Paragraph 1 of LAPK provides indication on the institutional jurisdiction in adjudication of the dispute.

Pursuant to Section 29, Paragraph 1 of the Law On Judicial Power and Paragraph 2 of the Regulations of the Cabinet of Ministers No. 951 "Regulations On the Territory of Operation of the Courts and Courthouses" of 13 December 2011, operation of district (city) courts shall be organized by the administratively territorial division, therefore, the notion "according to the place of the commitment of the violation", used in Section 288, Paragraph 1 of LAPK, means that the decision adopted by the institution within the case of administrative violation may be appealed in the district (city) court, in the territory of operation of which the administrative violation has been committed. The Ombudsman admitted that Section 269, Paragraph 1 of LAPK should be interpreted similarly.

Regardless of the abovementioned, the Ombudsman also concluded that the legislator had authorized both the state administration institutions with regional structural units[161], as well as institutions without such units[162] for the adjudication of cases of administrative violation. This means that the territorial principle in adjudication of administrative violation laid down in Section 269, Paragraph 1 of LAPK may not be objectively applied in all cases.[163] The abovementioned legal framework should be viewed systemically together with Section 269, Paragraph 1 of LAPK.

The Ombudsman considered that, providing authorizations to the institutions without regional structural units in Chapter 17 of LAPK, the legislator has provided an exception from the general principle. Namely, if the authorized institution has no territorial structural units established, the case of administrative violation shall be adjudicated in the relevant place of the commitment of the administrative violation, following the authorization assigned to an institution with centralized structure of administration, provided by the legislator in LAPK.[164] Legal grounds for such an action consist of the special provision of LAPK, providing authorization of the relevant institution to adjudicate the case of administrative violation.

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[161] For example, the State Revenue Service (Section 215^1 of LAPK), State Labour Inspectorate (Section 215^3 of LAPK), as well as the Procurement Monitoring Bureau (Section 215^{11} of LAPK) etc.

[162] For example, the Consumer Rights Protection Centre (Section 215^4 of LAPK), Competition Council (Section 215^8 of LAPK) etc.

[163] Reason for non-application of the territorial principle of adjudication of the administrative violation – non-existence of the territorial structural unit of the institution.

[164] It should be noted that such a principle of activity of public institutions in the legal system of Latvia exists also within the administrative procedure, including, for example, one centrally established Administrative Regional Court.

The Ombudsman pointed out – this is the explanation by the Procurement Monitoring Bureau as a centralized state administration institution located in Riga[165] regarding the reference to Section 215[11] of LAPK, explaining non-application of Section 269, Paragraph 1 of LAPK.

Taking into consideration the abovementioned, the Ombudsman admitted that, when adjudicating the cases of administrative violations, the Procurement Monitoring Bureau has legal grounds not to apply provisions of Section 269, Paragraph 1 of LAPK and adjudicate the case in its location.

Although the Ombudsman found no grounds for the initiation of a verification procedure, he, nevertheless, called the Procurement Monitoring Bureau for provision of wider explanations regarding conditions of the relevant action in communication with persons, thus promoting implementation of good governance.

At the same time, the Ombudsman called the Procurement Monitoring Bureau to provide wider explanations regarding reasons refusing adjudication of case of administrative violation according to the person's place of residence or according to the place of identification of the administrative violation.[166] The Ombudsman detected that the decisions addressed to private persons and refusing adjudication of case of administrative violation according to the person's place of residence were formal, since they were not justified by reasonable considerations, providing reasons why the Procurement Monitoring Bureau may not sustain the relevant person's request. The Ombudsman pointed out that such decisions did not comply with the principle of good governance and did not promote person's trust in the state administration.

3.2 Action of Public Utilities Commission in Allowing an Erroneous Interpretation of Legal Provisions

In 2015, the Ombudsman has detected a violation of the principle of good governance in the action taken by the Public Utilities Commission, allowing erroneous interpretation of legal provisions, and in the action of the Joint Stock Company "Latvijas gāze" (hereinafter referred to as – LG), refusing to enter into a natural gas supply contract, because the previous household user has not paid for the received service.

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[165] Regulations of the Cabinet of Ministers No. 893 "By-law of the Protection Monitoring Bureau" of 26 October 2004 and Structure of the Protection Monitoring Bureau. Available on: http://www.iub.gov.lv/lv/node/34

[166] Section 269, Paragraph 2 of LAPK.

Regarding the abovementioned, a person, who is a tenant of the gasified object – an apartment owned by the municipality, addressed with a submission to the Ombudsman, and pointed out that LG refuses to enter into a natural gas supply contract, because the previous household user has not paid for the received service. A court judgment sustained the claim of LG for recovery of the debt from the previous tenant of the apartment. Since the judgment was not executed voluntary, LG has submitted the writ of execution on enforcement of the abovementioned court judgment to a bailiff. LG has not sought through the court joint and solitaire responsibility from the municipality as an owner of the apartment.

LG explained that Paragraph 76 of the Regulations of the Cabinet of Ministers No. 1048 "Regulations for the Supply and Use of Natural Gas" of 16 December 2008 stipulates: if the household user is a renter of the system of gasified objects, the user and the owner of the object shall be responsible for the observance of the requirements referred to in Paragraph 36 of these Regulations. Whereas, Paragraph 36 of the abovementioned regulations stipulates that one of the duties, the execution of which owner of the gasified objects is responsible for, is the settlement of payments for the received natural gas. Therefore, LG considers itself not being legally obliged to restore supply of natural gas for the apartment and to enter into a contract with the submitter up to the moment, when the debt for the natural gas previously supplied to the apartment is fully paid.

Besides, the Public Utilities Commission pointed out – as long as LG has not received payment for the natural gas previously supplied to the rented apartment, the owner, including municipality, shall have no grounds to claim, whether on its own or the new tenant's behalf, from LG to enter into a natural gas supply contract with a new tenant and to restore natural gas supply to the relevant apartment. The abovementioned commission has admitted that there are no grounds to recognize the LG refusal to enter into a natural gas supply contract with a new tenant unlawful, if payment for the natural gas previously consumed in the apartment has not been received. Thus, the Public Utilities Commission has no grounds to issue a decision binding to LG, obliging the entry into a supply contract.

Pursuant to the opinion provided by the Ministry of Economics and conclusions of the Supreme Court,[167] the Ombudsman indicated that, pursuant to Paragraph 85 of the Regulations No. 1048, if payments for natural gas have not been made within 20 days

[167] Judgment of the Supreme Court Senate, the Department of Administrative Cases of 6 November 2013 in case No. SKA-676/2013.

from the period for the settlement of payments and if the household user has not paid the prepayment (if such has been specified), the system operator is entitled to discontinue the supply of natural gas to the household user, warning the user of this at least five days in advance.

Sub-paragraph 93.2.2 of the Regulations No. 1048 stipulate that the system operator has the rights to discontinue the supply of natural gas to the household user if the household user has illegally used natural gas. It arises from Paragraph 86 of the Regulations No.1048 that the supply of natural gas shall be restored to the household user within five working days after the household user has completely paid for the natural gas consumed, the late-payment interest and has covered the costs for the disconnection and restoration of the supply of natural gas, calculated by the system operator.

Regulations No. 1048 have been issued, pursuant, inter alia, on the Energy Law, and the terms used herein should be evaluated in conjunction with the terms used in the Energy Law. Respectively, Section 1, Clause 39 stipulates that household customer is a final customer, who buys and uses energy in his or her own household for personal needs (final consumption), except for the needs of commercial activities or other forms of professional needs. It arises from the abovementioned and Paragraph 76 of the Regulations No.1048 that the household used in this situation is the previous tenant of the apartment. In is clear from the actual circumstances – even if the abovementioned court judgment was executed, LG would not be able to objectively perform the actions specified in Paragraph 86 of the Regulations No.1048, i.e., to restore natural gas supply to the relevant household used, since the previous tenant lives no longer in this apartment.

Paragraph 86 of the Regulations No. 1048 should be applied in case, if the user of natural gas has not been changed. Thus, the LG argument stating lack of lawful duty to restore natural gas supply in the apartment up to the moment, when the debt for the natural gas previously supplied to the apartment is fully paid, does not comply with the regulation included in the Regulations No. 1048. This LG argument leads to delusive conclusion that natural gas is being supplied primarily to the apartment as a gasified object, and that natural gas supply should be restored to the apartment as a gasified object. However, as it arises, for example, from Paragraph 3 of the Regulations No. 1048, natural gas is being supplied to the user according to natural gas supply contract entered into, and therefore, pursuant to Paragraph 86 of the Regulations, natural gas supply should be restored to the household user.

Since the former tenant has lost any legal grounds to stay in the apartment, which is an important precondition for the execution of natural gas supply contract, Sub-paragraph 93.4 of the Regulations No. 1048 entitles LG to terminate the contract unilaterally, if the household user has lost tenancy rights of the gasified object. Whereas, termination of the previous contract is an important precondition for the establishment of new legal relations with the submitter.

Although Sub-paragraph 93.4 of the Regulations No. 1048 stipulates LG rights to terminate the contract unilaterally, the Supreme Court concludes,[168] that private will of LG may not prevail over the duty to provide public service laid down in the "Law On Regulators of Public Utilities". The duty laid down in the law limits the expression of will of LG. Therefore, in case, if circumstances specified in Section $42.^{1}$, Paragraph (1^{1}) of the Energy Law shall occur, according to the purpose of provision, the previous contract shall be terminated and a new one shall be entered into.

In this case, it is significant that actually natural gas supply ir being denied not to the owner of the apartment, but to the supplier, who, as a household user within the Regulations, wants to enter into a contract on natural gas supply and to whom previous legal relations resulted in LG claim, should not be referred to. At the same time, it arises from the abovementioned judgment of the Supreme Court that the debt caused by the previous household user, may not serve as a reason to deny entry into a natural gas supply contract to the current household user.

The Ombudsman has agreed to the conclusions of the Supreme Court,[169] that, by avoiding entry into a natural gas supply contract with the new user, LG itself refuses to gain income, thus limiting its own financial and profit possibilities.

Back on 26 October 2012, the Ombudsman provided an Opinion No. 6-6/152 within the framework of the verification procedure No. 2011-249-16B, pointing out that the current regulatory framework provides no grounds for LG to refuse entry into a natural gas contract due to the fact that the previous household user has not paid for the received service.

The Ombudsman concluded that LG was not entitled to refuse entry into a natural gas supply contract with the submitter.

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[168] Ibidem.

[169] Judgment of the Supreme Court Senate, the Department of Administrative Cases of 6 November 2013 in case No. SKA-676/2013, Clause 11.

Although the Supreme Court has pointed out that natural gas supply contract on the substance is a civil-law transaction, although entry therein is promoted by the legal duty to provide public service laid down in the “Law On Regulators of Public Utilities”, the Ombudsman called LG to enter into a natural gas supply contract with the submitter for the relevant apartment.

At the same time, the Ombudsman concluded that the Public Utilities Commission, through an erroneous analysis of regulatory framework and adoption of decisions based thereon in the particular problem situations, has made an action, which is incompatible with the principle of good governance, and called the commission to act in accordance with the principle of good governance.

3.3 On Action of Health Inspectorate in Not Providing a Substantive Answer

During the reference period, a person addressed the Ombudsman with a complaint for the action of the Health Inspectorate. The person indicated on her previous addressing to the Health Inspectorate, requesting for evaluation of the quality of her healthcare at the State Limited Liability Company (VSIA) “Paula Stradiņa KUS”. The Health Inspectorate adopted decision within a case of administrative violation.

The person was not satisfied with the evaluation provided by the Health Inspectorate, and she submitted to the Health Inspectorate several submissions concluding, inter alia, a number of various issues, but excluding a specific request within the case of administrative violation, however, these submissions were submitted within the time limit for appeal of the decision adopted within the case of administrative violation.

The Health Inspectorate did not consider these submissions as aimed to appeal of the decision adopted within the case of administrative violation, but just as submissions within the meaning of the Law On Submissions.

The Ombudsman pointed out that in case, if a person has not directly expressed his/her wish to appeal the decision within a case of administrative violation, the institution must evaluate the submission and substance thereof in general. If the submission shall contain any issues, which are not related to the case of administrative violation, the institution must be able to separate these issues and apply the regulatory enactment accordingly.

The Ombudsman called the Health Inspectorate:

1) to treat the submissions excluding a person's direct indication on appeal as contestation submissions, according to the content of the submission and the addressee (addressed to the head of the institution);

2) when replying to the questions of submitters – to avoid confining themselves with quotation of legal provisions only, but provide explanation according to the relevant situation and question, thus, providing reply on the substance, which is a part of the principle of good governance.

3.4 Action of Local Government in Allowing Incorrect Interpretation of Legal Provisions

Violation of the principle of good governance and incorrect interpretation of legal provisions was detected also in the action of Kocēnu District Council. Namely, the Ombudsman was addressed by a municipality's resident, who indicated that the Council had calculated fee for the difference of the consumed volume of water, referring to the provisions of the Regulations of the Cabinet of Ministers No. 1013 "Procedures for the Settlements for Services Related to the Residential Property in a Multi-apartment Residential House", although water meter in fact did not exist, since it was dismantled in the apartment owned by the relevant person with the Council's permission and in accordance to requirements (expired verification validity term, the premises were protractedly unoccupied, thus, nobody used the services).

The Council did not respond to the Ombudsman's call to agree with the owner of the apartment on mutually acceptable solution of the situation, as well as to reimburse losses caused to the person by re-calculation, still considering its action compliant with the regulatory enactments and the principle of good governance, because verification validity term of the dismantled water meter had expired.

The Council did not take into consideration the Ombudsman's indication to the opinion provided by the Ministry of Economics as the leading state administrative institution in the area of housing policy, that, in this particular situation, variety of analogy conclusion should be applied – conclusion from the smaller to larger, namely, if Paragraph 28 of the Regulations of the Cabinet of Ministers No. 1013 stipulates that in cases, when apartment shall not be used by anyone due to absence and owner of the apartment shall not be able to submit information on readings of the water meter or to provide verification of the water consumption meter, and if the owner of the apartment

shall notify the manager in advance, this means that in such a case, charge for the water consumption may not be calculated to the owner of the apartment, but in case of failure to verify the meter – the owner of the apartment shall not be obliged to pay for the difference of the water consumption. Moreover, such a difference of the water consumption may not be calculated in case, if the manager and owner of the apartment have agreed on refrain from use of water supply services and removal of the meter.

3.5 Violation of Principles of Good Governance and Legal Equality in Riga City Council

The Ombudsman reviewed the verification procedure regarding the action of Riga City Council refusing issuance of a resident card to a resident pursuant to Riga City Council Binding Regulation No. 206 "Binding Regulation for the Management and Use of Riga City Municipal Pay Car Parks" of 5 February 2013.

Pursuant to the information provided by Riga City Council Transport Department, the submitter had failed to submit all the required documents. Pursuant to Sub-paragraph 2.5 of the Binding Regulation No. 206, resident card shall be issued at a charge to the residents, who have declared their place of residence in the section of the street located in the territory specified in Sub-paragraphs 14.1-14.3 and 14.6 of the Binding Regulation No. 206, where a pay car park has been established, or in the territory specified in Sub-paragraph 14.4 of this Binding Regulation – provided that the relevant vehicle is within the ownership, possession, or control of the resident.

Binding Regulation No. 206 stipulates no charge for the parking in the section of the street, where the declared place of residence of the relevant resident is located. Thus, information provided by the commission regarding necessity to submit additional documents does not matter. The Ombudsman indicates that, according to the principle of good governance, the commission could have adopt a decision earlier on, whether the territory with the pay car parks falls within the declared place of residence of the submitter. In case of negative evaluation, the commission could have adopted decision earlier, without waiting for any additional documents to be submitted by the submitter. Thus, the Ombudsman has detected a violation of the principle of good governance in the activity of the commission.

Additionally, the Ombudsman asked Riga City Council to provide conclusion, whether the residents of the City of Riga, in the areas of whose declared places of residence pay car parks are located, are within equal and comparable circumstances with

these residents of the City of Riga, in the areas of whose declared places of residence no pay car parks are located, depending on the rights to obtain a resident card. At the same time, the Ombudsman asked grounds for the abovementioned within the context of the first sentence of Article 91 of the Constitution.

The Ombudsman agrees that, in the course of planning of the ongoing transport flow policy in the City of Riga, environmental protection and traffic safety requirements, as well as improvement of air quality must be taken into consideration. However, in the opinion of the Ombudsman, Riga City Council Transport Department has provided grounds, why Riga City Council is entitled not to develop car parks, instead of the grounds, why separate groups of residents of the City of Riga are not entitled to obtain a resident card. Thus, the Ombudsman points out that Riga City Council Transport Department has failed to provide objective and reasonable grounds for the unequal treatment implemented within Sub-paragraphs 2.5 and 5.1 of the Binding Regulation No. 206.

Municipal pay car parks are being established by the municipality, having regard to public interests, environmental protection and city planning. Thereby, the abovementioned criterion does not depend on the possibility of a resident declared in the territory of the city of Riga to meet this condition, in order to obtain a resident card. Thus, Riga City Council is obliged to create such a mechanism, which would provide compliance with the constitutional rights of the residents, and Riga City Council is not entitled to limit the rights of an owner, possessor or controller of a vehicle, who is declared in the territory of the city of Riga to obtain resident card, referring to the location of the declared place of residents in the city of Riga.

Thus, the Ombudsman detected violation of the first sentence of Article 91 of the Constitution in Sub-paragraphs 2.5 and 5.1 as far as the rights of the residents, who are declared in the city of Riga, and having vehicles within their ownership, possession, or control, but in the area of whose declared address there is no pay car park established by the municipality, to obtain resident card are limited.

4 Diligence and Responsibility of Institution to Continuously Improve its Activity

4.1 On Violation of the Principle of Good Governance in Activity of Housing and Environment Department of Riga City Council

The Ombudsman has reviewed the verification procedure regarding non-compliance with the principle of good governance in the activity of the Housing and Environment Department of Riga City Council, related to negligent performance of the duties of cemetery staff, resulted in an unlawful entry into a contract with a strange person for the maintenance of a person's family grave and a double-layer burial, thus destroying the family grave.

It was detected within the framework of the verification procedure that the principal documents for the registration or graves specified in Paragraph 5 of Riga City Council Binding Regulation No. 149 "Regulations for the Operation and Maintenance of Riga City Municipal Cemeteries" of 9 December 2008 – registration book of deceased, contracts for the maintenance of a grave and electronic database – were incomplete, because information was entered in the Riga City electronic database "Kapsētu IS" partially. Full use of this information was impossible, furthermore – the entered data were unreliable; materials of this verification procedure show that these data were entered just up to 1995, but not between 1995 and 2008. Data were not updated, and this actually meant that employees of a cemetery were supposed to use all the information sources available until then in relation to the burials in the cemetery in their work, including cemetery books and card catalogue, with the latter, according to the Housing and Environment Department of Riga City Council, having just informative meaning, furthermore, entries in the abovementioned card catalogue have no legal force, in addition, regulatory enactments do not oblige the cemetery manager to verify entries of the card catalogue.

It should be noted that Paragraph 15 of the Housing and Environment Department of Riga City Council by-law No. 92 of 18 January 2011 refers to the department tasks in the area of development and maintenance of cemeteries, consequently, by stipulating in Paragraph 15.4 its task to provide accurate, clear and safe registration of burials, as well as mapping of burial places, to take actions for the establishment of electronic database of burial places. It should be concluded that the established database was not able to fully operate at the moment, when a contract with a strange person for the maintenance of a person's family grave was entered into, followed by re-registration to some other person and sale of rights for the maintenance of the grave to a completely strange person, and that cemetery managers and other employees handling the principal documents of the cemetery on daily basis had to be notified of partial use of this database.

Although the Housing and Environment Department of Riga City Council repeatedly stressed that location of burials in the cemetery has not been registered with documents anywhere and that regulatory enactments do not require to do so, it is possible that the Department interpreted the mapping of burial places in a narrowed manner, without referring it to collection of information and registration on the map according to the respective grave. Therefore, in order to avoid any doubt and misunderstandings regarding burial place of a particular deceased person in the future, the Ombudsman called to evaluate necessity for documentary registration thereof, i.e., provision of mapping of burial places of each grave, as well as possibility to improve the database "Kapsētu IS" including the option for searching of a particular grave by a number, so that, in case of doubt, information verification was possible.

In this case, the Ombudsman also indicated that the principle of good governance included also a proper register of the documents receiver by the institution and timely and good quality execution (processing) thereof, namely, compliance with proper diligence in the process of administration of documents, which, in its turn, results in such a careful type of action of the institution, which, under certain circumstances and usually reasonably, is expected from a state administrative institution as a public authority. Execution in good quality means that the task should be executed not only in accordance with the applicable legal provisions, but also with the principle of good governance.

A.G.Slynn, Advocate General at the Court of Justice of the European Union, has concluded that maintenance of effective registration system was a part of good governance.[170] Whereas, Julianne Kokott, Advocate General at the Court of Justice of the European Union, has accentuated that, pursuant to the principle of good governance, an institution shall be obliged to provide administration and safe storage of the materials of personal files.[171]

4.2 On the Principle of Legal Equality in the Attitude of SRS Towards the Employed

[170] Conclusions of A.G.Slynn, Advocate General at the Court of Justice of the European Union, provided on 27 October 1983 within case 64/82 *Tradax Graanhandel BV v Commission of the European Communities*. Pages 1385-1386.

[171] Conclusions of Juliane Kokott, , Advocate General at the Court of Justice of the European Union, provided on 14 April 2011 within case C 110/10 P *Solvay SA v European Commission*. Clauses 38 and 39 of the conclusions.

The Ombudsman has evaluated a submission of a person indicating on lack of equal treatment in the SRS premium policy for the replacement of an absent employee and premium policy for the execution of duties of a mentor.

Within the framework of review of the submission, the Ombudsman paid attention of the SRS that Section 14, Paragraph 1 of the Law On Remuneration of Officials and Employees of State and Local Government Authorities stipulated the rights of an official (employee) to a premium not exceeding 30 per cent of the monthly salary determined for him or her in the cases specified in this remuneration law. Section 14, Paragraph 1 of the Law On Remuneration does not provide for the rights of the institution not to pay any premiums to an official (employee) for the replacement of an absent official (employee).

The Ombudsman paid attention of the SRS to one of the principles of public law stipulating that only actions laid down in a legal provision shall be allowed. Analogous opinion was provided by the Administrative District Court in the judgment No. A420415911 of 8 December 2011, pointing out that Section 14, Paragraph 1 of the law on remuneration does not provide any rights for the institution to choose whether or not to pay premium to an official (employee) for the replacement of an absent official (employee) or for performance of duties of a vacant office. Besides, the abovementioned judgment indicates that it does not arise from the external regulatory enactment that an institution is entitled to limit rights of a person in the area of social guarantees by issuing internal legal acts. Namely, deficiency of funds in the institution's budget itself should not be recognized as a legal ground for significant limitation of a person's rights in a democratic state.[172]

Separate verification procedure was not initiated, however, the Ombudsman provided the following recommendations to the SRS:

- to stop the unlawful actions in relation to ignorance of Section 14, Paragraph 1 of the law on remuneration;
- to provide premiums for the officials (employees) according to the provisions of Section 14, Paragraph 1 of the law on remuneration;
- to add the internal regulations of the SRS by stipulating procedures for the selection of mentors, if there are several ones in a single structural unit of the SRS.

The SRS indicated that the abovementioned recommendations were taken into consideration by providing for premiums to the officials (employees) also for the

[172] Judgment No. A420415911 of the Administrative District Court of 8 December 2011.
Available on: http://www.tiesas.lv/files/AL/2011/12_2011/08_12_2011/AL_0812_raj_A-04159-11_1.pdf

replacement of the same level officials (employees), as well as performance of duties of a vacant office, unless the abovementioned has been provided in their job descriptions. At the same time, the SRS indicated on the new procedure for the selection of a mentor within a structural unit of the SRS.

4.3 On Insufficient Diligence in Jelgava Municipality when Providing Social Services

In relation to a separate submission, the Ombudsman detected that, regardless of the fact that the family of the submitter, including minors, is under attention the Social Service since 2009, the service has protractedly failed to comply with the principles stipulated in Sub-paragraphs 8.6 and 8.7 of the Regulations of the Cabinet of Ministers No. 291 "Requirements for the Providers of Social Services" of 3 June 2003 in relation to the evaluation of risks in a family, since the abovementioned evaluation was conducted in the family only after the engagement of the Ombudsman in the review of the problem situation.

The Ombudsman detected that the Social Service avoided resolution of the social problems of the submitter on the substance, however, the submitter has not been able to overcome the life difficulties by her own strength, thus, limitation of the rights to social security and support guaranteed in Article 109 of the Constitution can be seen in the actions taken by the municipality and its subordinated institutions.

At the same time, analysing the decision adopted by the Apartment Commission refusing registration of the submitter in the registers for renting assistance of area owned or leased by the municipality, it was detected that the submitter had addressed the Dispute Commission with a submission, pointing out the reasons of her disagreement with the decision adopted by the Dispute Commission. Municipality left the submitter's submission not proceed with, on the ground that the Dispute Commission had never adopted the decision contested by the submitter.

The Ombudsman concluded that the municipality was not able to identify the decision contested by the submitter, although, it has been submitted within one month from the day of entry into force of the decision and addressed to the municipal Dispute Commission. In the opinion of the Ombudsman, even in the cases, when a person has failed to indicate the contested administrative act, the institution is obliged to evaluate the submission and substance thereof in general. The submission specified in this case should be considered a contestation submission. Taking into consideration the abovementioned, the Ombudsman concludes that, possibly, municipal record keeping needs to be

improved, or the action of municipality has been formal, without going into the details of circumstances.

Taking into consideration the inability to identify the administrative act contested by the submitter, as well as the failure to provide replies to the questions of the Ombudsman, it should be concluded that action of the municipality fails to comply with the principle of good governance. The verification procedure was completed detecting a violation of the principle of good governance, as well as a limitation of the rights to social security and support guaranteed in Article 109 of the Constitution.

5 Compliance with Reasonable Deadlines

5.1 On Failure to Send the Decision of Administrative Case in a Timely Manner

In 2015, after reception of a written submission from a submitter, the Ombudsman has detected a violation of the principle of good governance in the action of Pāvilosta District Council, manifesting as sending of a decision adopted by the Administrative Cases Commission in an administrative case to the addressee with one-month delay.

Having regard to the explanations on the particular situation provided by Pāvilosta District Council, the Ombudsman pointed out that one-month delay for the sending of a decision may not be recognized as necessary and proportionate.

5.2 Non-compliance with Reasonable Deadlines and Unfounded Limitation of Property Rights by DSI

The Ombudsman has detected a violation of the principle of good governance in the action of DSI after reception of a submission from a submitter, indicating that the inspectorate fails to return to the submitter a smartphone, which was seized within an administrative seizure and is located in the DSI. No separate verification procedure was initiated for the clarification of legal and actual circumstances of the particular situation, since, at an early stage of review of the submission, the Ombudsman concluded there was no information regarding facts, which might legally justify seizure of the smartphone.

Reviewing the submission and attached materials, as well as the information received from the institutions, it was detected that the smartphone was repeatedly forwarded among several institutions. Having regard to the abovementioned, as well as

the fact that purpose of the criminal proceedings and administrative violation records is provision of efficient application of the relevant legal provisions, the Ombudsman concluded that, during the relevant period, by failing to return the smartphone to the submitter, his property rights have been groundlessly impaired, and the DSI has acted contrary to the principle of good governance. The Ombudsman called the DSI to comply with the principle of good governance and not to limit any person's property rights in the future.

6 The Right of a Person to be Heard

The Ombudsman has reviewed a person's submission regarding the item about the issuance of medical certificates broadcasted in the programme "Aizliegtais paņēmiens. Operācija: Slimības lapa." ["Prohibited technique. Operation: Medical certificate."] on the television channel LTV1 on 19 January 2015, demonstrating video records of provocative experiments conducted during the visits of several General Practices, made using the hidden camera.

After review of the copies of documents attached to the submission and the received information, the Ombudsman pointed out that adjudication and clarification of the problem situation on the substance and lawfulness of administrative acts will be decided upon in court, therefore, the Ombudsman would not evaluate on the substance the justification of the decisions adopted by the Health Inspectorate and the National Health Service in this particular stage of adjudication of administrative cases. However, at the same time, the Ombudsman concluded that violation of the principle of good governance can be detected in the action of both abovementioned institutions in the concerned problem situation related to failure to clarify and hear a person's opinion.

7 On Accessibility of State Administration

Accessibility of an institution is a significant part of the principle of good governance. Therefore, in the opinion of the Ombudsman, introduction of a unified approach in creation of the official e-mail addresses of municipalities would relief the administrative burden, promote access to municipalities and enhance persons' communication therewith.

Pursuant to the Regulations of the Cabinet of Ministers No. 171 "Procedures by which Institutions Place Information on the internet" of 6 March 2007, "Contacts" is one of the home page sections, providing accessibility of the institution.

Analysing e-mail addresses of municipalities of Latvia,[173] the Ombudsman has detected that municipalities lack a unified approach to the form of official e-mail addresses. Namely, the following words of e-mail addresses are being used: dome@pasvaldiba.lv, pasvaldiba@pasvaldiba.lv, info@pasvaldiba.lv, as well as pasts@pasvaldiba.lv, iac@dome.pasvaldiba.lv. Whereas, Jūrmala City Council has used the domain name "iestade.gov.lv" for the creation of the official e-mail address "iestade.gov.lv", contrary to Paragraphs 26 and 28 of the Regulations 171.

The Ombudsman called the Ministry of Environmental Protection and Regional Development to implement the complex of measures required for the unified introduction of the official e-mail addresses according to the Ministry's competence, asking to notify within a certain time limit.

V Information of Ombudsman's Office

1. 1 On Establishing Ombudsman's Institution in Constitution

In May of 2015, the Ombudsman addressed the Saeima with a call to review a proposal to add the Constitution of the Republic of Latvia with a new chapter "The Ombudsman", offering his proposal in the form of a developed draft law.[174]

The great significance of socially legal role of the Ombudsman's institution is characterized by the cognition of J.Söderman, the first Ombudsman in the European Union, that the "Ombudsman's institution is the most important constitutional novation of this century".[175]

The Ombudsman as a special public official, whose task is provision of additional verification for the protection of citizens' rights against actions taken by the state, has become a self-evident official in majority of the European states. The positive potential, due to which such an institution is necessary for democracy, is rooted in two circumstances. Firstly, unlike the other public institutions, the task of which is protection

[173] Available on: http://www.lps.lv/Pasvaldibas/
[174] Full text of the draft law is available on: http://www.tiesibsargs.lv/sakumlapa/Constitutions-papildinasanu-ar-jaunu-nodalu-tiesibsargs-darba-grupa-skatis-12.maija-plkst.-15.00
[175] Concept for the implementation of the Ombudsman's institution in Latvia. Available on: https://www.vestnesis.lv/ta/id/4794

of rights of the residents, the Ombudsman is more flexible, able to formulate problems more quickly and react. That is why in many states addressing to the Ombudsman is much more popular and understandable than other procedures.

Secondly, the Ombudsman mostly has higher level of confidence of the society due to the independence. This is especially important factor in a situation, when level of confidence of the society in the state administration is low, and the residents are not convinced whether the state really serves for their interests. In this regard, in an ideal situation, the Ombudsman plays a significant role for the promotion of legitimacy of democracy by demonstrating sensibility of the state administration against possible violations of the rights of residents demonstratively and efficiently.[176]

Significance of the Ombudsman's institution in today's European democracies arises from the problems faced by democratic states: increase in complicacy of the state administration, unpopularity of political parties, necessity to establish and maintain constant connection with residents beyond the classic institutions of democracy – parliament, bureaucracy, and court.

Looking at the Ombudsman's institution established in Latvia back in 2006, it should be concluded that mostly it fits the classic model. First of all, parliament is the ground of its legitimacy; secondly, this is "generalized", not "specialized" Ombudsman; thirdly, functions of the Ombudsman are mainly related to supervision of the fundamental human rights and implementation of good governance, persuasion and publicity.

At the same time, it should be noted that the Ombudsman is facing a hard task in Latvia – to achieve implementation of his legally unbinding proposals in the society and legal system, which is used to implementation of mandatory orders only. Thus, authority of the Ombudsman's institution is very important, as well as the independence and reputation in general.

Establishment of such authority requires a corresponding legal status of the Ombudsman's institution, namely, establishment in the Constitution. Establishment of the Ombudsman's institution in the Constitution would not only protect this institution from undesirable political manipulations, but also send signals of a serious will of the political decision-makers to establish fundamental rights of the residents of Latvia and the state's responsibility before them.

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[176] Reif. L. C. (2004). *The ombudsman, good governance and the International Human Rights system*. Leiden, Netherlands: Martinus Nijhoff.

Thinking about the future of the institution, it also must be taken into consideration, that not all the residents of Latvia know, who is the Ombudsman and what are his functions.[177] Therefore, establishment of the public image of the Ombudsman also at institutional level would be promoted by adding the specifically legal aspect of the activity of the institution with educational and interest protection elements. Status of the institution, when clearly defined in the Constitution, would definitely promote it, accentuating that, in a democratic state, rights and interests of the residents are not less important than, for example, reasonable use of public funds, verified by the State Audit Office.

At the same time, it should be noted that status of the Ombudsman has been established in the Constitution in majority of the European states. Currently, Latvia is among those seven states from the Member States of the European Union, where the status of the Ombudsman's institution has not been established in the fundamental law. According to the survey data of the Ombudsman's Office, from 28 Member States of the European Union, the national human rights institution has not been constitutionally established in Belgium, Czech Republic, Ireland, Italy, Cyprus, Latvia and Luxembourg.

Additionally, establishment of the Ombudsman's institution in the Constitution would promote compliance of a national human rights institution with so-called Paris principles,[178] including the entirety of most significant minimum recommendations adopted by the UN General Assembly on the status and activity of national human rights institutions in the area of protection and promotion of human rights.

Purpose of Paris principles is creation of independent and reliable national human rights institutions.

Pursuant to the Paris principles, such a mechanism must:

- be independent from the government, and such an independence must be guaranteed by the law or the Constitution;
- unify as many various participants as possible and operate in as many areas as possible;
- operate with broad powers, as well as be able to promote and protect human rights by using various means, including recommendations regarding the current and proposed laws and political viewpoints;

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[177] Problems Regarding Human Rights and Healthcare. Survey of the Residents of Latvia. SKDS, 2013. Pages 28-35. Available on: http://www.tiesibsargs.lv/petijumi-un-publikacijas/petijumi

[178] Annex "Principles in relation to the status and activity of national institutions for human rights protection and promotion" to the UN resolution 48/134 (20.12.1993.).
Available on: http://www.un.org/documents/ga/res/48/a48r134.htm

- receive powers for the conducting of investigation, including rights to hear complaints and forward them to competent institutions;
- operate on regular basis and efficiently;
- be adequately financed, and it may not be subject to financial control, which might affect independence of the mechanism;
- be available to all the society.

The Parliamentary Assembly of the Council of Europe concluded the following in the recommendation No. 1615 "Ombudsman's Institution" of 2003: "Every Ombudsman's institution needs several significant signs to provide efficient activity." Establishment of the institution's status in the Constitution was mentioned as the first one. Consequently, the Assembly recommends the Member States of Council of Europe to form an Ombudsman's institution; establishment of the institution's status in the Constitution is highly recommended.[179]

Responding to the abovementioned recommendation of the Parliamentary Assembly, in the meeting on 16 June 2004, the Committee of Ministers of Council of Europe included the comment of the Secretariat of Venice Commission, stressing that constitutional establishment of the Ombudsman's institution has turned out to be an important condition to provide guarantee for the institution's independence. Venice Commission consistently encourages the member States to establish status of the Ombudsman's institution in the constitution.[180]

In the opinion of the Ombudsman, strengthening of the Ombudsman's authority and independence would intensify reliability of the society and loyalty to the state in the long-term, thus, decreasing the gap between the society and the state power, thereby, system of democratic state would be strengthened. At the same time, such a solution would establish the principle of separation of powers, included in the Constitution, and exclude any doubt about the Ombudsman's participation in any of the branches of power, simultaneously, this would establish guarantee of the Ombudsman as an autonomous constitutional institution.

During the course of the development of the proposal, the Ombudsman consulted with a wide range of experts in legal and political sciences – Egils Levits, Judge of the

[179] Council of Europe. Parliamentary Assembly, Recommendation 1615 (2003)1. The institution of ombudsman, 7.i., 10.i.p. Available on: http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ ta03 /erec1615.htm

[180] Ministers' Deputies, CM Documents, CM/AS(2004)Rec1615 final 21 June 2004. The institution of Ombudsman - Parliamentary Assembly Recommendation 1615 (2003) (Reply adopted by the Committee of Ministers on 16 June 2004 at the 888th meeting of the Ministers' Deputies).
Available on: https://wcd.coe.int/ViewDoc. jsp?id=753909&Site=COE

European Court of Justice, Professor Ineta Ziemele, former Judge of the ECHR, now – Judge of the Constitutional Court, Artūrs Kučs, Associate Professor of the University of Latvia, Jānis Pleps, Assistant Professor of the University of Latvia, Gunārs Kūtris, former Chairman of the Constitutional Court, Juris Dreifelds, Associate Professor of the Brock University (Canada), and Reinis Bērziņš, Deputy Head of the President's Chancery.

In general, the experts unitedly admitted necessity for the establishment of the Ombudsman's institution in the Constitution by assigning a whole chapter for that matter.

Chairman of the Saeima Legal Affairs Committee transferred the Ombudsman's proposal for evaluation to the working group for possible extension of the powers of the President and evaluation of the presidential election procedures. On 12 May 2015,[181] after hearing of the experts' opinions, the working group concluded there were no categorical "against" from anybody in relation to inclusion of the Ombudsman's institution in the Constitution, majority of the participants present agreed to this addition, and discussions were related to details only. However, the proposal submitted by the Ombudsman has not been proceeded with so far.

2 Financial Resources and Activity Results of the Institution

The Ombudsman's Office is financed from the state budget. In 2015, the planned funding of the Ombudsman's Office from the state budget was 1 168.5 thousand euro.

Budget's actual implementation during the reference period was 1 144.5 thousand euro, including the European Union policy instruments and other foreign financial aid for the implementation of co-funded and funded projects and measures – 29.3 thousand euro. In comparison with 2014, amount of the used funds has not changed considerably, although expenses were increased for more efficient provision of execution of functions and tasks of the Ombudsman's Office: for the supervision in the area of social and economic law, accessibility of the Ombudsman's Office in the regions, as well as for the international cooperation (participation fee in the European Network of National Human Rights Institutions (ENNHRI) and participation fee in the UN International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)), however, at the same time, there was reduction of funds related to completion of

[181] Minutes No. 1 of the sitting of the Saeima Legal Affairs Committee working group for possible extension of the powers of the President and evaluation of the presidential election procedures on 12 May 2015. Available on: http://www.saeima.lv/documents/288dc5e6d105b8b330fbfc3bebe87a0955db9dc9

the project “Development of the Mechanism for the Monitoring of Forced Returnees” on the first half of 2015.

It should be noted that a part of financial resources for the coverage of expenses consists of revenue from the lease of premises, which accounted for 34.7 thousand euro in 2015, but funding of foreign cooperation partners for the implementation of projects and measures – 7.6 thousand euro.

2.1 State Budget Funding and its Use in 2015 (in Euro)

Item	Financial indicators	In previous year (actual implementation)	In the reference year	
			approved in the law	actual implementation
1	Financial resources for the coverage of expenses (total)	1 131 770	1 168 466	1 144 522
1.1	grants	1 126 296	1 136 878	1 136 878
1.2	paid services and other own revenue	5 474	31 588	7 644
1.3	foreign financial aid	0	0	0
1.4	donations and presents	0	0	0
2	Expenses (total)	1 131 770	1 168 466	1 144 522
2.1	maintenance expenses (total)	1 129 146	1 165 842	1 141 898
2.1.1	current expenses	1 126 396	1 157 442	1 133 498
2.1.2	interest expenses	0	0	0
2.1.3	subsidies, grants and social benefits	0	0	0
2.1.4	current payments to the budget of the European Community and international cooperation	2 750	8 400	8 400
2.1.5	transfers related to maintenance expenses	0	0	0
2.2	expenses for capital investments	2 624	2 624	2 624

In 2015, work continued on the implementation of the project “Development of the Mechanism for the Monitoring of Forced Returnees”, for which the Ombudsman’s Office entered into agreement with the Ministry of the Interior in 2013. The project is being developed under the general programme “Solidarity and Management of Migration Flows” within the framework of the European Return Fund (at the amount of 103.8 thousand euro in total). Project activities lasted up to the middle of 2015.

Following measures were implemented within the framework of the project in 2015:

1) survey of the places of accommodation of detained foreign returnees in the structural units of the State Border Guard and police detention centres;

2) 144 returnees were questioned during the project up to 30 June 2015;

3) information on results of survey of the returnees was entered in the database established during the implementation of the project in accumulating manner;

4) participation in nine actual expulsion observations;

5) developed guidelines for the implementation of monitoring of forced returnees;

6) results of the project were presented in the final meeting.

2.2 On Performance Indicators of Ombudsman's Office Activity in 2015

Performance indicator	**Plan of the reference period**	**Implementation of plan of the reference period**
Result of activity: informed society and timely prevented violations		
Organized inspections in public and municipal institutions (closed and partially closed institutions, orphan’s courts, educational institutions etc.)	40	37
Organized educational seminars, discussions and other events	30	31
Participation in the events organized by other institutions – lectures on issues related to the Ombudsman’s competence	12	13
Prepared publications in media	2 000	3 184
Result of activity: compliance with the principle of good governance		

Provided opinions to the Constitutional Court	15	15
Provided opinions to public institutions on draft laws	45	23
Participation in working groups and committees	150	109
Result of activity: implementation of the Ombudsman's policy		
Received (reviewed) submissions	2 600	1 775
Prepared responses to submissions	1 720	1 845
Prepared refusals to submissions	600	458
Verification procedures initiated on the basis of submissions	280	69
Prepared responses in the e-mail regarding issues within the competence of the Ombudsman's Office	550	679
Provided verbal consultations:	6000	6355
➢ in the presence	1 600	2036
➢ by phone	4400	4319
Verification procedures initiated at the initiative of the Ombudsman	25	10

Due to the rapidly growing volume of work of the Ombudsman's Office and insufficient staff resources, in 2014, a decision was adopted to participate only in the working groups and committee sittings, where a ready draft regulatory enactment is under review or a call to provide opinion has been received.

Whereas, the Ombudsman provided opinions on draft regulatory enactments only in cases of risks related to violation or limitation of human rights and a call to provide opinion has been received.

Performance indicator "Prepared responses to submissions" is closely related to other indicators – number of received (reviewed) submissions and "Verification procedures initiated on the basis of submissions". Taking into consideration the degree of complicacy of the problem described in the submission, more often a response is being provided to the applicant instead of initiation of a verification procedure, including request of information from other institutions and evaluation of the problem, which is a long process. Thus, decreasing tendency in numbers of the verification procedures remains.

During the reference period, the number of submissions has also decreased, because a large part of persons have chosen consultations in the presence or instant responses by e-mail, and this tendency is reflected also in the large number of verbal consultation.

On the basis of the performance indicators of the Ombudsman's Office, it can be concluded that informative campaigns and informing of society has delivered result, and the society pays greater attention to the compliance with human rights. For example, in 2014, 1877 submissions were received, but in 2015 – just 1775, which represents decrease by 102 submissions.

During the reference period, the Ombudsman's Office has actively informed and educated the society on its rights by implementing various publicity activities and cooperation with media. In 2015, media published 3141 publications on issues within the Ombudsman's competence, including 43 press releases prepared by the Ombudsman's Office.

In 2015, structural changes were implemented in the Ombudsman's Office. In order to achieve the goals and tasks included in the Ombudsman's strategy and to improve work organization of the Ombudsman's Office, provide more efficient use of labour resources and more regular workload for the legal advisers of the Office, the Division of Legal Equality was liquidated in March of 2015. Functions of this division were integrated in the Division of Civic and Political Rights, the Division of Social, Economical and Cultural Rights and the Division of the Rights of Children according to the division of the legal areas of the abovementioned divisions.

3 Personnel

There are 46 posts in the Ombudsman's Office, including the Ombudsman's post; in the reference year, 43 of these posts were occupied.

33 of the employees work in the area of legal analysis and consulting, six employees – in provision of administration, document management, personnel and financial management function, two – in provision and management, another two – in issues of communication and international cooperation.

All together, eight men and 35 women are employed in the Ombudsman's Office.

Division of employees in the Ombudsman's Office by the level of education: one with Doctor's degree, 31 with Master's degree, six with Bachelor's degree, one employee

with the 1st degree vocational education and four students of the bachelor's degree study program.

Division of employees in the Ombudsman's Office by the age groups: eight employees are 20-30 years old, 21 employees are at the age between 30 and 40, nine employees are 40-50 years old, another three employees are at the age between 50 and 60, but two employees are older than 60 years. Average age of the personnel is 37 years.

In 2015, five employees were hired, but legal labour relations with four employees were terminated.

At the end of 2015, evaluation of the work performance was carried out for all the employees of the Ombudsman's Office, the result of which was used for the purpose of determination or review of monthly salary of each employee, clarification of job duties, provision of the employees' growth and carrier, determination of needs for qualification improvement and training. Evaluations of the work performance consisted of the person's self-evaluation, evaluation of superior and interview with the employee, analysing the work performance in relation to the achievement of individual goals, performance of professional duties, competences and professional qualification.

4 Communication with Society

Implementing the duty laid down in the Ombudsman Law to promote the public awareness and understanding of human rights, of the mechanisms for the protection of such rights and the role and functions of the Ombudsman and the work done by the Ombudsman, in 2015, the Ombudsman's Office actively established communication with the society. The Ombudsman engaged not only in explanation of opinions, but also repeatedly expressed his opinion on processes significant for the society. For example: how to find out identity or an anonymous commentator, if the comment has undermined a person's honour and dignity; the Ombudsman explained the reasons for his categorical objections against the payment of remuneration to the guardians; the cases, in which evaluation of the Director of the Corruption Prevention and Combating Bureau may be conducted; provided his opinion on the presence of a lawyer during the negotiations of security authorities regarding annulment of access to official secret; familiarized the society and responsible institutions with the detected systemic deficiencies in the institutional childcare and explained the ways of prevention thereof; evaluated critically the insufficient volume of social assistance and the limited access to social services for the refugees and persons with alternative status, as well as warned of the action planned by the state – that, upon decrease of benefits for the persons, who have received international assistance, the state can end up being in conflict with the undertaken international obligations; expressed his opinion on matching rights of houseowners and tenants; provided a comment on possible limitations for women regarding wearing of Muslim's cap; paid attention of schools and municipalities that "confirmation" of the students in secondary schools may not be humiliating and dangerous to children's health etc.

Continuing the practice commenced in the previous years to involve the society in their rights protection, the Ombudsman called former and current students and employees of orphan homes to respond and inform the Ombudsman's Office of their experience in the institutions of this kind.

Several informative materials, which were specifically aimed at vulnerable groups of persons, were also developed in 2015. During the reference year, special attention was paid to the children's communication with their parents, who are in imprisonment; persons' rights and duties in the psychiatric clinic; and returnees.

In order to promote the children's communication with their parents, who are in imprisonment, the Ombudsman's Office in cooperation with the Latvian Society of

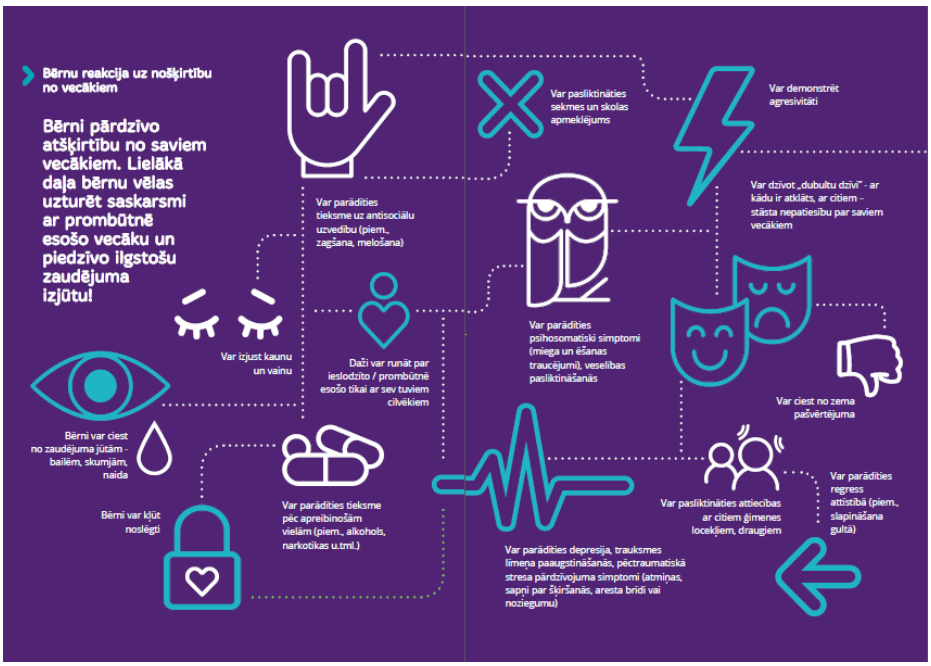
Systemic and Family Psychotherapy prepared and published a booklet “How a small phone conversation can do a great job”.

This material is useful not only for the parents, who are in imprisonment, but also for those, who run separated lives, live or work abroad or in other city, for young people, who do not live together with their parents due to unfavourable conditions, child carers and for every interested person.

How a small phone conversation can do a great job

For parents, who cannot be next to their children because of various reasons

The informative material explains children’s reaction to isolation and specific character of the needs for phone communication depending on the child’s age, as well as gives ideas for the conversation topics and describes structure of phone conversation step by step.



Children's reaction to isolation from parents			May demonstrate aggressiveness
Children suffer due to their isolation from parents. Majority of children wants to maintain communication with the absent parent and experience a lasting feeling of loss.	Tendency to anti-social behaviour may appear (for example, stealing, lying)	School results and attendance may deteriorate	
May feel shame and guilt			May live a "double life", being honest with some people, while telling lies about his/her parents to others
	Some are able to talk about imprisoned / absent parent to close people only	Psychosomatic symptoms (disorders related to sleeping and eating) may appear, deteriorate	
Children can suffer from the feelings of loss – fear, sadness, hate			May suffer from low self-respect
Children may become secluded		Relationship with other family members and friends can deteriorate	Development regress may appear (for example, wetting in bed)
	Tendency to intoxicating substances may appear (for example, alcohol, drugs and such)	Depression may appear, increase of alert level, symptoms of experience of post-traumatic stress (memories, dreams of the moment of divorce, arrest or crime)	

The booklet "How a small phone conversation can do a great job" will be distributed in prison facilities, and, furthermore, it is available to every interested person on the home page of the Ombudsman's Office.[182]

Compliance with human rights in psychoneurological hospitals has been in the Ombudsman's focus, since persons with mental disorders is especially vulnerable group with very high human rights impairment risk. Therefore, in 2015, the Ombudsman's Office commenced a voluminous work by developing informative materials on the rights and duties of persons in psychoneurological clinics. In cooperation with the resource centre for persons with mental disorders "Zelda", work on the development of two separate informative materials was commenced:

- Booklet on commitment in psychiatric hospital against the person's will;
- Booklet on commitment in psychiatric hospital in case of enforcement of medical coercive measure.

Work on the development of these informative materials will continue also in 2016.

Pursuant to Section 50^7 of the Immigration Law, in Latvia, efficient observation system of forced return shall be observed by the Ombudsman, who has been assigned this function on 16 June 2011 by specifying in the law the tasks included in the observation of the process. Since 2013, the Ombudsman's Office had commenced the project "Development of the Mechanism for the Monitoring of Forced Returnees" within the framework of the programme of the European Return Fund for 2013,[183] and, within this programme, guidelines for the implementation of the mechanism for the monitoring of forced returnees and communication cards for successful communication were created.

Purpose of the communication cards was provision of communication between the representatives of the Ombudsman's Office and the forced returnees without the presence of an interpreter. Problems related to the communication language is being aggravated also by the fact that there are not many persons in Latvia, who could provide verbal interpretations in the rare languages, furthermore, operative availability of such interpreters is not always possible.

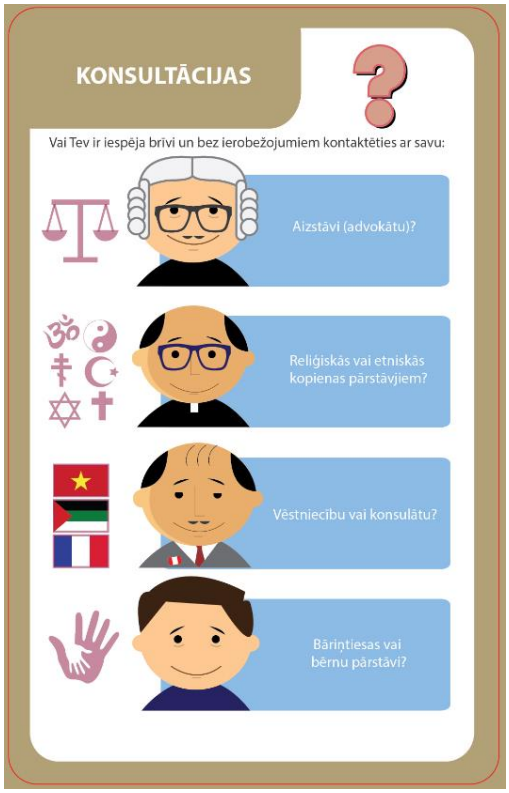
[182] Booklet "How a small phone conversation can do a great job".
Available on: http://www.tiesibsargs.lv/files/content/Ka_maza_telefonsaruna_var_veikt_lielu_darbu_2015.pdf
[183] Project "Development of the Mechanism for the Monitoring of Forced Returnees" (IA/TSB/EAF/2013/3).

You are in Latvia

Where am I?

Communication cards help creating communication, in order to find out at basic level information on compliance with the human rights of the forced returnees in Latvia in such thematic blocks, as housing conditions in the detention/accommodation facility (for example, in relation to overcrowding, hygiene, privacy, clothing and linen, catering, medical care, leisure activities, contacts with family and other aspects), mistreatment and violence, as well as the person's rights and duties.

Communication cards provide communication through pictures and basic questions in six languages (Vietnamese, Farsi, Arabic, French, Spanish and Hindu). Languages were selected after consultations with representatives of the State Border Guard.



CONSULTATIONS

Do you have access to free and unlimited contacts to your:

Defense counsel (advocate)?

Representative of religious or ethnic community?

Embassy or consulate?

Representative of orphan's court or children?

At the end of 2014, the Ombudsman's Office commenced informative campaign to explain human rights, good governance and legal equality. Within the framework of the campaign, the Ombudsman's Office developed calendars for 2015 and book-marks. Whereas, due to cooperation with the National Library of Latvia and regional libraries the book-marks and calendars were available to the residents of Riga and the entire territory of Latvia.

These book-marks provided explanations of human rights, good governance and legal equality, with humour and caricatures. Calendars and book-marks are available free.

LATVIJAS REPUBLIKAS
TIESĪBSARGS
Baznīcas ielā 25,
Rīgā, LV-1010.
Tālr.: 67686768
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www.tiesibsargs.lv

Valsts pārvaldes pienākums ir informēt sabiedrību par savu darbību,
tajā skaitā sniegt iedzīvotājam saprotamas atbildes.

Laba pārvaldība ir atklātība pret privātpersonu, datu aizsardzība,
taisnīga procedūru īstenošana saprātīgā laikā, privātpersonas tiesību un interešu ievērošana savā darbībā.
Laba pārvaldība ietver: tiesības tikt uzklausītam, tiesības piekļūt materiāliem, kas attiecas un konkrēto cilvēku,
valsts pārvaldes pienākumu pamatot savus lēmumus, kā arī tiesības prasīt,
lai valsts pārvalde atlīdzina iestādes vai to darbinieku radītos zaudējumus.

"…On the basis of your submission and based on the legal framework, by adoption of resolution, quality was detected." **Hmm, I do not understand anything, I was just asking about working hours of this institution!**	The Ombudsman of the Republic of Latvia Baznīcas Street 25 Riga, LV-1010. Phone: 67686768 tiesibsargs@tiesibsargs.lv www.tiesibsargs.lv
The right to good governance	
State administration is obliged to inform the society of its activities, including provision of responses, understandable to the residents. Good governance means transparency in relation to private person, data protection, fair implementation of procedures within a reasonable time limit, compliance with rights and interests of private person within the activity. Good governance includes the following: the right to be heard, the right to access the materials related to the relevant person, duty of state administration to justify the decisions, as well as the right to demand from state administration reimbursement of losses caused by employees of an institution or officers (employees) thereof.	

70 000 calendars and 60 000 book-marks in total were available to the residents within the framework of the informative campaign.

LATVIJAS REPUBLIKAS
TIESĪBSARGS

Jūlijs 2015

27			1	2	3	4	5
28	6	7	8	9	10	11	12
29	13	14	15	16	17	18	19
30	20	21	22	23	24	25	26
31	27	28	29	30	31		

Augusts 2015

31						1	2
32	3	4	5	6	7	8	9
33	10	11	12	13	14	15	16
34	17	18	19	20	21	22	23
35/36	24/31	25	26	27	28	29	30

TIESĪBAS UZ PRIVĀTO DZĪVI

Privātā dzīve ietver sevī tādus jēdzienus kā vārds, uzvārds, personas kods, fotogrāfija, informācija par veselības stāvokli, personas attiecības ar citiem cilvēkiem, dzīvokļa neaizskaramība u.c. Katram cilvēkam ir tiesības noteikt, cik daudz viņš par sevi vēlas izpaust citiem. Likumā noteiktos gadījumos tiesības uz privāto dzīvi var ierobežot. Pacientam ir tiesības nepiekrist trešo personu (piemēram, cita ārstniecības personāla, medicīnas studentu vai ģimenes locekļu) klātbūtnei vizītes laikā pie ārsta.

The Ombudsman of the Republic of Latvia X-ray room Doctor, what are you daring? I have rights to privacy!	
The right to private life	Private life includes such notions, as name, surname, personal identification number, photograph, information on health condition, person's relations to other people, inviolability of home, etc. Each person shall have the right to determine the amount of information he/she wants to reveal to other people. The right to private life may be limited in cases stipulated by law. Patient shall be entitled not to agree on presence of third parties (for example, other medical personnel, medical students or family members), when visiting a doctor.

The Ombudsman of the Republic of Latvia X-ray room Doctor, what are you daring? I have rights to privacy! Mom, but will I get minimum wage for tidying up my room?	
The right to fair pay	The right to fair pay means that every employee has right to receive a pay adequate to the completed work. The state has determined that pay of any employee may not be lower than the minimum wage determined by the state. The child shall be obliged to take care of himself/herself adequately to his/her age and help to do work in and about the home. While parents provide maintenance of the child, he or she shall do work in and about the home of their parents without the right to require any remuneration for this unless it has been specifically promised to them. Participation in work in and about the home may not deny child's rest, leisure, participation in entertainment, sports and culture events.

Besides, during the reference period, representatives of the Ombudsman's Office have participated in several public discussions. For example: presentation of the newest survey results of internet aggressiveness index, discussion of the President's Expert group for the improvement of governance about the institutions, which are not subordinated to the Cabinet of Ministers, discussion of experts of the Latvian Medical Association about topical issues in the area of psychiatry, meeting of review of work results of the State Police, presentation of the survey "Transparency of Lobbyism", conference "Information

technology – for the improvement of life quality for persons with disabilities", international scientific conference "Improvement of parliamentary democracy" etc.

Several discussions were also organized by the Ombudsman's Office. At the end of 2015, honouring the International Day of Persons with Disabilities, the Ombudsman, in cooperation with the organization of people with disabilities and their friends "Apeirons" and the National Library of Latvia, organized a wide programme of events: conference, contact exchange, excursions and awarding of non-governmental organizations.

Namely, the International Day of Persons with Disabilities was commenced by a conference "Aspects of the UN Convention on the Rights of Persons with Disabilities in Latvia". Purpose of the conference was report on compliance with the UN Convention on the Rights of Persons with Disabilities in Latvia. Programme of the conference was structured in such a way, as to review implementation of the convention from different viewpoints: from the evaluation of persons with disability, from the public viewpoint and from the practice implemented by municipalities. Organizations representing persons with disabilities, experts and representatives of municipalities held presentations in the conference.

Event of the non-governmental organizations or contact exchange was a by-event of the conference, which lasted throughout the day and was aimed at promotion of cooperation and idea exchange of the non-governmental organizations. The resource centre for persons with mental disorders "Zelda", Latvian Society of the Blind, Latvian Association of the Deaf, Latvian Paralympic Committee, society "Rīgas pilsētas "Rūpju bērns"" [Riga City "Care Child"], society "Cerību spārni" ["Wings of Hope"], society "Latvijas Kustība par neatkarīgu dzīvi" ["Latvian Movement for Independent Living"], Valka Society of Disabled Persons, Salaspils Society of Disabled Persons, Latvian Association of Women with Disabilities "Aspazija", Latvian Multiple Sclerosis Association, Social Integration State Agency, Pulmonary Hypertension Society and other organizations shared their good experience and cognitions.

Whereas, at the end of conclusion of the day, awarding ceremony of the competition "Annual Award for the Support to Persons With Disabilities" took place. Members of jury included Andris Vilks, Director of the National Library of Latvia, Ivars Balodis, Chairman of the organization of people with disabilities and their friends "Apeirons", Rūta Dimanta, Head of the charity fund "Ziedot.lv", Evita Zālīte, opera singer, Aija Barča, Chairwoman of Saeima Social and Employment Matters Committee, Aidis

Tomsons, journalist of Latvian and Juris Jansons, the Ombudsman of the Republic of Latvia.

In total, jury evaluated 52 applications in seven nominations: “Loudest Voice”, “Employment Promoter”, “Digital Integration Promoter”, “Service Provider”, “Education Promoter”, “Social Campaign”, “Defender of Children With Disabilities”.

In the nomination “Loudest Voice”, the prize was awarded for active and successful contribution by representing persons with disabilities, their rights and interests in relations with public, municipal institutions and private persons. Pursuant to the jury’s decision, the main prize was awarded to Salaspils District Centre for Children and Youth With Disabilities “Zelta Atslēdziņa” [“Golden Key”], but Distinctions were awarded to the Latvian Society of Haemophilia and Daugavpils Association of Pensioners.

In the nomination “Employment Promoter”, the prize was awarded for productive promotion of employment of persons with disabilities, and the main prize was awarded to Cēsis Society of Persons With Disabilities, but Distinctions – to Mērsrags Support Centre for Persons With Disabilities, society “Ventas krasti” [“Banks of Venta”] and Daugavpils City Society of Persons With Disabilities.

In the nomination “Digital Integration Promoter”, the prize was awarded for efficient digital solutions facilitating integration of persons with disabilities into society, and the prize was awarded to the Latvian Association of the Deaf.

In the nomination “Service Provider”, the prize was awarded for activities affecting provision of the necessary services to persons with disabilities, including variety and accessibility of services (physical and informative) and coverage. Respectively, the main prize was awarded to the Society for Children and Youth With Disabilities “Cerību sala” [“Island of Hopes”], but Distinction was awarded to the society “Cerību spārni” [“Wings of Hope”].

In the nomination “Education Promoter”, the prize was awarded for activities providing integral education (including interest education, further education), application/development of interactive methods to facilitate rights of persons with disabilities to education. In this nomination, the main prize was awarded to the Autism Society of Latvia, but Distinctions were awarded to the society “SUPPORT to persons with disabilities” and society “Eņģeļi ar mums” [“Angels With Us”].

In the nomination “Social campaign”, the prize was awarded for active and the most efficient social campaign, aimed at integration of persons with disabilities into society and compliance with their interests in various areas, for example, employment etc. In this

regard, the main prize was awarded to Riga Society of the Tender-Eyed and the Blind "Redzi mani" ["See Me"], but Distinctions – to the Latvian Society of the Blind Jelgava Territorial Organization and the society of persons with disabilities "Motus Vita".

Finally, in the nomination "Defender of Children With Disabilities", the prize was awarded for outstanding achievements, defending rights and interests of children with disabilities in various areas, for example, social integration, the right to culture, education etc. In this nomination, the main prize was awarded to the foundation "Support Centre for Families with Children With Disabilities "Cimdiņš"" ["Little Glove"], but Distinctions – to the society "Autism Support Point in Rēzekne" and "Latvian Society of spina bifida and hydrocephalus".

During the reference period, the cycle of seminars, which was commenced in the previous years for social pedagogues, class teachers, school principals and other subjects of protection of the rights of children, was also continued. Seminars were organized for such topics, as disorders of children's behaviour and possible solutions, children's safety in educational institutions and preventive work, rights and duties of children and pedagogues and social pedagogues preventive work with schoolchildren.

As every year, also in 2015, on the International Human Rights Day, the Ombudsman's conference is being organized, and such a conference took place from 9 until 11 December in 2015. In the reference year, the conference was divided into three thematic blocks: on the first day the conference, achievements of the Ombudsman in 2011-2015 were revisited: recommendations and implementation thereof; second day was dedicated to the independence of media and pluralism of information, but the third day – to the rights of children to full development.

Conference materials and video are available on the home page of the Ombudsman's Office.

In total, 44 educational seminars, visiting consultations, discussions and other events were organized in 2015.

5 International Cooperation

For several years, the Ombudsman's Office actively operate in various international and European organizations. International cooperation provides opportunity to gain new experience, broaden horizons, as well as promote compliance with human rights nationwide. Besides, active international communication allows for influencing of

processes, which may, directly or indirectly, affect compliance with human rights also in Latvia.

In 2015, the Ombudsman has delivered two international reports to the UN Human Rights Treaty Bodies:

- Ombudsman's report on the human rights situation in the Republic of Latvia within the framework of the 2nd cycle of the UN Universal Periodic Review.[184]
- Alternative Report of the Ombudsman of the Republic of Latvia for the Committee on the Rights of the Child of United Nations on Situation in the Rights of Children in Latvia in the Period from 1 January, 2007 to 30 June, 2012, 2015.[185]

In 2015, the Ombudsman's Office has actively promoted cooperation with Ombudsman's Offices of other Member States of the European Union, international and European Union organizations, as well as provided opinion on various aspects of human rights. The Ombudsman has provided opinion to the Office of the United Nations High Commissioner for Human Rights on the Resolution No. 28/4 of the Human Rights Council; on racism and other kind of discrimination in sports; on rights of persons with disabilities to participate in decision-making processes.

Information on compensations in cases of discriminations related to air traffic has been provided for the Equality and Human Rights Commission of Great Britain. The Ombudsman has provided opinion in evaluation of the Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in issues of social security, conducted by the European Commission. The Ombudsman has delivered a presentation on education in Latvia, while participating in the Meeting of Ombudsmen of Baltic and Nordic States.

Along with the abovementioned, in 2015, the Ombudsman has also provided information to the United States Embassy in Latvia on the complaints received in the Ombudsman's Office in 2015 regarding discrimination based on ethnic origin (especially

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[184] Ombudsman's report on the human rights situation in the Republic of Latvia within the framework of the 2nd cycle of the UN Universal Periodic Review, 2015.
Available on:
http://www.tiesibsargs.lv/files/content/zinojumi/UPR_Tiesibsarga_zinojums_17062015.pdf
http://www.tiesibsargs.lv/files/content/zinojumi/UPR_Tiesibsarga_zinojums_17062015_ENG.pdf

[185] Alternative Report of the Ombudsman of the Republic of Latvia for the Committee on the Rights of the Child of United Nations on Situation in the Rights of Children in Latvia in the Period from 1 January, 2007 to 30 June, 2012, 2015.
Available on:
http://www.tiesibsargs.lv/files/content/zinojumi/ANO_Bernu_tiesibu_konvencijas_zinojums_Enu_zinojums_2007-2012_15122015.pdf

– against residents of Roma nationality), race, gender, religion, sexual orientation, as well as hate speech.

The Ombudsman provided information to Slovakia National Human Rights Centre on legal framework regarding action/assistance of law enforcement authorities to the people, who have suffered from violation of the prohibition of discrimination in the Republic of Latvia.

Opinion has been provided also to the Equality Commission of Northern Ireland on the strategic litigation and to EQUINET on contribution of the Ombudsman's institution in implementation of economical, social and cultural rights.

The Ombudsman participated also in the study "*CharterClick*" on the Charter of Fundamental Rights of the European Union, which was conducted by universities from Italy, France, Germany, Great Britain and Sweden within the framework of a European Union project.

Additionally, the Ombudsman provided information for the study on the examples of good practice of the Ombudsman's institution in the area of prevention of discrimination, conducted by Malta National Commission for the Promotion of Equality within the framework of the project ESF4.220.

During the reference period, the Ombudsman provided opinion to Slovakia National Human Rights Centre on solution in the matter affecting provision of equal treatment in terms of access to public transport services for persons with disability and responded to the request for information from the European Disability Forum Directorate on the practice of the Ombudsman's Office, when evaluating violations of the rights of persons with disabilities in public transport.

Besides, the Ombudsman has provided opinion to the European Ombudsman on possible solution in the matter affecting the right of a hearing-impaired person regarding taking of exam in the European Personnel Selection Office.

It should be stressed that, since 2015, the Ombudsman's Office is a full-fledged member of the European Network of Ombudsmen. The European Ombudsman Institute is an independent non-profit organization with the purpose to promote concept of the Ombudsman institutions and exchange of experience among the Ombudsman institutions at national, European and international level. Activity of the organization includes also support and cooperation with the international Ombudsman institutions, as well as other regional, national and international organizations.

Besides, the Ombudsman's Office is a full-fledged member of the European Network of Ombudspersons for Children (ENOC). This organization was founded in 1997 and currently joins 43 independent institutions of the rights of children in 35 European states. Main goals of the organizations are – promotion of compliance with the UN Convention on the Rights of the Child, promotion of compliance with the rights of children, sharing with information, strategies and examples of good practice, as well as development of efficient activity of the independent institutions of the rights of children. In 2015, attention of ENOC was mainly paid to the problems related to violence against children.

Besides, the Ombudsman's Office actively works in the European Union Agency for Fundamental Rights (FRA), which is a partnership of the European Union, in protection of the fundamental rights of the society. This is an organization, which provides independent, fact-based recommendations to the European Union and decision-makers of national level, thus, helping to prepare more business-oriented discussions, strategies and laws, as well as conducts independent studies in the area of fundamental rights. The Ombudsman's Office actively communicate with representatives of the Agency for Fundamental Rights both by providing the necessary information, and using studies prepared by the organization.

Besides, the Ombudsman's Office is a full-fledged member of the European Network of Equality Bodies (EQUINET). This organization joins 45 institutions in 33 European states. Participating organizations are national equality institutions, which fight against discrimination, including discrimination based on age, gender, race, ethnic origin, religion, sexual orientation or disability.

Besides, the Ombudsman's Office is a full-fledged member of the International Ombudsman Institute (IOI). This is an international organization, which was founded in 1978 and is the only global organization joining more than 170 independent Ombudsman institutions from more than 90 states. The main goal of the International Ombudsman Institute is focusing on compliance with good governance, as well as raising of capacity of the independent institutions.

The International Ombudsman Institute supports its members both, by organizing various courses and trainings, and conducting studies in important areas of human rights. In 2015, the Ombudsman's Office in cooperation with IOI organized international training on monitoring principles and instruments, so that the national preventive mechanisms could guarantee the implementation of the Additional Protocol of UN Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Participants had opportunity to learn from internationally recognized experts – representatives of the Association for the Prevention of Torture (APT). Representatives from more than 20 states, including Pakistan and Ivory Coast, participated in the training.

Besides, the Ombudsman's Office is a full-fledged member of the European Network of National Human Rights Institutions (ENNHRI). This network of organizations joins national human rights institutions from across the Europe. These participating organizations are national institutions of human rights, which are independent from governments, and these organizations have been assigned wide legal and constitutional mandate for the development and protection of human rights. These organizations have been accredited and comply with the UN Paris Principles, providing their independence, pluralism and efficiency.

There is especially important fact that, in March of 2015, the Ombudsman's Office passed the accreditation process in the Accreditation Sub-committee of the International Coordinating Committee for National Human Rights Institutions (ICC) and was evaluated with accreditation status "A", which is the highest evaluation for a human rights institution. Compliance with the status "A" allows for voting rights, rights to participate in the activity of the International Coordinating Committee and decision-making, as well as in the activity in the UN Human Rights Council and other UN mechanisms.

Accreditation process in the abovementioned institution was necessary for the Ombudsman's Office to receive the highest internationally recognized evaluation on compliance of the organization with the international standards of national human rights institutions. Besides, the accreditation provides international recognition and protection for a human rights institution complying with Paris Principles.

6 Opinions Provided by Ombudsman's Office to the Constitutional Court

1	26.01.2015 No. 1-6/1	The Ombudsman's opinion in case No. 2014-33-01 "Regarding compliance of Section 279, Paragraph 1 and Section 288, Paragraph 1 of the Latvian Administrative Violations Code with Article 92 of the Constitution"	Juris Siļčenko
2	09.02.2015 No. 1-6/2	The Ombudsman's opinion in case No. 2014-34-01 "Regarding compliance of Section 36, Paragraph 2, Clause 1, Section 42 and the words "with or without confiscation of property" of Section 177, Paragraph 3 of the Criminal Law with the second and third sentences of Article 105 of the Constitution"	Elīna Birģele
3	27.03.2015 No. 1-6/3	The Ombudsman's opinion in case No. 2014-36-01 "Regarding compliance of Section 8, Paragraph 1 of the Law on Control of Aid for Commercial Activities with Article 105 of the Constitution"	Raimonds Koņuševskis
4	30.03.2015 No. 1-6/4	The Ombudsman's opinion in case No. 2014-35-03 "Regarding compliance of Paragraph 54.1 of the Regulations of the Cabinet of Ministers No. 221 "Regulations Regarding Electricity Production and Price Determination upon Production of Electricity in Cogeneration" of 10 March 2009 with Articles 1 and 105 of the Constitution and Section 28, Paragraph 2 of the Electricity Market Law"	Inga Peimane
5	10.04.2015 No. 1-6/5	The Ombudsman's opinion in case No. 2015-01-01 "Regarding compliance of Section 7, Paragraphs 1 and 2 of the Law On the National Flag of Latvia and Section 201^{43} of the Latvian Administrative Violations Code with Article 100 of the Constitution"	Kristīne Pakārkle
6	18.05.2015 No. 1-6/6	The Ombudsman's opinion in case No. 2015-06-01 "Regarding compliance of Section 11^{6}, Paragraph 1 of the Judicial Disciplinary Liability Law with Article 100 of the Constitution"	Laura Lapiņa

7	04.06.2015 No. 1-6/7	The Ombudsman's opinion in cases No. 2015-03-01, No. 2015-04-01, No. 2015-08-01 and No. 2015-09-01 "Regarding compliance of Section 2 of the law "Amendments in the Insolvency Law" of 25 September 2014 and the law "Amendments in the Law On Prevention of Conflict of Interest in Activities of Public Officials" of 30 October 2014 with Article 1 and the first sentence of Article 106 of the Constitution"	Inese Leimane
8	25.06.2015 No. 1-6/8	The Ombudsman's opinion in case No. 2015-07-03 "Regarding compliance of Paragraph 3 of the Regulations of the Cabinet of Ministers No. 341 "Procedures for the Determination and Reimbursement of Losses and Expenses Related to Provision of Public Transport Services and for the Determination of Tariffs for Public Transport Services" of 15 May 2012 with Articles 1 and 105 of the Constitution"	Raimonds Koņuševskis
9	12.08.2015 1-6/9	The Ombudsman's opinion in case of external persons No. 2015-10-01 "Regarding compliance of Section 7, Paragraph 3 of the "Law On Prevention of Conflict of Interest in Activities of Public Officials" with the first sentence of Article 91 and Article 110 of the Constitution"	Gita Gailīte
10	17.08.2015 1-6/10	The Ombudsman's opinion in case No. 2015-11-03 "Regarding compliance of Articles 19 and 20 of the Regulations No. 141 of the Bank of Latvia of 15 September 2014 "Requirements for Anti-Money Laundering and Prevention of Terrorism Financing in Transactions of Purchase and Sale of Foreign Currency Cash" with Articles 1 and 64 and the first sentence of Article 91 of the Constitution"	Inese Leimane
11	07.09.2015 1-6/11	The Ombudsman's opinion in case No. 2015-13-03 "Regarding compliance of the first sentence of Paragraph 24 of Riga City Council Binding Regulation No. 211 "Regarding Municipal Duty for Maintenance and development of Municipal Infrastructure in Riga" with Article 105 of the Constitution"	Inga Peimane, Raimonds Koņuševskis

12	30.10.2015 1-6/12	The Ombudsman's opinion in case No. 2015-15-0103 "Regarding compliance of Section 1, Clauses 2 and 6, Section 4, Section 10, Section 18, Paragraph 1 of the Law on Development and Use of the National DNA Database, as well as Paragraphs 2 and 13 of the Regulations of the Cabinet of Ministers No. 620 "Procedures for the Provision of Information to be Included in the National DNA Database, as well as the Collection of Biological Material and Biological Traces" of 23 August 2015 as far as they concern suspected persons, with Article 96 of the Constitution"	Juris Siļčenko
13	05.11.2015 1-6/13	The Ombudsman's opinion in case No. 2015-15-01 "Regarding compliance of Paragraph 27 of the Transitional Provisions of the Law On Electronic Mass Media with Article 1, the first sentence of Article 100 and Article 105 of the Constitution"	Laura Lapiņa
14	18.12.2015 1-6/14	The Ombudsman's opinion in case No. 2015-14-0103 regarding the matter, if DNS data obtained from a person within the contested legal framework, should be recognized as personal identification data within the meaning of the Personal Data Protection Law	Juris Siļčenko
15	18.12.2015 1-6/15	The Ombudsman's opinion in case No. 2015-19-01 "Regarding compliance of Section 657, Paragraphs 1, 3 and 5 of the Criminal Procedure Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia" and other matter, which, in the opinion of the Ombudsman, could be important within this case	Inga Zonenberga

6 Statistics on Activity of Ombudsman's Office in 2015

	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL
Received persons' submissions													
Division of Civic and Political Rights	87	104	87	102	70	73	113	91	85	73	70	42	997
Division of Social, Economical and Cultural Rights	51	41	55	53	35	31	45	62	44	36	44	52	549
Division of the Rights of Children	13	31	18	18	9	19	13	10	16	13	17	27	204
Division of Legal Equality	7	10	0	0	0	0	0	0	0	0	0	0	17
Other employees	0	0	2	0	0	0	0	0	0	1	0	5	8
Total	**158**	**186**	**162**	**173**	**114**	**123**	**171**	**163**	**145**	**123**	**131**	**126**	**1775**
Initiated verification procedures													
Area of civic and political rights	1	1	6	0	5	1	3	3	0	0	2	0	22
Division of Social, Economical and Cultural Rights	3	4	3	4	2	6	1	1	1	2	0	1	28
Area of the Rights of Children	1	4	0	5	1	2	0	1	1	0	1	2	18
Division of Legal Equality	0	0	1	0	0	0	0	0	0	0	0	0	1
Total	**5**	**9**	**10**	**9**	**8**	**9**	**4**	**5**	**2**	**2**	**3**	**3**	**69**
Refusals to initiate a procedure													
Division of Civic and Political Rights	3	10	5	7	10	6	17	12	5	3	8	4	90
Division of Social, Economical and Cultural Rights	25	24	23	32	19	23	25	23	33	32	24	35	318
Division of the Rights of Children	4	1	4	4	3	2	5	5	2	5	2	5	42
Division of Legal Equality	1	6	1	0	0	0	0	0	0	0	0	0	8

Total	**33**	**41**	**33**	**43**	**32**	**31**	**47**	**40**	**40**	**40**	**34**	**44**	**458**
	Jan	**Feb**	**March**	**April**	**May**	**June**	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**TOTAL**
Responses to submissions (excluding refusals)													
Division of Civic and Political Rights	83	96	92	58	85	62	83	69	92	66	69	55	910
Division of Social, Economical and Cultural Rights	57	51	56	58	59	44	49	64	47	66	45	56	652
Division of the Rights of Children	16	19	31	23	14	24	14	25	22	15	31	32	266
Division of Legal Equality	6	6	4	0	0	0	0	0	0	0	0	0	16
Other employees	0	1	0	0	0	0	0	0	0	0	0	0	1
Total	**162**	**173**	**183**	**139**	**158**	**130**	**146**	**158**	**161**	**147**	**145**	**143**	**1845**
Completed or terminated verification procedures													
Division of Civic and Political Rights	3	1	11	1	1	10	10	4	9	3	3	1	57
Division of Social, Economical and Cultural Rights	0	2	4	3	2	3	5	1	1	4	0	3	28
Division of the Rights of Children	0	5	1	2	4	0	0	2	1	1	0	1	17
Division of Legal Equality	0	3	1	0	0	0	0	0	0	0	0	0	4
Total	**3**	**11**	**17**	**6**	**7**	**13**	**15**	**7**	**11**	**8**	**3**	**5**	**106**
Consultations													
Division of Civic and Political Rights	19	17	34	22	14	27	16	23	11	23	26	23	255
Division of Social, Economical and Cultural Rights	29	39	26	24	31	23	23	26	38	21	30	31	341
Division of the Rights of Children	12	12	11	19	10	15	4	14	15	15	15	7	149
Division of Legal Equality	5	3	0	0	0	0	0	0	0	0	0	0	8
Consultations by phone	342	380	510	519	56	317	360	383	419	369	342	322	4319

	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL
Consultations (continued)													
Responses by e-mail	58	90	78	60	46	38	50	40	68	62	52	37	679
Visitors without appointment	117	87	100	153	92	85	106	129	135	111	83	85	1283
Total	**582**	**628**	**759**	**797**	**249**	**505**	**559**	**615**	**686**	**601**	**548**	**505**	**7034**
Opinions													
To public institutions on draft laws	5	2	2	0	3	1	2	1	3	1	1	2	23
To the Constitutional Court	1	1	2	1	1	2	0	2	1	1	1	2	15
Total	**6**	**3**	**4**	**1**	**4**	**3**	**2**	**3**	**4**	**2**	**2**	**4**	**38**
Monitoring visits													
Total	**1**	**2**	**11**	**3**	**2**	**5**	**2**	**3**	**0**	**2**	**2**	**4**	**37**
Informing of society													
Publications (LETA monitoring)	**102**	**244**	**281**	**309**	**118**	**142**	**413**	**346**	**337**	**258**	**208**	**383**	**3141**
Press releases	**1**	**5**	**1**	**2**	**7**	**4**	**9**	**7**	**3**	**1**	**1**	**2**	**43**
Educational events (seminars, visiting consultations etc.)	**2**	**2**	**1**	**4**	**4**	**5**	**4**	**1**	**5**	**7**	**5**	**4**	**44**
Participation in working groups and commissions	**2**	**13**	**9**	**7**	**15**	**7**	**5**	**2**	**17**	**13**	**12**	**7**	**109**

Summary

Area of the Rights of Children

[1] During the reference period or in 2015, the Ombudsman's Office received 890 submissions regarding issues of the rights of children, including possible violations. In comparison with 2014, number of submissions has grown by 24%. When evaluating substance of these submissions, it becomes obvious that the rights of children to grow up in family is still a topical issue – 108 submissions in comparison with 95 during the previous reference period, but number of submissions regarding the rights of orphans and children without parental care has more than doubled last year.

While performing daily duties and summarizing the information obtained for 2015, the Ombudsman is forced to admit that number of guardians and foster families is critically insufficient nationwide. Furthermore, analysing responses of the municipalities questioned within this context, it is obvious that majority of them has failed to indicate the measures taken for the promotion of the movement of guardians and foster families in their administrative territories. It leads to conclusion that nothing has been done at all.

[2] In the autumn of 2015, the Ombudsman commenced a comprehensive study regarding understanding of violence against children and situation in Latvia. Purpose of the study was to find out opinion of 5^{th} - 12^{th} grade students, parents and pedagogues on what, in their opinion, is violence against child, frequency and sources of suffering of the children, the following action of students, parents and pedagogues in case, if a child suffered from violence. Main conclusions of the study show that violence against children involves both, adults, including parents, family members, pedagogues etc., as well as children themselves – peers, friends, and classmates. Furthermore, overall understanding about the content of the notion "violence against child" is insufficient. Thereby, spread of violence against children must be decreased both in family and school, and it is possible only by education of all the involved parties, including education regarding the content of the notion "violence".

[3] Taking into consideration urgency of this topic within the context of several publicly known incidents and taking position for the protection of the interests and rights

of minors, in 2015, the Ombudsman got engaged in the development of amendments in the Criminal Law stipulating more severe punishments for sex crimes against children. Besides, the Ombudsman proposed to the Ministry of Justice to evaluate the necessity for amendments of Section 57 of the Criminal Law, stipulating that criminal liability against a person, who has committed a crime against morality and sexual inviolability of a minor shall not be time-barred. The abovementioned proposal was supported partially, though, by prolonging the time limit, during which the person shall be entitled to report the committed crime.

[4] The year of 2015 explicitly reflected that media reporting on possible criminal offences against children frequently describe even the most intimate details and reveal information, on the basis of which the victim can be surely recognized, for example, in the school or parish. Although the society is entitled to know about violations of the rights of children, obtaining of accurate information regarding identity of the victim is just a simple satisfaction of curiosity without legitimate purpose. During the reference period, such violations were detected in several verification procedures, thus, revealing the lack of nationwide and efficient protection mechanism for the child's rights to private life in cases, when prohibited information about the child is being published, if the violation has been made by a journalist and mass media. Thus, currently the only type of liability of the persons blamed on such violations – journalists and mass media – is civil-law liability. However, this rights protection mechanism is not sufficiently efficient, since rights to demand remuneration through the means of civil law is a choice of private persons. If the legal representative of the child shall fail to exercise these rights, journalist avoids any liability. Thus, a higher possibility for recurrence of publishing of information about the child is provided. In the opinion of the Ombudsman, in order to prevent abuse of legal deficiencies and the resulting violations of the rights of children, legal framework must be improved, however, such a proposal was not supporter by the responsible institutions.

[5] In 2015, the Ombudsman updated the issue on preventive work with children. For this purpose, survey of municipalities was conducted, and responses were received from all 119 municipalities of Latvia. Within the survey, social services indicated a problem related to belated reception of information in the social service from schools, i.e., when the problems have already grown very serious. Unfortunately, the Ombudsman's recommendations previously provided to the municipalities are not being properly

implemented in this area. For example, several municipalities lack system or even vision for preventive work, and frequently such an understanding includes only sending of a child from one institution to another and small chat with employees. Besides, funding for the preventive work with children is inadequate, and there is also shortage of relevant trained specialists.

In the opinion of the Ombudsman, this is the area, where positive changes could be provided by more active involvement of the society, therefore, the parents are also being called to be more active and demand safe and violence-free environment for their children in kindergartens and schools, since such a position will make the responsible authorities and institutions to pay adequate attention to these issues and provide solution.

[6] Similarly as before, in 2015 the Ombudsman also continued studying of the issue regarding the rights of children of imprisoned parents top communication with parents. Detailed interviews with foster families conducted for this purpose showed that mostly children of such families do not contact their parents, and the main reason for this is indisposition of the parents and children themselves (54%). Relations between children and parents were evaluated as rather negative, furthermore, it was pointed out that children felt disappointment for their parents' unkept promises and shame for their imprisonment. Whereas, the most common way of communication between children and parents was phone conversations (56%).

Taking into consideration the abovementioned, it should be concluded that children living in foster families are much less motivated to contact their imprisoned parents. Therefore, in the opinion of the Ombudsman, guardian or foster family must stimulate communication between children and their imprisoned parents, unless the Orphan's Court has adopted decision on limitation of access rights.

[7] In 2015, the Ombudsman initiated a verification procedure regarding compliance of the procedures for financing of private educational institutions with the equality principle within the context of the rights to elementary and secondary education.

During the verification procedure, it was concluded that the principle "money follows the student" had been fully introduced in relation to public funding, and it worked regardless of the status of founder of the educational institution – wages or pedagogues and purchase of certain equipment for the studies is being equally financed from the state budget funds and earmarked subsidies both, in private schools and municipal educational

institutions. The state budget funds for the catering of students are also being assigned regardless of the status of founder of the educational institution – equally both, for private schools and municipal educational institutions. Thus, public funding is being provided, complying with the principle of equality among the students, who have opted for municipal educational institution, and the students, who have preferred a private educational institution. Whereas, if the child is not a student of an educational institution founded by the municipality of his/her place of residence, municipal funding "follows" the student only to an educational institution founded by other municipality, but not a private school.

Thereby, it should be concluded that, in the legal system of Latvia, the rights of child to acquire education in a private school or an educational institution founded by other municipality shall be recognized as their right to opt, and this means that the parents are entitled to such a legal and institutional system, which would promote their possibilities to make such a choice. Thus, by promoting one option and failing to promote the other, the state implements unequal treatment, which may not be recognized as compliant with Article 91 of the Constitution. The Ombudsman has called the Ministry of Education and Science to eliminate these deficiencies.

[8] In the summer of 2015, XI Latvian Youth Song and Dance Festival took place in Riga, bringing together approximately 38 000 children and youngsters from across Latvia. On 14 July 2015, the Ombudsman received a letter from the Latvian Medical Association reporting on possible criminal negligence and violence against children in the course of this festival. A number of facts showing on significant violations of the rights of children during the festival were published by mass media.

In order to evaluate the possible violations, Commission for the Evaluation of the Work Organization of XI Latvian Youth Song and Dance Festival was composed by the order of the Minister for Education and Science. Commission's report, dated 2 September 2015, pointed out at a number of violations during the organization of the event, which should be dealt with as omission of the responsible officials.

Taking into consideration the abovementioned, the Ombudsman requested the Public Prosecutor's Office to evaluate actions of the responsible officials, who had adopted a decision on arrangement of 12 500 children at Mežaparks open-air stage, which is not suitable for such a number of participants, thus, essentially violating safety rules and causing risk to health and life of the children.

Besides, the Ombudsman requested to evaluate compliance of the provided catering with the requirements of regulatory enactments and possible violations of fire safety in the places of accommodation of participants of the festival.

Pursuant to Section 50^1, Paragraph 1 of the Protection of the Rights of the Child Law, a child may participate in different activities (events) if it does not hinder his or her acquisition of education, as well as does not threaten his or her safety, health, morality or other substantial interests. According to Section 50^2, Paragraph 1 of the Protection of the Rights of the Child Law, child safety shall be ensured at public events in which children participate, or a public recreation activity, sports or recreation location accessible to children.

Whereas, Section 72, Paragraph 1 of the Protection of the Rights of the Child Law stipulates that organisers of events for children and such events in which children take part, shall be liable for the protection of the health and life of the child, that the child be safe, that he or she is provided with qualified services and that his or her other rights are observed. Paragraph 2 of the abovementioned Section stipulates that for violations committed the organisers of events shall be held disciplinarily or otherwise liable as laid down in law.

In the opinion of the Ombudsman, careful evaluation of circumstances to detect, whether organizers of the event have complied with the rights of children during the Song Festival, may provide a significant contribution in the children's safety issues in the future, when similar celebration at such a scale will be organized. Whereas, the Ombudsman's position that the responsible persons should be held liable, caused criticism from the organizers of the event, who, directly or indirectly, had made violations of regulatory enactments by their act or omission. However, it should be taken into consideration that the rights of children are of higher priority nationwide, therefore, in the opinion of the Ombudsman, organizing issues of the Song Festival had to be verified very carefully, and liability of each person involved for the detected violations had to be evaluated.

Civic and political rights

[9] According to his competence, the Ombudsman has chosen promotion of protection of the rights of persons with mental disorders as one of the priorities of his work in the recent years. In 2015, the same as before, the Ombudsman received comparatively small number of submissions from persons with mental disorders,

however, non-existence of submissions is not an automatic indicator of non-existence of problems. The fact that employees of the Ombudsman's Office have frequently received information from the residents of the state social care centres during the monitoring visits that one of the methods for the solution of a conflict between the clients and care institutions is referral of client to the psychiatric hospital, should be mentioned as one of such problems. Although the Ombudsman has not identified this problem as a systemic one, however, there are certain concerns regarding helplessness of the clients and limited defence possibilities in such situations. Therefore, the Ombudsman stresses that, when evaluating the stationing necessity of the patient against his/her will, a principle must be followed that restriction of liberty due to mental illness is unfounded, if based on discrimination or prejudices in relation to persons with disabilities.

Being aware that work with mentally ill or mentally disordered patients is always hard for all of the involved personnel categories, special attention should be paid to the personnel policy issues of psychoneurological hospitals. The Ombudsman has been notified that psychoneurological hospitals face acute shortage of personnel, therefore, fixation is being applied to especially monitored patients, furthermore, provision of daily walks is problematic.

In order to obtain objective information on personnel policy issues, in 2015, the Ombudsman asked all the psychoneurological hospitals of Latvia to provide information, whether adequate level of medical staffing is available to provide appropriate care and medical treatment to persons with mental disorders. Summarization and evaluation of the received information will be carried on in the first quarter of 2016, whereas, the Ombudsman's conclusions and proposals will be sent to the Ministry of Health.

[10] Every year, the Ombudsman's Office receives constantly high number of submissions from prison facilities on possible violations of the rights of inmates. In 2015, approximately 530 submissions related to such issue were received. The same as every year, in 2015, large part of these submissions were related to household conditions in prison facilities, however, in comparison with the previous years, in the reference period number of such submissions was half of that. Namely, in 2015 – 34 submissions, whereas, in 2014 – 66. Possibly, the abovementioned facts could be explained by the explicit interest and attempts of the responsible officials to improve household conditions in prison facilities in the recent years.

Similarly as before, requests from administrative courts to provide information on the Ombudsman's findings within the monitoring of prison facilities were also received in 2015. Thereby, it should be concluded that inmates actively use the current rights protection mechanism in relation to the actual action of the prison facility, which has failed to provide dignified conditions, and initially address the responsible officials, whose competence includes solution of the relevant problems, but, if the adopted decision shall turn out to be dissatisfactory, appeal shall be submitted in the administrative court.

In 2015, the Ombudsman's Office received 46 submissions related to provision of medical aid to the imprisoned persons. Majority of submissions constantly contain complaints regarding quality of provided treatment and professionalism of medical staff, when investigating a patient and determining the necessary treatment therapy. Frequently these submissions indicate that only painkillers are being handed in prison, but not medication for treatment. Therefore, no good quality treatment process is provided.

Besides, throughout the course of repeated visits to prison facilities, it was detected that imprisoned persons with disabilities are not provided with adequate imprisonment conditions, including monitoring and care.

When summarizing the information acquired during the visiting of prisons, it was detected in relation to imprisonment facilities, that there was no unified internal procedure in relation to organization of video conferences and provision of other related issues. Taking into consideration the fact that the abovementioned issue has not been settled, officials and employees of imprisonment facilities take the organization and provision of court sittings via video conference, since, taking consideration the insufficient resources, this would impose additional duties without provision of adequate regulation and additional human resources. Taking into consideration the fact that duration of video conference cannot be predicted, provision of video conferences burdens officials and employees of imprisonment facilities to perform fully their direct professional duties.

The Ombudsman recommended in his report to the Prison Administration and the Ministry of Justice to promote unified practice in relation to solution of issues related to video conferences at imprisonment facilities, as well as solution of personnel policy issues, namely, to promote additional trained employees for the provision of video conferences.

[11] In 2015, the Ombudsman received 343 submissions containing complaints of residents regarding the right to fair trial. In comparison with the year before, number of

submissions has slightly decreased, however, in general, there have been no significant changes in the number of received submissions in the recent years. Furthermore, aspects of the right to fair trial are among the most popular ones, and employees of the Ombudsman's Office provide also verbal consultations on these issues.

Persons point at both, problematic access to courts – expensive legal services, unavailable state ensured legal assistance, comparatively high state fees, and the long durations of all kinds of proceedings, and insufficient motivation of adjudications, expensive and complicated enforcement process, as well as other aspects of the right to fair trial.

Evaluating the character of the received complaints, the Ombudsman admits that they are of individual character, thus, attention of the responsible institutions has been paid to systemic problems in several separate situations only. For example, having detected that cassation complaints continuously, sometimes even for a year and a half or two years, pend in the Supreme Court not proceeded with, the Ombudsman has called to pay especial attention to the actions of the court after reception of cassation complaints, by providing more timely planning of assignments sitting for the adoption of decision on initiation of cassation court proceedings.

The Ombudsman evaluates positively the reforms conducted in the judicial system, including increase of the number of judges in courts, however, the right to fair trial may not be provided without good quality legal assistance, which is available to persons. Issue on the volume of state ensured legal assistance to persons, who cannot afford hiring of an advocate due to limited resources, should still be considered a topical one. Although the legislator has stipulated in the State Ensured Legal Aid Law a broader range of cases, when state ensures legal assistance in administrative cases by providing for legal assistance also for the appeal of decisions adopted by orphan's courts in the administrative court, however, evaluation the situation as a whole, the Ombudsman considers that the volume of state ensured legal aid is still insufficient. Furthermore, in 2015, another essential problem was detected within this context. Namely, although the Administrative Procedure Law has established the principle of objective investigation, the practice has proved that the vulnerable groups of residents frequently ask for assistance in the administrative procedure, however, they are not able to receive the state ensured legal aid in administrative issues. Whereas, the state administration institutions and municipalities, including the capital companies established thereby, with their own legal departments or at least full-time lawyers, use to hire advocates and lawyers at the budget's expenses for

administrative court proceedings. It should be stressed that public persons are obliged to comply with the prohibition stipulated in the Law On Prevention of Squandering of the Financial Resources & Property of the State & Local Governments to enter into contracts for provision of services on issues, the solution of which is included in the duties of an official or employee of the relevant institution.

In 2015, the Ombudsman continued studying of the issue related to videoconferencing in courts and imprisonment facilities. The responsible institutions were sent a report "Ensuring of the right to fair trial in the court proceedings by videoconferencing", indicating on the detected deficiencies and providing recommendations for the improvement of situation. The Ombudsman detects with a satisfaction that this study was recognized as a valuable one, and professionals have organized discussions and implemented certain measures aimed at improvement of the situation on the basis of this study. However, very important issues, which affect and may affect persons' rights to fair trial, namely, issue on rights of the parties of proceedings to defence and representation, confidential correspondence with the provider of legal aid in court proceedings using videoconferencing, are still topical. Besides, the issue on implementation of training and taking of informative explanatory measures to promote videoconferencing in court proceedings is still topical.

[12] According to the framework of human rights, role of media in provision of the freedom or word is a topical issue both, in the international and local society. In 2015, for the first time in Latvia, Media Policy Division was established under the Ministry of Culture, thus, pointing at the government's intention to create a unified, strong, professional, sustainable and stable media environment. Media Policy Division developer and transferred for public discussion the Guidelines of Latvian Media for 2016-2020. Having paid his attention to the activity of media, having heard media experts, having familiarized himself with the planning documents of media environment, regulatory enactments and the international documents binding to Latvia, the Ombudsman came to the following cognitions or proposals in 2015:

- Public service broadcasting currently does not reach all the residents of Latvia, and this should be evaluated negatively.
- In order to avoid propaganda, which is hostile to the statehood of Latvia, critical thinking and media using skills of residents must me promoted.

- National Electronic Mass Media Council must ensure timely evaluation and punishing of mass media for reflection of hate speeches and one-sided information on issues crucial to the society.
- Politicians must be responsible in relation to strengthening of public media. Unfortunately, the budget for 2016 shows decrease of funding in comparison with 2015, and this is a clear violation of law, since the Electronic Mass Media Law clearly stipulates that subsidy of the state budget for the public service may not be lower than a year before.
- Violations of the standards of ethics and personal identification data are frequent in media environment, especially on the internet. This problem intensifies by the fact that many internet portals do not identify themselves as media, thus, considering that these regulatory enactments governing the relevant environment are not applicable. Violations of this kind are much less frequent in public media.
- Idea about establishment of a media ombudsman, which would promote improvement of media environment according to human rights, should be considered.

[13] Having evaluated particular events, during the reference period, the Ombudsman has explained that a person, who works in the area of public law at his/her own wish, may not demand for himself/herself the same treatment as a private person, who is entitled to anonymity. Rights of the society to obtain information may be referred also to separate aspects of private life of public persons under certain conditions. Therefore, there is a certain difference between the degree of protection of the rights to private life. Furthermore, during performance of service duties, officials are being assigned special rights, as well as exposed to specific duties and limitations. Officials in public service are being exposed to high requirements of ethics and behaviour, and duty of compliance therewith is being applied also to the off-duty period. Limitations of fundamental rights are also valid regardless of whether the person is on duty at the particular moment within a wider meaning of this notion, or not. If a private person shall acquire information on officials, who secretly provide performance of functions of public policy and national security authorities, efficiency of activity of these institutions can be affected negatively. Consequently, free acquisition and accessibility of such information is not in the interests of the state and society. However, in the opinion of the Ombudsman, decisive meaning for the provision of reasonable balance between the protection of

private life and the freedom of word, is in the circumstance, whether the published article or photograph provides any contribution in socially important discussion. Correspondingly, information on the activities of the official during the off-duty period should be evaluated from the viewpoint of the legal interest of society. The abovementioned interest includes person's actions, which are related to performance of professional duties in any way in the area of public law. Whereas, curiosity of a separate person or a group thereof, as well as commercial interest of a newspaper or other media should not be considered the legal interest of the society and may not serve as excuse for the limitation of an official's rights to private life during the off-duty period.

[14] The year of 2015 kept showing the tendency that the Ombudsman's Office received a small number of submissions from foreigners and persons, who had applied for international protection and received the relevant status. In comparison with the previous years, more frequent addressing to the Office was observed by persons, who had no citizenship and had protractedly resided illegally in the territory of Latvia, and who asked for advice in relation to a refusal to the foreign spouses regarding issuance of permits for the residence in the Republic of Latvia.

Similarly with the request to review the amount of funds for the asylum seekers for the purchase of food, hygiene and the essential goods, in 2015, the Ombudsman expressed his objection to the government's decision to decrease benefits for the persons, who had received international protection, since such a decrease can turn out to be in conflict with the international obligations undertaken by Latvia. As a full-fledged Member State of the European Union, Latvia has undertaken to provide adequate social well-being and livelihood to the international protection subjects within the social assistance and without discrimination, in order to eliminate the social difficulties faced by the persons, who are looking for protection outside their state of origin due to military conflicts, persecution or endangerment of life. Decreasing the amount of benefit, state may not decrease it below the minimum livelihood, which is necessary for provision of dignified existence.

On the basis of conclusions from a study conducted in the Ombudsman's Office earlier on, on 2015, the Ombudsman publicly, as well as representatives of the Office during discussion of the draft "Asylum Law" in the Saeima, repeatedly reminded that, during solution of the consequences of refugee crisis and the issue related to arrival of huge number of asylum seekers expected in Latvia in 2016, it was important to provide an efficient nationwide mechanism for the integration of foreigners, who have received

international protection, into society, thus, avoiding creation of an excluded part of society, which may cause risks to the state, its development and security. For the purposes of integration of persons, who have received international protection, in Latvia, it shall be recommended to establish not only a one stop agency, which would coordinate integration of these persons, by developing an individual integration plan for each of them, but also, possibly, to consider a necessity to introduce an integration contract, which would be signed between an individual and the state.

The Ombudsman pays attention to the fact that not only political guidelines of integration, but also an institution, which is able to provide implementation of the abovementioned document in the long term, are necessary in the state. Sufficient funds must be assigned for the acquirement of official language and state system, and relevant acquirement programme must be developed. The state may not allow addition of the crowd of on-citizens and stateless persons with the persons, who have received international protection, who are not able to accept the state system and necessity of the integration.

In the spring of 2015, the Ombudsman organized a round table discussion on ensuring of rights and interests of the alien minors, who reside in Latvia without guidance of their legal representatives, as well as the possible deficiencies in the legal framework, including the Regulations of the Cabinet of Ministers No. 707 "Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians" of 16 December 2003. Participants of the discussion admitted that the Regulations No. 707 were outdated and failed to comply with today's requirements. Besides, contradictions were detected between provisions of these Regulations and the Immigration Law. Taking into consideration the special status of unaccompanied minors and the state's duty to provide special protection for the right of each child, who has left without parental care, the Ombudsman asked the responsible institutions to improve the legal framework.

In 2015, when conducting interviews with the minor returnees, as well as after familiarization with the persons' files, the Ombudsman detected that minors were being expelled by failing to comply with the **Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. This Directive stipulates that, before expulsion of an accompanied minor from the territory of a Member State,** the authorities of that Member State shall be satisfied that

he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return. This provision has been included also in the Immigration Law. Taking into consideration the recommendations of the Ombudsman, the State Border Guard has changed the practice by following provisions of the Immigration Law.

[15] In 2015, the Ombudsman's Office has received 19 submissions of persons on criminal procedural decisions on application of security measures. In most cases, the persons were called to use the rights protection mechanism laid down in the Criminal Procedure Law – to appeal the decision on application of custody or submit a request to review necessity for further custody in case of significant changes of the conditions. However, in 2015, several verification procedures regarding possible violations of the right to freedom were reviewed. Although the problems relates to efficiency of periodical control of custody were stressed in the report for 2013, violations in relation to the element of these rights and freedoms were detected also in 2015. In at least two verification procedures, the Ombudsman detected conditions, subject to cognitions on the court's duty to justify the decision adopted within the periodical control of custody.

Areas of social, economical and cultural right

[16] During the reference period, the Ombudsman kept actively following the government's determination to reduce poverty by paying attention to the categories of less protected people, such as deprived persons, poor residents, persons in the social care centres and persons with disabilities. The Ombudsman put forward the task to repeatedly pay the attention of national government to the fundamental element of social rights – to create for residents such living and working conditions, that would provide at least the minimum level dignified life for everyone – as his task in the area of protection or social rights by putting an accent on the factor that, in the area of socially economic rights an individual has not got any opportunities to receive any compensations, contrary to the area of civic and political rights, where a person can address, for example, the European Court of Human Rights for the protection of their rights.

[17] During the reference period, the Ombudsman kept following the implementation of recommendations provided within the framework of the verification procedure No. 2011-276-17AA regarding the impact of negative wage indexes of

insurance instalments on the age pension reviewed in the first half of 2014. Along with the amendments in the Law On State Pensions, the state in general eliminated the deficiencies of the state pension system specified in the Ombudsman's opinion in relation to preclusion of negative capital indexes in the future. At the same time, the Ombudsman stressed the following: although the state has undertaken by the abovementioned amendments to conduct recalculation of age pensions for persons, whose pensions were affected by the negative capital index, which should be evaluated positively from the viewpoint of legitimate expectations, however, the abovementioned amendments fail to provide sufficiently clear definition of legitimate expectations. Namely, there is no clear time limit set, during which recalculation of the age pension would be completed, furthermore, there are no clear procedures defined regarding whom the calculation would be provided first and whom later on. The abovementioned issues have been subordinated to the traditional excuse of the possibilities provided by the state budget. Furthermore, it took year and a half to implement the Ombudsman's recommendation in a legal provision and succeed in adaptation of amendments in regulatory enactments, which are essential for the residents of Latvia.

[18] Besides, during the reference period, the Ombudsman addressed the President, pointing at the most acute issues: high risk of poverty, unavailable healthcare and impairments of the right to housing. The Ombudsman stressed: in most cases it can be detected that ministries of the relevant areas mostly admit existence of the respective problem and submit a respective budgetary request to the government. However, it is the government, which, upon setting priorities, year by year finds areas, which are more important for the development than social security, available healthcare and well-being of residents, thus, paying minimum attention to the problems of social issues or leaving it to the residents themselves. The Ombudsman pointed out that it was hard to admit with such an attitude that social justice in Latvia is being implemented not only in words, but also in deeds.

[19] During the reference period, the Ombudsman analysed situation within the framework of the verification procedure, when the Social Integration State Agency failed to provide a person with possibility to undergo a course of social rehabilitation due to long queues. Eventually, the person reached retirement age and was automatically

excluded from the queue. Furthermore, the person had no possibility to find out the serial number in the queue.

The Ombudsman pointed out that the person has been denied a rehabilitation course within a reasonable time limit after submission of the required documents in the agency not due to limited funds of the person, but due to limited funds of the state. Since the issues related to ‘first come, first served’ principle and service availability have been reviewed in the Ombudsman’s Office before, the Ombudsman stresses that, when solving the issues related to provision of rehabilitation and technical equipment, relevant funding must be assigned, and necessity and efficiency of the provided services must be evaluated.

After involvement of the Ombudsman, the Ministry of Welfare informed that, in 2015, the average waiting time for social rehabilitation services was 2 years and 3 months. On 1 September 2015, having reviewed the conceptual report prepared by the Ministry of Welfare, the Cabinet of Ministers decided to assign additional funds at the amount of 754 792 euro for the provision of social rehabilitation services for 1140 persons in 2017. Using the abovementioned funding, it was planned to provide additional social rehabilitation services on annual basis for 855 persons with functional disorders, who have required social rehabilitation services for the first time, 114 persons with functional disorders, who have required these services repeatedly, and 171 persons politically persecuted and the emergency workers and victims of the accident at the Chernobyl nuclear power station. The Ministry of Welfare considered that the abovementioned would provide gradual implementation of the Ombudsman’s recommendation.

[20] Within the framework of a verification procedure in 2015, the Ombudsman detected that the current system stipulates the following – municipalities provide continuous social care and social rehabilitation services in the municipal social care centres, but in cases, if there is no such a centre at the relevant municipality, or in case of insufficient capacity, it shall be entitled to enter into a contract with other social service providers for the provision of continuous social care and social rehabilitation service and payment. Municipality shall enter into such contracts on the basis of a procurement procedure, which results in finding of the best and financially most favourable service provider. Maximum duration the municipality is entitled to enter into a contract in this regard, is three years. Correspondingly, action of the municipality upon selection of adequate long-term service provided for their clients has been limited by the provisions of the Public Procurement Law and law “On the State Budget” (for the relevant year). This

may result in unsuccessful participation in the tender of the respective service provider, and, due to this reason, clients are obliged to move to other institution – winner of the procurement.

Since movement of clients between institutions has been justified by financial considerations only, then, regardless of the fact that such a system complies with the applicable legal framework, in the opinion of the Ombudsman, it should not be supported. When providing long-term services of social care and social rehabilitation institution for the persons of pension age and persons with disabilities, client's interests – opportunity to retain the institution providing the service and the habitual environment, peers and emotional well-being – must be primary.

Referring to the Ombudsman's recommendation, the Ministry of Finance has indicated that Section 15, Paragraph 1 of the law "On the State Budget for 2016" included exceptions, stipulating that the municipalities shall be entitled to undertake long-term relations pursuant to Section 22, Paragraph 2 of the law "On the Municipal Budgets", with the purposes including provision of long-term social care and social rehabilitation services. This means that, in the future, municipalities shall be allowed to enter into contracts for the provision of long-term social care and social rehabilitation services for unlimited period.

[21] On 31 March 2010, the UN Convention on the Rights of Persons with Disabilities of 13 December 2006 entered into force in the Republic of Latvia. Fulfilment of the obligations laid down in the Convention shall be coordinated by the Ministry of Welfare, whereas, the Ombudsman shall provide supervision thereof.

In 2014, within the framework of a monitoring, the Ombudsman conducted interviews with persons with disabilities regarding evaluation of introduction of the abovementioned convention and a public survey on attitude towards persons with disability. Whereas, in 2015, the Ombudsman summarized information provided by the municipalities of Latvia on introduction and implementation of the convention. Information was obtained from all 119 municipalities.

Summary on the results obtained within the survey:

- special privileges or exemptions for persons with disabilities and families with a disabled child are stipulated in the regulatory enactments in majority of the municipalities;

- as it arises from the information provided by the municipalities, mostly they provide information on services in various ways (97%), however, only in 17% of all cases, municipalities have consulted persons with disability in the process of preparation of informative materials, and just in 8% of all cases internet sites of municipalities have been made in line with the guidelines for the availability of home page content;
- representatives of 55% of municipalities consider that employees of municipalities are not trained for work with persons with disabilities. At the same time, opinion on necessity for special training varies – 46% of municipalities would need such training, while 9% - not;
- summarizing responses on support for the employment of persons with disability, it is obvious that majority of municipalities (70%) fails to provide support for creation of subsided jobs/special workshops for persons with disabilities. Correspondingly, such support is provided by only 30% of municipalities. Most frequently, such support is provided by districts with city territories (43%), while less frequently – by large cities (22%), and municipalities of rural territories (15%).

During the reference period, several persons with disabilities, who are active, for example, in handicrafts within the framework of their economic activities, repeatedly complained to the Ombudsman that the law "On Personal Income Tax" causes to large burden for persons with disabilities – obtained income across a year are frequently equal or less with the legally stipulated minimum income tax payment. Having reviewed the persons' submissions on the minimum payment of personal income tax at the amount of 50 euro laid down in Section 19, Paragraph 2^1 of the law "On Personal Income Tax", the Ombudsman admitted that such a payment was lawful. However, the Ombudsman, at his own initiative, addressed the Ministry of Finance, requesting for opinion on permissibility of an exception in the law "On Personal Income Tax" – not to apply Section 19, Paragraph 2^1 of the law "On Personal Income Tax" to persons with disabilities, taking into consideration the low rates of their employment. The Ombudsman considered that such an exception could promote employment of persons with disabilities.

In August of 2015, the Ministry of Finance replied that the Ombudsman's proposal would be evaluated within the development of the recurrent amendments in the law "On Personal Income Tax". On the repeated request for information on direction of the Ombudsman's proposal the Ministry of Finance replied in November of 2015 by

expressing its understanding in relation to the importance of the Ombudsman's proposal, however, indicating that a separate exception will not be supported due to tax optimization risks. The Ministry of Finance paid attention to the fact that currently regulatory enactments stipulate several tax exemptions for persons with disabilities, engaged in economic activity. Consequently, these persons are supposed to exercise these exemptions according to the respective situation. Furthermore, the Ministry of Finance undertook evaluation of other options of personal income tax payment within the context of the Ombudsman's proposal, in order to foresee the most suitable personal income tax payment for persons with disabilities, who are engaged in a small-scale economic activity.

During the reference period, on the basis of a submission of a person, the Ombudsman detected that not all offices of the SJSC "Latvijas Pasts" are accessible to persons with disabilities. Post office can forward the parcel to some other office, which is accessible to persons with disabilities, subject to additional charge. The Ombudsman pointed out that, pursuant to national and international legal framework, if the premises are not accessible to everyone, expenses related to forwarding of parcel to a post office accessible for clients should be undertaken by the SJSC "Latvijas Pasts", because the person with disability is not able to receive the parcel at the post office closest to his/her place of residence as every resident due to omission and discriminatory treatment the SJSC "Latvijas Pasts".

[22] During the reference period, similarly with the previous years, majority of submissions in relation to the rights to housing contained persons' requests to the Ombudsman to resolve civil issues. Majority of submissions contains complaints about payment items for utility or management services included in the bills issued by the management institutions, in the opinion of the submitters, unreasonably, as well as failure to provide accurate information, actions of neighbours and such. Frequently, residents point out at inability of the residents of multi-apartment houses to take unified position in relation to renovation works of houses and usefulness thereof and call the Ombudsman to engage in settlement of the dispute. The Ombudsman has explained his lack of powers to engage in settlement of such disputes, because relations between residents of houses and the administrator (manager) are subject to private law, regardless of the ownership of the housing fund. Submitters have been explained the situation and provided advice regarding possible actions to be taken according to the applicable law.

[23] In the Republic of Latvia, many municipalities face difficulties related to provision of sufficient housing fund or limited funds to maintain and put in order the current residential spaces, furthermore, state support is insufficient. For example, in 2014, 10 258 persons entitled for housing assistance were waiting in the queue for municipal housings (including the persons waiting for housings protractedly), while number of vacant housings was just 2412.

In regard to the vacant housings, many municipalities admitted these housings were not fit for living due to necessity of cosmetic or even major repair, which the municipalities are not able to pay for. The Ombudsman has pointed out that sometimes the requirement set for a resident to provide cosmetic repair in the housing at his/her own expense should be recognized as disproportionate, taking into consideration that residential spaces are being mainly provided within the assistance measures to specially protected groups of residents, orphans, persons with disabilities and low-income families, which are not able to afford any investments in repair of housing due to material conditions. Largely, this type of assistance should be described as a lottery, because municipal housing funds are of various technical and visual condition. In general, the residential spaces inspected during the monitoring were in satisfactory or bad condition (with some exceptions); this applies particularly to houses for collective living, resided by various social groups and equipped with common-use auxiliary rooms, which are morally outdated and fail to comply with contemporary requirements, as well as are hard to manage. One of the verification procedures led to conclusion that frequently compliance of spaces with the criteria describing premises fit for living defined by the law is formal, however, not in all cases these spaces are suitable for long-term human accommodation and for placing of household items. Therefore, the Ombudsman recommended to the municipalities to interpret legal provisions according to sense and purpose thereof, refraining from narrowed interpretation of legal provisions, in order to avoid formal assistance.

[24] During the reference period, the Ombudsman kept receiving submissions regarding issues affecting administration of residential houses. In 2015, a significant tendency appeared related to embezzlement of the payments paid by the apartment owners for the utility services by the administrator, without transferring of those payments to the service providers, as laid down by the law. It is worth to note, that, most frequently, police does not find constituent elements of a criminal offence, and criminal proceedings are not

being initiated, however, rights protection mechanism provides for possibilities of appeal in the public prosecutor's office.

When evaluating submissions regarding dishonest administrators, it must be stressed that administrators, including the dishonest ones, have been included in the register of administrators under the Ministry of Economics, which is solely informative mean, though. Within the meaning of Section 18 of the Law on Administration of Residential Houses, main function of the register of administrators is provision of up-to-date information on persons, who administer or who want to administer residential houses and comply with the criteria for the administration work laid down in the law. The law stipulates no negative legal consequences, if the administrator has failed to register himself/herself with the register. Thus, entries of the register of administrators of residential houses do not affect validity of administration contract or volume of the administrator's responsibility laid down in the law. At the same time, regulatory enactments do not stipulate any rights or duties for the Ministry of Economics to evaluate repeatedly compliance of the administrator's qualification, but information regarding violations of professional activity of the administrator shall be entered in the register on the basis of a court adjudication. In general, it should be admitted that there are no quick and simple solutions in situations, when house owners have happened to select a dishonest administrator.

In relation to non-provision of fundamental services – water, heat, waste collection – in the rented property, the Ombudsman has concluded that the currently applicable rights protection mechanism (imposition of administrative fine) is not sufficiently effective to make the house owner to restore provision of fundamental services, because imposition of fine can hardly ever guarantee resumption of provision of fundamental services (in administrative violation cases). Majority of the decisions adopted by the administrative commission on non-provision of fundamental services, especially in cases, when large fines are imposed, is appealed in the court. Many renters (legal entities, which are subjects to private law) are liquidated in the result of insolvency procedure before the end of the trial; therefore, recovery of the imposed fine is impossible. The Ministry of Economics agrees with the Ombudsman that the imposed administrative fine itself does not prevent situation, when tenant of residential space is not provided with fundamental service. Currently, there is no adequate and efficient solution for this problem.

[25] In relation to the right to health, majority of submitters have complained of quality of the received healthcare service and unkind attitude of health professionals during the reference period. During the reference period, the Ombudsman has commenced a study on compliance of the minimum of medical aid guaranteed by the state of Latvia with the human rights standard, as well as continued the verification procedure regarding the system of compensated medicines established nationwide.

[26] After the tragic incident on 21 November 2013 in the supermarket "Maxima", located at Zolitūde, opinion was expressed that one of the possible reasons for the fatalities was non-professional actions of security guards. Mass media published information that, according to the instructions, security service working at "Maxima" commenced evacuation only after finding of the source of alert. Having analysed the regulatory enactments the future security guards are being familiarized with in the process of training, the Ombudsman detected that:

- regulatory enactments do not provide for direct duty of a security guard to provide immediate evacuation from public premises occupied by people in case of activation of alarm;
- action of a security guard in case of activation of alarm is basically provided for by the internal rules of the protected facility;
- regulatory enactments provide large freedom of action for a security guard in relation to evaluation of situation, for example, to decide, whether safety of visitors and participants of the event is under risk in case of alarm and whether immediate evacuation is necessary.

Executing the Ombudsman's recommendation, the Ministry of the Interior informed in October of 2015 on preparation of a draft "Civil Protection and Catastrophe Administration Law" stipulating that, in case of risk, owner or legal possessor of the infrastructure, shall provide timely warning of people and information on action, as well as evacuation from the infrastructure. Besides, the Ministry of the Interior has prepared a draft Regulations of the Cabinet of Ministers "Fire Safety Regulations" stipulating a person's duty to evacuate in case of sounding of fire alarm or upon discerning of fire.

The Ombudsman admits that the problem still has been left systemically unsettled, since there are no unified standards determined for the education institutions, which would determine the content to be taught to the future security guards. It arises from the letters of reply of the State Police and the Ministry of the Interior that these institutions

are detaching themselves from solution of this problem, considering that security companies should agree on professional standard. However, the Ombudsman considers that the State Police and the Ministry of the Interior should engage in the development of professional standards more actively and regulate the requirements to be set for the security education up to the moment of entry into force of the professional standard.

Taking into consideration the public importance of the matter, the Ombudsman will follow the progress thereof.

Compliance with the principle of good governance

[27] Reviewing a submission of some person, in 2015, the Ombudsman recommended the Ministry of Finance in cooperation with the SRS to change practice in relation to application of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax" in cases similar to the submitter's within six months, as well as to evaluate necessity to amend regulatory enactments for the elimination of ambiguous interpretation of the abovementioned legal provision. The SRS informed on change of practice in relation to application of Section 9, Paragraph 1, Clause 33 of the law "On Personal Income Tax", for evaluation of moment of obtaining of the common property of spouses. However, regardless of the abovementioned, the SRS continues several legal proceedings maintaining the position opposite to the current practice. Since the Ombudsman found no reasonable explanation to such actions taken by the SRS, he repeatedly called the SRS to act consequently and evaluate termination of the legal proceedings in the cases specified in the letter of the In December of 2015, the SRS explained that it would not withdraw the documents submitted for appeal, but terminate the legal proceedings only after reception of the court's adjudication. The Ombudsman considers such action to be contrary to the principle of good governance, namely, the SRS knows negative result of the legal proceedings on the substance in relation to the institution, and however, it continues impairment of the rights of a private person.

[28] When evaluating actions taken by the SRS, violating the deadline set for the review of contestation submissions in the regulatory enactments, the Ombudsman concluded – data conformity audit included different procedures for the calculation of late payment interest in comparison with the calculation for tax audit purposes. The Ombudsman found no reasonable explanation for such a different legal framework and

considered – it shall not be acceptable that, upon inspection of the same issue regarding taxation by using various tax control methods, the taxpayer is being exposed to unequal and disproportionate consequences in relation to the calculated late payment interest. In the opinion of the Ombudsman, within the data conformity audit, late payment interest should be calculated similarly, as laid down for the tax audit purposes, therefore, the Ministry of Finance in cooperation with the SRS was recommended to conduct amendments in regulatory enactments. Additionally, the Ombudsman detected that the information provided by the clients of the Ombudsman's Office leads to conclusion – delays of the deadlines set for the review of contestation submissions are systemic in the SRS. Such action is not compatible with good governance.

[29] During the reference period, on the basis of a submission of private persons, the Ombudsman has provided opinion on application of Section 269 of LAPK, as well as a violation of the principle of good governance. Namely, Section 269, Paragraph 1 of LAPK stipulates that a case of administrative violation shall be adjudicated according to the place of the commitment of the violation. Accordingly, the private persons asked the Procurement Monitoring Bureau to adjudicate the initiated cases of administrative violation according to the place of the commitment of the violation – in Rēzekne or according to the place of residence of the private persons. The Procurement Monitoring Bureau refused to do so and adjudicated the case at its own location – in Riga, on the solely basis of Section 215^{11} of LAPK, stipulating the competence of the Procurement Monitoring Bureau.

The Ombudsman admitted that Section 269, Paragraph 1 of LAPK regulates general provisions on institutionally territorial jurisdiction for adjudication of the case of administrative violation. Namely, the notion "according to the place of the commitment of the violation", included in the abovementioned legal provision, shall mean that the case of administrative violation shall be adjudicated by the authorized institution, which provides the control provided for by the law in the relevant territory of the commitment of the administrative violation. At the same time, the Ombudsman concluded that the legislator has authorized both the state administration institutions with regional structural units[115], as well as institutions without such units for the adjudication of cases of administrative violation. This means that the territorial principle in adjudication of administrative

[115] For example, the State Revenue Service (Section 215^{1} of LAPK), State Labour Inspectorate (Section 215^{3} of LAPK), as well as the Procurement Monitoring Bureau (Section 215^{11} of LAPK) etc.

violation laid down in Section 269, Paragraph 1 of LAPK may not be objectively applied in all cases. The Ombudsman considered that, providing authorizations to the institutions without regional structural units in Chapter 17 of LAPK, the legislator has provided an exception from the general principle. Namely, if the authorized institution has no territorial structural units established, the case of administrative violation shall be adjudicated in the relevant place of the commitment of the administrative violation, following the authorization assigned to an institution with centralized structure of administration, provided by the legislator in LAPK. Legal grounds for such an action consist of the special provision of LAPK, providing authorization of the relevant institution to adjudicate the case of administrative violation.

The Ombudsman pointed out – this is the explanation by the Procurement Monitoring Bureau as a centralized state administration institution located in Riga regarding the reference to Section 215^{11} of LAPK, explaining non-application of Section 269, Paragraph 1 of LAPK. Taking into consideration the abovementioned, the Ombudsman admitted that, adjudicating the cases of administrative violations, the Procurement Monitoring Bureau has legal grounds not to apply provisions of Section 269, Paragraph 1 of LAPK and adjudicate the case in its location. At the same time, the Ombudsman called the Procurement Monitoring Bureau to provide wider explanations regarding reasons refusing adjudication of case of administrative violation according to the person's place of residence or according to the place of identification of the administrative violation. The Ombudsman detected that the decisions addressed to private persons and refusing adjudication of case of administrative violation according to the person's place of residence were formal, since they were not grounded by reasonable considerations, providing reasons why the Procurement Monitoring Bureau may not sustain the relevant person's request. The Ombudsman pointed out that such decisions did not comply with the principle of good governance and did not promote person's trust in the state administration.

[30] During the reference period, a person addressed the Ombudsman with a complaint for the action of the Health Inspectorate. The person indicated on her previous addressing to the Health Inspectorate, requesting for evaluation of the quality of her healthcare at the State Limited Liability Company (VSIA) "Paula Stradiņa KUS". The Health Inspectorate adopted decision within a case of administrative violation. The person was not satisfied with the evaluation provided by the Health Inspectorate, and she submitted to the Health Inspectorate several submissions concluding, inter alia, a number

of various issues, but excluding a specific request within the case of administrative violation, however, these submissions were submitted within the time limit for appeal of the decision adopted within the case of administrative violation. The Health Inspectorate did not consider these submissions as aimed to appeal of the decision adopted within the case of administrative violation, but just as submissions within the meaning of the Law On Submissions.

The Ombudsman pointed out that in case, if a person has not directly expressed his/her wish to appeal the decision within a case of administrative violation, the institution must evaluate the submission and substance thereof in general. If the submission shall contain any issues, which are not related to the case of administrative violation, the institution must be able to separate these issues and apply the regulatory enactment accordingly.

[31] Within the framework of review of a submission, the Ombudsman paid attention of the SRS that Section 14, Paragraph 1 of the Law On Remuneration of Officials and Employees of State and Local Government Authorities stipulated the rights of an official (employee) to a premium not exceeding 30 per cent of the monthly salary determined for him or her in the cases specified in this remuneration law. Section 14, Paragraph 1 of the Law On Remuneration does not provide for the rights of the institution not to pay any premiums to an official (employee) for the replacement of an absent official (employee).

The Ombudsman paid attention of the SRS to one of the principles of public law stipulating that only actions laid down in a legal provision shall be allowed. Analogous opinion was provided by the Administrative District Court in the judgment No. A420415911 of 8 December 2011, pointing out that Section 14, Paragraph 1 of the law on remuneration does not provide any rights for the institution to choose whether or not to pay premium to an official (employee) for the replacement of an absent official (employee) or for performance of duties of a vacant office. Besides, the abovementioned judgment indicates that it does not arise from the external regulatory enactment that an institution is entitled to limit rights of a person in the area of social guarantees by issuing internal legal acts. Namely, deficiency of funds in the institution's budget itself should not be recognized as a legal ground for significant limitation of a person's rights in a democratic state.

[32] Analysing e-mail addresses of municipalities of Latvia, the Ombudsman has detected that municipalities lack a unified approach to the form of official e-mail addresses, namely, the following words of e-mail addresses are being used: dome@pasvaldiba.lv, pasvaldiba@pasvaldiba.lv, info@pasvaldiba.lv, as well as pasts@pasvaldiba.lv, iac@dome.pasvaldiba.lv. Whereas, Jūrmala City Council has used the domain name "iestade.gov.lv" for the creation of the official e-mail address. Accessibility of an institution is a significant part of the principle of good governance. Therefore, in the opinion of the Ombudsman, introduction of a unified approach in creation of the official e-mail addresses of municipalities would relief the administrative burden, promote access to municipalities and enhance persons' communication therewith. The Ombudsman called the Ministry of Environmental Protection and Regional Development to implement the complex of measures required for the unified introduction of the official e-mail addresses according to the Ministry's competence, asking to notify within a certain time limit.

Information of Ombudsman's Office

[33] The Ombudsman is facing a hard task in Latvia – to achieve implementation of his legally unbinding proposals in the society and legal system, which is used to implementation of mandatory orders only. Thus, authority of the Ombudsman's institution is very important, as well as the independence and reputation in the society. Establishment of such authority requires a corresponding legal status of the Ombudsman's institution, namely, establishment in the Constitution. Establishment of the Ombudsman's institution in the Constitution would not only protect this institution from undesirable political manipulations, but also send signals of a serious will of the political decision-makers to establish fundamental rights of the residents of Latvia and the state's responsibility before them.

In May of 2015, the Ombudsman addressed the Saeima with a call to review a proposal to add the Constitution of the Republic of Latvia with a new chapter "The Ombudsman", offering his proposal in the form of a developed draft law. The Ombudsman's proposal was transferred to the working group for possible extension of the powers of the President and evaluation of the presidential election procedures. On 12 May 2015, after hearing of the experts' opinions, the working group concluded there were no categorical "against" from anybody in relation to inclusion of the Ombudsman's institution in the Constitution, majority of the participants present agreed to this addition,

and discussions were related to details only. Unfortunately, the proposal submitted by the Ombudsman has not been proceeded with so far.

In the opinion of the Ombudsman, strengthening of the Ombudsman's authority and independence would intensify reliability of the society and loyalty to the state in the long-term, thus, decreasing the gap between the society and the state power, thereby, system of democratic state would be strengthened. At the same time, such a solution would establish the principle of separation of powers, included in the Constitution, and exclude any doubt about the Ombudsman's participation in any of the branches of power, simultaneously, this would establish guarantee of the Ombudsman as an autonomous constitutional institution.

It should be noted that status of the Ombudsman has been established in the Constitution in majority of the European states. Currently, Latvia is among those seven states from the Member States of the European Union, where the status of the Ombudsman's institution has not been established in the fundamental law.

[34] The Ombudsman's Office is financed from the state budget. In 2015, the planned funding of the Ombudsman's Office from the state budget was 1168.5 thousand euro. There are 46 posts in the Ombudsman's Office, including the Ombudsman's post; in the reference year, 43 of these posts were occupied.

[35] During the reference period, the number of submissions has decreased, because a large part of persons have chosen consultations in the presence or instant responses by e-mail, and this tendency is reflected also in the large number of verbal consultations. It can also be concluded that informative campaigns and informing of society has delivered result, and the society pays gradually greater attention to the compliance with human rights trying not to violate them. For example, in 2014, 1877 submissions were received, but in 2015 – just 1775, which represents decrease by 102 submissions.

Taking into consideration the degree of complicacy of the problem described in the submission, more often a response is being provided to the applicant instead of initiation of a verification procedure, including request of information from other institutions and evaluation of the problem, which is a long process. Thus, decreasing tendency in numbers of the verification procedures remains.

[36] During the reference period, the Ombudsman's Office has actively informed and educated the society on its rights by implementing various publicity activities and cooperation with media. In 2015, media published 3141 publications on issues within the Ombudsman's competence, including 43 press releases prepared by the Ombudsman's Office. In total, 44 educational seminars, visiting consultations, discussions and other events were organized in 2015.

[37] At the end of 2015, evaluation of the work performance was carried out for all the employees of the Ombudsman's Office, the result of which was used for the purpose of determination or review of monthly salary of each employee, clarification of job duties, provision of the employees' growth and carrier, determination of needs for qualification improvement and training. Evaluations of the work performance consisted of the person's self-evaluation, evaluation of superior and interview with the employee, analysing the work performance in relation to the achievement of individual goals, performance of professional duties, competences and professional qualification.

[38] For several years, the Ombudsman's Office actively operate in various international and European organizations. International cooperation provides opportunity to gain new experience, broaden horizons, as well as promote compliance with human rights nationwide. Besides, active international communication allows for influencing of processes, which may, directly or indirectly, affect compliance with human rights also in Latvia.

Along with the previous achievements, since 2015, the Ombudsman's Office is a full-fledged member of the European Network of Ombudsmen. The European Ombudsman Institute is an independent non-profit organization with the purpose to promote concept of the Ombudsman institutions and exchange of experience among the Ombudsman institutions at national, European and international level.

There is especially important fact that, in March of 2015, the Ombudsman's Office passed the accreditation process in the Accreditation Sub-committee of the International Coordinating Committee for National Human Rights Institutions and was evaluated with accreditation status "A", which is the highest evaluation for a human rights institution. Compliance with the status "A" allows for voting rights, rights to participate in the activity of the International Coordinating Committee and decision-making, as well as in the activity in the UN Human Rights Council and other UN mechanisms.

Such an accreditation process was necessary for the Ombudsman's Office to receive the highest internationally recognized evaluation on compliance of the organization with the international standards of national human rights institutions. Thus, the accreditation provides international recognition and protection for a human rights institution complying with internationally determined principles.