

Year 2011, Political and Civil rights Division

What are civil and political rights?

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

“Civil” rights are possessed by each and every individual in modern society, while “political” rights are most often attributable only to citizens. Therefore, the notions “political rights” and “civil rights” are not always identical by their nature.¹

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

- “Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.” (Section 100)
- “Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.” (Section 101)
- “Everyone has the right to form and join associations, political parties and other public organizations.” (Section 102)
- “The State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets.” (Section 103)
- “Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language.” (Section 104)²

Priorities in the area of civil and political rights:

1. Protection of the rights of persons with mental health disabilities and development impairments.
2. Legal status and protection of detained aliens and asylum-seekers.

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

Protection of the rights of persons with mental health disabilities has been set among priorities in the Ombudsman’s Strategies since such persons belong to one of the most vulnerable social groups facing infringement of their rights on daily basis, while their

¹ Mits M. *Tiesību katalogs. //Cilvēktiesības pasaulē un Latvijā.* / red. I. Ziemele. – Rīga: SIA “Izglītības solī”, 2000, p.p. 84 -85.

² Satfecka L. *Mēs demokrātijā.* / 2nd edition. – Rīga: “Sabiedrība par atklātību – Delna”, 2010, p.p. 7-13, also available at: <http://www.scribd.com/doc/58626238/Rokasgr%C4%81mata-M%C4%93s-demokr%C4%81tij%C4%81-II-edition>

possibilities to protect their own rights are limited. The Office has been focusing in 2011 on a number of issues related to the provision of such rights.

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

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

Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHR) stipulating that everyone has the right to fair court also provides, inter alia, that everyone has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. The above right also derives from Section 92 of the Constitution which stipulates that everyone has the right to fair court. European Court of Human Rights has interpreted the stipulations contained in Article 6 of ECPHR so that: “The State is responsible for providing a defense counsel and ensuring adequate defense. The rights guaranteed by the Convention are practical and effective, rather than theoretical or illusory.”³ European Court of Human Rights has further emphasized that mental diseases can not serve as grounds to ignoring the right of individual to fair court: “...though even mental condition may pose certain restrictions as regards exercising of the right to fair court, it may not, however, serve as excuse to deny such right as guaranteed in Article 6.(1) of ECPHR.”⁴

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

Section 68, Part Seven of the Law on Medical Treatment provides for appointing a defense counsel for protection of the interests of patient. Where a person points out at legal proceedings to unwillingness to be accommodated and receive medical

³ Award made by European Court of Human Rights in *Belgian linguistic*, Paragraph 31

⁴ Award made by European Court of Human Rights in *Winterwerp v. Netherlands*, Paragraph 75

treatment at psycho-neurological hospital on compulsory basis, yet the defense counsel appointed and remunerated by the State declares at the court meeting that, in their opinion, there are grounds for compulsory referral of the person for treatment, an infringement of the right to fair court may be established since in substance no defense counsel prescribed by law is provided at legal proceedings.

Problems have also been identified in this context in concerning the role of prosecutor in handling the matters in question, since prosecutors on most occasions see no sense of their participation at such matters. As a result, prosecutors most commonly raise no objections to the effect that a State-appointed defense counsel infringes the rights of person during the proceedings through failure to ensure protection of the person's interests or even acts in contradiction with the client's interests.

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

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

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

The draft laws were approved by the Saeima in the 1st reading on 8 December 2011. The Ombudsman actively supported advancing of the draft laws since they were generally aimed at notable improving the situation in the field of human rights, compared to the existing regulation in the field of restricting legal capacity. The Ombudsman also pointed out, however, to shortcomings in draft laws concerning the matters of human rights, as well as proposed specific amendments to the draft law. He pointed out to the Saeima, for example, that failure to address the issue of supporting the entities capable of providing assistance to persons with mental impairments without restricting legal capacity of such persons, and the failure to provide no alternatives to restriction of legal capacity were the most significant shortcomings of the draft laws. He also pointed out to the Saeima to the failure to mention the need to provide funding to guardians in summaries of the draft laws. If no funding is provided to guardians, it might be extremely difficult to find persons willing to assume the duties of guardian in case of individuals with no close relatives; whilst the draft laws provide for extending the functions of guardian, orphans' courts report on problems in

finding guardians even with the present scope of functions. The possibilities to ensure qualitative performance by guardians of their duties would be therefore highly limited. The Ombudsman has drawn attention of the responsible Saeima committee to the need to provide for mandatory funding from the state budget to allowances for performance of the duties of guardians; otherwise it would be hardly possible to believe that human rights of people with limited legal capacity would be guaranteed in practice.

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

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

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

- In general, the services provided by such centers are perceived by the PSCC staff as care services that are not aimed at social re-integration of the persons accommodated there;
- The proportion of transitions to alternative forms of care or returning to unassisted life is very low against the number of PSCC clients;

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

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

choice to leave at his/her free will.⁵ The fact a person lacks legal capacity *de jure* does not exclude the need for consent *de facto*.⁶

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

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

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

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

Constitutional Court has construed the right to privacy guaranteed by Section 96 of the Constitution pointing out that “such rights involve a number of aspects. They protect physical as well as mental integrity of individuals, their name and identity, and personal data. The right to privacy means that individuals are entitled to their private space, to pursue their own selections, and to develop and improve their personalities according to their natures and preferences, subject to minimized interence on part of the State or other individuals.”⁷ Moreover, though even Article 8 of the Convention imposes a duty on the State first of all to abstain from interence in private and family life of an individual, the State, apart from that negative duty, also has a positive duty to take the steps necessary to guarante such rights.⁸

Ensuring protection of information concerning private life, and inparticular the information related to an individual’s health condition, on national level is essential to enable the State to guarantee the right to privacy enshrined in Article 8 of the Convention to each and every individual.⁹ It is important to note that the UN Convention on the Rights of Persons with Disabilities is binding upon Latvia, and that

⁵ Award made by ECHR in *Ashingdane v. UK*, 28.05.1985, para 42.

⁶ Award made by ECHR in *Shtukaturov v. Russia*, 27.03.2008, para 106.

⁷ Award made by Constitutional Court on 26 January 2005 in proceedings No 2004-17-01, Paragraph 10.

⁸ Award made by Constitutional Court on 23 April 2009 in proceedings No 2008-42-01, Paragraph 10.

⁹ Микеле де Сальвиа. Прецеденты Европейского суда по правам человека. Санкт-Петербург: Юридический центр Пресс, 2004, стр. 551.

Article 22, Part Two of the Convention stipulates that “States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.”

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

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

Paragraph 7.4.1 of the Regulations stipulates that the Center shall compile on annual basis summaries of information about patients with psychical and behavioral impairments, specifying the number of patients who have received treatment at outpatient psycho-neurological centers, outpatient and inpatient hospital wards, and the patients in whom organic psychical impairments (including symptomatic), temper (affective) impairments, neurotic, stress-related and somato-form impairments as well as adult personality-related and behavioral impairments have been identified for the first time. According to Paragraph 7.6.4 of the Regulations, the number of patients with identified psychical and behavioral impairments (neurotic impairments, reaction to heavy stress, and adaptation impairments) shall be summarized. Paragraph 10 of the said Regulations stipulates that “identification information of patients (name, surname, personal number, declared and actual residence of patient) shall be kept in data processing system in coded form separately from any other information contained in the Register. The link in data processing system between identification information of patients and other information contained in the Register shall be coded. Identification of a particular patient is available to the Center and to the person authorized by personal data operator to enter and update the information specified in Paragraph 6 of the Regulations”. Paragraph 11 of the said Regulations stipulates that “Information contained in the Register shall be kept in electronic form, subject to protection of the data of natural entities in accordance with the procedures prescribed by the Law on Protection of Data of Natural Entities and by the Law on Medical Treatment. The information contained in the Register shall be classified information subject to limited access.”

Processing of personal data¹⁰ in data bases such as the register of patients with specific diseases entails restriction of the right to inviolability of privacy guaranteed by Section 96 of the Constitution and Article 8 of the Convention. Section 116 of the Constitution stipulates that the right of persons to privacy may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Moreover, to ensure that such restrictions are justifiable, they have to be necessary in a democratic society, and the means have to be commensurable with the goal to be achieved. Commensurable restriction has to achieve the particular goal; to be adequate for achievement of the particular goal; and commensurable with the eventual loss incurred by the individual. Therefore, the public benefit gained from restriction imposed on an individual has to be real and exceed the latter.

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

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

European Court of Human Rights (ECHR) has repeatedly pointed out in their practice that protection of personal, in particular medicinal data is fundamental to enable individuals to exercise their rights to privacy and inviolability of family life guaranteed by Article 8 of the Convention. Confidential treatment of data about the person's health condition is a principle of utmost importance in the legal systems of all State Parties to the Convention. It is essential not only for respecting the privacy of patients but also for preserving their trust in medical professions and in health protection in general. National laws have to contain adequate legal guarantees to prevent dissemination or disclosure of data about health condition of a person in such

¹⁰ The term "Personal data processing" extends to all and any actions taken in respect of personal data including the use, making available, transfer and disclosure of such data.

a manner that would contradict with the guarantees contained in Article 8 of the Convention.¹¹

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

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

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

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

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

¹¹ G. Feldhūne, A. Kučs, V. Skujeniece. *Cilvēktiesību rokasgrāmata tiesnešiem*. LU Cilvēktiesību institūts, 2004, p.p. 56.

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

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

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

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

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

Reduced funding available to the Office has prevented more detailed review of social protection of the above-listed persons and discrimination in labor market; it follows, however, from the information at disposal of Ombudsman's Office that the State is experiencing certain problems in this area. Where the State assumes responsibility for an individual who applies for asylum and grants to such individual a residence permit, subject to *pagarināt*¹², the State should also ensure all preconditions to more effective and expedient implementation of integration *realizācijai*¹³. It is important to ensure that the persons who have obtained alternative status have access to range of social support and services that is wider than currently provided for by the Law on Social Services and Social Support.

If the possibility to learn language is not available to an individual, the access of such individual to vacancies in labor market is problematic. If the State provides no assistance to the holders of alternative status due to lack of funds and no support to free language classes, the access of such persons to labor market is impaired, and such persons present a long-term burden on the social support system.

At present, holders of alternative status who have not learned the national language and have found no employment receive aid from the State during the first nine months; future support is available in accordance with the Law on Social Services and Social Support.

Complaints filed by the persons who have obtained alternative status indicate to shortcomings in the State integration policy, and in case of extended status the income of such persons reduces to such extent that they are insufficient to cover even the primary needs and expenditures¹⁴. The Ombudsman is going to proceed with completing investigation of the above-described issues.

¹² Other than persons to whom the status of refugee is granted, because such persons have regular residence permits and their social protection is equated to that of citizens and non-citizens.

¹³ Integration should include free access to the official language classes to enable persons to gain communication skills. Language knowledge would, on the turn, enable such persons to enter the labor market, and it is crucial because such persons cause no burden to the social system any more.

¹⁴ Section 3, Part One Prim, and Section 35, Part One of the Law on Social Services and Social Aid.

Events in 2011 that deserve mentioning and demonstrate notable improvements in accommodation of detained foreigners including asylum-seekers include opening of the new Center of Accommodation of Detained Foreigners “Daugavpils” (hereinafter – the Center) last summer. Visit to the said Center identified notable improvements in living conditions and provision, compared to the previous accommodation – Center for Accommodation of Detained Foreigners “Olaine” which is already closed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The Right to Fair Court

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

1.1. Reasonable deadlines

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

Article 6, Part One of European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter – ECPHR) stipulates that everyone has the right to hearing at fair trial including the right to timely hearing, that is, hearing within reasonable time. The purpose of such norm is “to protect all parties to proceedings [...] from excessive procedural delays”¹⁵, to prevent excessively long legal uncertainty, and in general to preserve trust in the effectiveness and reliability of judicial system¹⁶.

In a number of inspection proceedings the Ombudsman, assessing the actions taken by court, has certainly acknowledged the fact that court in Latvia are overloaded and that there exist a number of various obstacles related to staffing and financial support to full effectiveness of their work. At the same time, the Ombudsman emphasizes that European Court of Human Rights has declined in their practice the arguments referred to by governments to the effect that lack of human resources or general bureaucratic obstacles may not be treated as sufficient excuse of inability to ensure timely hearing

¹⁵ See the Award made by European Court of Human Rights in *Stögmüller v. Austria*, (1969).

¹⁶ Award made by European Court of Human Rights in on 28 July 1999 in *Bottazzi v. Italy*, application No 34884/97.

of a case¹⁷; Section 6, Paragraph 1 of the ECPHR imposes a duty on the states to organize their judicial systems in such a manner to enable courts to meet the requirements of this section¹⁸.

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

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

Notwithstanding that, according to the ECPHR practice, the State is not responsible for delays occurring in legal proceedings through the actions of the involved parties,¹⁹ the Ombudsman has pointed out in his opinion to the need to review the applicable regulation and the existing court practice, so that parties to proceedings would be prevented from exercising their procedural rights in a manner that leads to intentional delay of legal proceedings.

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

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

There are two key issues present on such occasions:

- 1) lengthy periods of adjudication;
- 2) scope of rights available to person while in custody.

The Ombudsman has already pointed out to the actual nature of lengthy periods of adjudication; the draft law on Amendments to Criminal Proceedings also indicates to seeking solutions to the existing situation. The amendments envisage a number of changes to the existing system in order to accelerate hearing of criminal proceedings. The new draft law provides for more frequent reviewing of the need for continued

¹⁷ Award made by European Commission for Human Rights on 26 October 1984 in *De Cubber v. Belgium*, et als.

¹⁸ See, inter alia, the Award made by European Court of Human Rights on 26 February 1993 in *Salesi v. Italy*, Paragraph 4, and the in *Bottazzi v. Italy* mentioned above.

¹⁹ See, for example, the Award made by ECHR in *König v. FRG* A 27 para 103 (1978).

custody when the first instance court has rendered their judgment. Enactment of the above-mentioned amendments to Criminal Procedure are scheduled to 1 July 2012.

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

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

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

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

Amendments to the Criminal Law of 21 October 2010 (enacted on 1 January 2011) include introduction of a new norm – Section 49.¹ that prescribes the ways how the adjudicating court can indemnify individuals against the damage caused to them through the failure to observe the right to finalization of criminal proceedings within reasonable period of time. Section 49.¹, Part One of the Criminal law prescribes: “If the court establishes failure to observe an individual's right to finalization of criminal proceedings within reasonable period of time, it may: 1) take such fact into account when deciding on penalty and mitigate the penalty; 2) apply penalty below the minimum limit prescribed by law for the criminal offence in question; or 3) impose another penalty which is less severe than that prescribed by law for the criminal offence in question”.

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

1.3. Access to Court

The earlier discussed issue of access to court and the right of individual to apply to governmental and municipal authorities has become actual again in 2011 as well as

the obstacles to exercising such right due to lack of knowledge of the official language.

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

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

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

2. Legal Status of an Individual

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

The Ombudsman pointed out in the Annual Report 2010 to double citizenship as an issue that should be focused on in the nearest future on political level since persons who migrate abroad and reside there for certain period of time may apply for naturalization in such foreign country, and therefore in certain conditions this the number of citizens of the Republic of Latvia may trend to decrease, or a notable the number of latent holders of double citizenship may happen. The State should decide

in the nearest future on addressing such global trend. Formulations of the Citizenship Law have remained unchanged for more than thirteen years already²⁰. At present, when proposals have been made to the Saeima for amendments to the citizenship Law, including also eventual amendments related to the issue of double citizenship in case of certain group of countries, political discussion of the regulation prescribed by Section 3.¹ of the citizenship Law would be appropriate, including Part Five of the said Section²¹. In the Ombudsman's opinion, the vision of how would the State address the issue of decreasing the number of non-citizens should be formulated on political level. The number of holders of such status should be decreased by means of normative regulation in possibly short time.

Applications received from population in 2011, both oral and written, mark another trend related to the regulation of citizenship status in our country: the persons seek to denounce their citizenship of the Republic of Latvia and to acquire the status of non-citizen. No legal reaction is available to such trend which could be rather described as emotional protest to the present situation in our country since, according to the normative regulation, an individual who has been a citizen of any country may not apply for the status of non-citizen²².

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

The Area of Criminal Law

What is Criminal Law in the Context with Human Rights?

Criminal Law is related to the actions of repressive public authorities in the course of pre-trial investigation, imposing and enforcement of sentence. Therefore, the area of criminal law focuses on virtually all fundamental rights listed in Section 8 of the Constitution and in the

²⁰ The most recent amendments to the Citizenship Law were made on 22 June 1998 and enacted on 10 November 1998.

²¹ Section 3.¹ of Citizenship Law regulates the citizenship of children born in Latvia after 21 August 1991 to stateless persons or non-citizens.

²² Section 1, Part One, Paragraphs 2, 3 of the Law on the Status of Ex-USSR Citizens who have no Citizenship of Latvia or any other Country.

Convention, the infringement of which results or may result mainly from the actions of State or municipal police, or the officials of Prison Administration. These include imposing and enforcement of sentences in administrative offence matters; investigation of criminal offence and the related restriction of rights; as well as conditions at prison facilities and restrictions imposed on the rights of individuals kept in custody. The key issues in the context of this area may include:

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

Priorities in the Area of Criminal Law:

1. Protection of the rights of individuals kept in closed-type imprisonment facilities.
2. Protection of the rights of individuals during the pre-trial investigation
3. Observation of the guarantees to protection of the rights of individuals in their communication with police.

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

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

Part 1, Paragraph 2 of the Recommendation Rec(2006) of the Committee of Ministers to member states on the European Prison Rules²³ (hereinafter – European Prison Rules) stipulate that persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody. The Senate has concluded in a number of proceedings that, in case of prisoners, certain minimum human rights must be ensured which an individual may not be deprived of without infringing upon the individual's right to human treatment (*cf. Paragraph 11 of Senate Award of 15 June 2006 in case No SKA-348/2006; Paragraph 7 of the Award of 14 February 2007 in case No SKA-186/2007; Paragraph 11 of the Award of 15 June 2007 in case No SKA-404/2007*).

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

²³ According to the practice of Constitutional Court, European Prison Rules constitute an authoritative source for identification of the minimum scope and contents of the rights of sentenced persons (see, for example, Award made by Constitutional court on 2 December 2009 in proceedings No 2009-07-0103, Paragraph 14).

The Ombudsman is the sole independent public institution to whom the legislator has delegated the mandate to visit closed-type facilities at any time without special permit; to move freely within the territory of such facilities; to visit any premises, and to meet vis-à-vis any individuals kept in closed-type facilities. Officials of the Ombudsman's Office effectively use such right to obtain objective information through handling of individual applications as well as through monitoring visits undertaken at their own initiative. 14 visits²⁴ to imprisonment facilities have taken place in 2011. Monitoring visits were conducted to the Prison of Šķīrotava, Prison of Vecumnieki, Prison of Daugavgrīva, Prison of Jelgava, Prison of Olaine and Central Prison of Riga.

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

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

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

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

1. Observation of the Principle of Good Governance

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

²⁴ Apart from attendance of the Referendum and Elections of the 11th Parliament in the capacity of observers

In case of imprisonment facilities, the principle of good governance means that prisoners have free access, both written and verbal, to the prison staff. Prison administration has to ensure timely response to the prisoners' requests and complaints. Prison administration has to ensure proactive communication with prisoners, inform them about the rights and duties of prisoners, and to provide reasonable replies to all questions of prisoners, as well as to handle the problems of prisoners at the imprisonment facility in question.

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

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

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

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

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

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

The matter of charging the costs of consumed electric power on prisoners is also on agenda. According to the provisions of Paragraph 41 of the Cabinet Regulations No 432 of 30 May 2006 Concerning the Internal Regulations of Imprisonment Facilities, costs of electric power consumed by individual household appliances shall be born by the prisoner. Consequently, a prisoner may only use personal TV and other household appliances if he/she can bear the costs of consumed electric power.

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

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

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

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

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

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

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

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

The opinion also focuses on the issue that administrative commission tends to ignore court rulings on repealing the decisions made by administrative commissions, and to make new decisions identical to the previous ones. Though Section 50.¹³ Part Four of the PEC stipulates that, when the court has repealed decision made by administrative commission, the matter is subject to discussion at the nearest meeting of administrative commission, such situation is impermissible. The duty to comply with court rulings arises from the Constitution of the Republic of Latvia and the Law on Judiciary. Moreover, the court has frequently pointed out in their rulings to material shortcomings in the actions of administrative commissions. The Ombudsman has therefore concluded that at present unnecessary load is imposed on courts; decisions of administrative commissions are not repealed, and the prisoner gains no benefit even if court repeals decision of administrative commission: it only entails the duty to ensure repeated examination of the matter at the nearest meeting of administrative commission

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

3. Health Care

Applications concerning health care issues (unavailability of physicians, quality shortcomings of available medicinal aid, shortage of medicine preparations) have been also filed this year, like in previous years. On 20 June 2010 the Ombudsman's opinion No 20 was issued in which problems were discussed and recommendations

made to the Ministry of Justice, Ministry of Health and Prison Administration. The opinion stated that the existing health care system for prisoners did not meet the guidelines of European Prison Rules. In October 2011 the Ombudsman addressed a letter to the Prime Minister to draw repeatedly attention to the health care problems at imprisonment facilities.

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

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

Ministry of Justice shall bear the following costs:

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

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

4. Household conditions

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

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

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

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

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

4.1. Prison of Jelgava

The Ombudsman, as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), concluded in 2007 already that regime and accommodation conditions at the Prison of Jelgava failed to meet the requirements of human rights. Representatives of the Ombudsman's Office visited the Prison of Jelgava on 23 March 2011 including inspection conducted at life sentence block. They conducted during the visit that prisoners sentenced for life could seek neither employment nor education. The only daily activity available to them was outdoor walk during one hour. Therefore, a prisoner spends 23 hours a day in the cell. Prisoners sentenced for life are completely separated not only from other prisoners but also from each other. A prisoner can freely communicate and contact only his/her cell-mate. In fact, nothing has changed in conditions at such cells in comparison to the previous visits. The cells are situated in the middle of room, where passage along the cell "windows" has outside-facing windows made of glass blocks. The cell windows have a grid on them. Therefore, prisoners accommodated in cells have no access to daylight. Separation of toilet facility is rather formal. The size of cells is small and, given that prisoners spend 23 hours a day there, their accommodation in such cells is humiliating to human dignity.

4.2. "Transit" cells at Central Prison of Riga

The Ombudsman notified in 2010 the Head of Central Prison of Riga and the Chief of Prison Administration of regular complaints filed by prisoners concerning insufficient daylight at the cells of first block of the Central Prison of Riga. It was established during visits to the prison that windows had iron structures fixed on them, just like in case of quarantine cells. The Ombudsman recommended to ensuring normal daylight in cells. Representatives of the Ombudsman's Office visited the Central Prison of Riga in 2011 and, having inspected the "transit" cells, established that the Ombudsman's recommendation concerning the ensuring of access to daylight was not implemented. Windows were still covered with safety "blinds" made of steel that

prevented daylight from cells. In cell No 73 there was a single mercury light lamp above the window. Such lamp only provided the required lighting in direct vicinity to the window. No lighting was provided in other parts of the cell. It turned out during the visit that, even with natural lighting switched on, virtually nothing could be seen near the door to cell No 73 and in the toilet area. In cell No 76, on the turn, natural lighting was switched off, and prisoners were in full dark at about 15:00 o'clock when the door was opened. If even the safety blinds fixed on windows can not be removed for objective reasons, the failure on part of prison administration to provide adequate natural lighting has no excuse. Allegation of the staff that natural lightning is switched off upon the prisoners' request is beneath contempt. It was also pointed out that activities of prisoners only started after 17:00 when working hours of the staff were over. Such improper attitude must not be accepted. Prison administration has to ensure that prisoners have their time filled with sapid activities.

4.3. Daugavpils Branch of the Prison of Daugavgrīva

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

The Ombudsman has previously noted in relation to the conditions at quarantine cells that accommodation conditions at the inspected quarantine cells fail to meet human right standards, in particular there is no natural ventilation and lightning provided in the cells, and separation of toilet is insufficient to ensure privacy. No more than four prisoners were present at quarantine cells during the visits; however, the cells had beds for 12 persons (six bunk beds); the space of cells is not sufficient for the intended number of prisoners. The Ombudsman pointed out to urgent need to either eliminate the shortcoming identified at quarantine cells or to discontinue their use. In reply to the shortcomings pointed out by the Ombudsman, the Prison Administration informed in early 2011 that arrangements aimed at insuring natural ventilation and lightning has been made promptly after the Ombudsman's notice, and repair works would be continued within the limits of funding allocated for the year 2011.

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

Separation of toilets is formal, namely, they are separated from the other area with a small partition which is not sufficiently high and separates the toilet from one side only. On most occasions it was observed that no regular cleaning is done at quarantine cells. Representatives of the Ombudsman's Office observed that some cells had one or two prisoners accommodated there while others had about seven to nine prisoners, and some cells were unoccupied. The prison staff explained that the cells with 9

prisoners were intended for the prisoners who were waiting for transportation to Grīva Branch of the Prison of Daugavpils. Minor redecoration could be observed in one of the inspected cells; such fact, of course, deserves appreciation, yet the separation of toilet is insufficient also in the redecorated cell.

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

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

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

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

4.4. Prison of Šķirotava

Proposals and recommendations were issued following the visit to the Prison of Šķirotava in November 2009 concerning improvement of household conditions at the prison. Conditions at isolator cells were incompatible with human right standards. Monitoring visit conducted in 2011 resulted in conclusion that the old isolator cells were not used any more, and than new cells had been arranged with accommodation

conditions by far better than the previous ones. It was recommended, however, to improve natural as well as artificial lighting there.

4.5. Prison of Vecumnieki

Prison of Vecumnieki is the only prison in Latvia that may be treated as open-type prison by its form, because it has no closed or partially-closed type prison departments, and there is an ample unrestricted territory on which the prisoners may move freely. Visit on 12 October 2011 included inspection of isolator cells, residential and other premises. Infringements of human rights were identified in respect of isolator cells. The cells were chilly and damp at the time of inspection. In case of two isolator cells intended for accommodation of two prisoners, the toilet is not separated, and the window is small, therefore natural lighting is also minimal. The attention of Ombudsman was drawn during the visit to the fact that prisoners were also accommodated in workshop premises and on farm on the territory adjacent to the prison. The above fact was confirmed by the staff; they pointed out that the reason was protecting the concerned individuals from other prisoners. About 10 persons are accommodated in the workshop rooms. The rooms are in very poor condition: with very thin external walls in poor condition, and no central heating is provided in sanitary premises. As to the farm, two prisoners who work at the farm are also accommodated there. They have a room adjacent to the cattle-shed. The Ombudsman has issued his opinion on the identified breaches to the competent authorities, pointing out that the rooms arranged in workshop area and at the farm are not suitable for regular accommodation of people. Section 50.⁶ Part Three of Penal Enforcement Code of Latvia stipulates that sentence shall be served by convicted persons in open hostel-type prisons. Therefore, according to the normative regulations, accommodation of convicted persons at farm or workshop premises is not permitted if even they have expressed their agreement to be separated from other prisoners because they feel unsafe. The State certainly has the duty to guarantee safety of the prisoners who may not be accommodated in common residential premises for various reasons; therefore, the willingness of prison administration to ensure safety of prisoners deserves appreciation, yet it has the duty to provide accommodation in accordance with the law even in such occasions.

5. Availability of Information

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

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

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

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

TV is treated as a source of information. From the view of human rights, an imprisoned person must have the possibility to obtain information about public processes, while the state has no duty to ensure access to information in a specific manner (convenient to an individual). The State has discretion in ensuring to prisoners the possibility to obtain information about public processes.

The Ombudsman therefore finds it appropriate to ensure that the Prison Administration has to seek optimum ways solutions to provide access to information taking into consideration the capacities and resources of each imprisonment facility: for example, to provide libraries with printed matters, or to provide access to TV or radio broadcasts in the common use premises

Availability of information includes not only availability of radio and TV but also access to library and newspapers. Each prisoner must have the possibility to exercise this right, and prison administration may not impose groundless restrictions on such right.²⁵

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

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

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

The above issue was also discussed at the meeting of regular task force for criminal sentence enforcement policy. Ministry of Justice also acknowledges the existing problem related to availability of information in case of convicted persons who serve their sentence at medium or highest degree closed-type prisons. convicted persons who have no personal TV devices should have the possibility to watch TV at common

²⁵ *Poltoratskiy v. Ukraine*

use premises of prison facility, implementation of such solution, however, would involve additional funding from the State budget.

6. Investigation institutions at imprisonment facilities

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

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

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

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

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

8. Re-socialization

Amendments to the Latvian Penalty Enforcement Code related to re-socialization of individuals sentenced to deprivation of liberty were made in summer 2011, The main focus in 2012 shall be on the implementation of re-socialization measures at imprisonment facilities.

9. Housing issue after release from prison

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

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

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

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

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

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

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

Criminal proceedings are subject to the internationally recognized human rights, without imposing unjustified criminal procedural duties or incommensurable infringement with the individual's life.²⁶ The investigation measures taken during the pre-trial period, procedural means of compulsion, handling of property matters, and finalizing of pre-trial criminal procedure within reasonable time limits have direct effect on human rights of individuals. It may not be excluded, however, that human rights of an individual may be incommensurately restricted or infringed within a pending criminal proceedings due to insufficient regulatory norms, their interpretation or actions on part of individual officials.

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

²⁶ Section 12 of the Criminal Procedure Law

²⁷ Section 12 of the Criminal Procedure Law

according to the draft law is ensuring that the imposed penalty is commensurable with the dangerousness and harmfulness of the criminal offence, rather than modifying the classification of criminal offences. This means that compulsory work or pecuniary penalty should be imposed in case of less severe crimes, and deprivation of liberty should only be imposed on special occasions.

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

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

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

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

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

his statutory functions, namely, to carry out inspections in relation to potential infringements of the individuals' rights to fair court.²⁸

Examples:

- A person applied to the Ombudsman because she believed that criminal proceedings in which she had the status of injured person were being delayed. The Ombudsman applied to the supervising prosecutor to foster ensuring of the applicant's right to fair court, and asked to check whether or not the criminal proceedings were being delayed. The supervising prosecutor identified in his initial reply no breaches in the course of criminal procedure. Since the Ombudsman found the motivation referred to by the supervising prosecutor to be insufficient, a repeated request was made to inform about the actions taken within the criminal proceedings. In reply to such request, the superior prosecutor provided the necessary information and, according to such information, directions of the supervising prosecutor had not been taken into account in criminal proceedings and delay had occurred. It was further noted that inspection proceedings had been instituted in relation to disciplinary breach committed by the supervising prosecutor, and disciplinary penalty had been imposed on the supervising prosecutor.
- A person applied to the Ombudsman concerning eventual infringement of his right to fair court – eventual delay of criminal proceedings. The applicant pointed out that the process directing entity did not reply to his applications filed within the criminal proceedings. The Ombudsman asked the supervising prosecutor to carry out inspection. The reply to such request stated that criminal proceedings had been finalized and that complaint concerning the eventual delay of criminal proceedings had been declined. The Ombudsman was not satisfied with such reply, and so he applied to a superior prosecutor who repealed the reply issued by the supervising prosecutor. Repeated review of the criminal procedure established that proceedings had been delayed, and so it was resumed. Provision of information requested by the Ombudsman concerning the steps taken in the criminal proceedings was refused, however, pursuant to Section 375, Part One of the CPL which stipulates that during criminal proceedings, the materials located in the criminal case shall be a secret of the investigation. Moreover, familiarization by the Ombudsman with the decision on dismissal of criminal proceedings, which had been later repealed, was also refused. The Ombudsman applied to superior chief prosecutor of judicial area of prosecutors' office in relation to the above-stated; however no positive result was achieved. The Ombudsman was therefore prevented from obtaining full conviction that the applicant's right to fair court was ensured, and from issuing substantially motivated reply to the applicant.

²⁸ Administrative Department of Supreme Court Senate has pointed out in Paragraph 10 of the Judgment made on 6 November 2008 in proceedings No SKA-705/2008: "The secret of investigation referred to in Section 375, Part One of Criminal Procedure Law should not be understood as overall prohibition to release the materials of criminal proceedings during the pre-trial stage to any persons not specified in this norm; it is aimed to achievement of the goal of criminal procedure. Namely, it enables the entity driving the proceedings to decide whether or not release of such materials at the given point of time to the given person would jeopardize the interests of investigation, and to refuse such release. Non-release of materials in criminal proceedings may not be pursued as an end in itself. There are no grounds to refuse releasing of materials in criminal proceedings unless such release would affect the success of proceedings".

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

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

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

The Ombudsman applied in November 2011 to the Parliamentary Commission for Human Rights and Social Affairs of the Republic of Latvia. The Ombudsman pointed out to his duty to exercise control over compliance with the human right standards prescribed by the Constitution and international law. The legislator has granted to the Ombudsman the necessary tools to enable obtaining of all information necessary within the scope of inspection proceedings and assessment of whether or not human rights and principles of good governance have been complied with in each individual occasion. Recommendation No 1615 of Parliamentary Assembly of the Council of Europe dated 8 September 2003 stipulates that characteristics essential for any institution of ombudsman to operate effectively include guaranteed prompt and unrestricted access to all information necessary for the investigation.²⁹ In the situation where law enforcement institutions interdict familiarization with information relevant to inspection proceedings, the Ombudsman's right to perform the functions defined in the Ombudsman's Law is restricted. The Ombudsman issued a recommendation to Legal Commission of the Saeima to introduce amendments to Section 375, Part One of the Criminal Procedure Law defining the right of Ombudsman to familiarize with all information necessary within the scope of inspection proceedings, in order to eliminate different practice pursued by law enforcement institutions as a result of contradicting interpretation of Section 13, Paragraph 1 of the Ombudsman's Law and Section 375 of the Criminal Procedure Law.

²⁹ <http://assembly.coe.int/Documents/AdoptedText/ta03/EREC1615.htm>

2. Attachment of property

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

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

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

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

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

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

The tasks of police include guaranteeing the safety of individuals and society.³⁰ Police has the duty to protect the lives, health, rights and freedoms, property of individuals, and the interests of society and the State against criminal and other illegitimate perils. Each and every individual seeks protection against danger caused by illegitimate or

³⁰ Section 3 of the Police Law

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

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

Example:

- A person applied to the Ombudsman's Office stating that he had the 2nd group disability with mental impairments, and that he felt threatened by certain individuals on street. The actions taken by police to protect him were ineffective, and attitude towards him was offending. The applicant also pointed out that the police officer in charge has threatened to refer him to psycho-neurological hospital if he applied to police again.

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

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

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

upon the person's right to inviolability of privacy that constituted essential restriction of the person's fundamental rights.

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

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

Examples:

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

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

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

cause physical or moral sufferings to a person, i.e., for ill-intentioned purposes; therefore the Ombudsman appealed to the State Police for abandoning the use of such premises, and to the Court Administration for closing of such premises.

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

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

Constitutional Court rendered award in proceedings No 2010-44-01 on 20 December 2010 declaring non-compliance of Section 7, Part Five, Paragraph 1 of the Law on Procedure for Accommodation of Detained Persons with Section 95 of Constitution of the Republic of Latvia.³¹ The State Police was instructed to eliminate the shortcomings in the Law on Procedure for Accommodation of Detained Persons and ensure compliance of the conditions at TDFs with the statutory requirements.

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

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

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

Staffing of police officers at different sections also differs. It was identified in a number of TDFs, for example, that uniforms were not provided to the staff in the manner and amount prescribed by regulatory acts. No actions aimed at ensuring

³¹ The Ombudsman filed an application in 2010 with the Constitutional Court concerning the fact that the size of partition prescribed by law as for separation of toilet facilities – 1.2 meters is not sufficient to ensure privacy of a person.

compliance with the requirements prescribed by the Law on Accommodation of Detained Persons were identified at the TDFs visited before October 2011. This leads to concerns about the possibility to ensure compliance with the statutory requirements by the deadline determined by the Constitutional Court (31 December 2011).

IV. Actual Problems in the Field of Criminal Law

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

1. The Right of Individual to Security and Liberty

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

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

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

has the status of detained person subject to restriction of their rights according to such status.

The Ombudsman applied to the Ministry of Justice in 2007 already with proposal to draft amendments to the CPL aimed to define clearly the need for ensuring control over the need of continued application of detention applied by convicting judgment of the first instance court. The above opinion of the Ombudsman was not taken into consideration, however. Section 4 of the currently drafted law on Amendments to Criminal Procedure Law envisages supplementing Section 281 of the Law with new parts, 5.¹ un 5.² respectively, prescribing the procedure for assessment of the need for continued detention when the case is presented for hearing in accordance with appellate procedure. According to the said amendments, where adjudicating of a case is postponed or suspended for a period exceeding two months, the appellate instance court shall have the duty to assess the need for continued detention. The detained person shall only be entitled to file application concerning assessment of the need for continued detention if adjudication of the case is scheduled to a date that is more than two months from accepting of the case for hearing. Given that control of detention after passing of the case to appellate instance court is formal due to the present wording of Section 281, Part 5, and that it does not meet the requirements of human rights, the Ombudsman has committed to follow up progress of the amendments announced at the meeting of State Secretaries.

2. The Right of Individual to Fair Court

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

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

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

The Ombudsman applied to the Ministry of Justice in late 2010 already for drafting amendments to the LLA aimed at preventing the incommensurable restriction of human rights guaranteed by Constitution. Unfortunately, Ministry of Justice did not support such proposal and pointed out that “draft law on amendments to the Law on Legal Aid by the State had been presented to the Saeima on 1 June 2009 and that such

amendments had the effect, inter alia, of reducing the scope of legal aid provided by the state in order to (as stated in summary to the draft law) save the assets of State budget; therefore, the aim pursued by legal policy of the legislator was reducing of the scope of provided legal aid, and that therefore no motion concerning increased scope of legal aid can be seconded at present because it would contradict with the set political goal.”

Though even the right to fair court is not absolute, Constitution contains no direct specification as to the occasions on which such right may be subject to restriction. Constitutional Court as well as European Court of Human Rights has held³² that the right to fair court may be restricted insofar a person is not essentially deprived of them. Such restriction, however, has to be defined in law and justified to a commensurable legitimate purpose. The applicable regulation, however, virtually has the effect of depriving low income persons of their right to apply to Constitutional Court, and therefore they have no access to the above-described legal remedy.

The Ombudsman has also identified opinions of other law experts within the scope of inspection proceedings. A. Rodiņa, Associate Professor of the University of Latvia, points out in her promotion thesis “Theory and practice of constitutional complaint in Latvia” that “subjects of constitutional complaint have no access to state provided legal aid guaranteed to persons in civil, administrative, and criminal proceedings. Such duty of the state derives, however, from the guarantees provided in Section 92 of the Constitution.(...) person has to be able to demonstrate in constitutional complaint the fundamental right infringed (and the form of infringement) by a legal norm (act) that contradicts with a legal norm (act) of superior effect”³³. J. Grīnbergs, Chairperson of the Bar Council of Latvia, points out to the need for providing in regulatory acts the possible solution for implementation of the duty related to provision of legal aid at Constitutional Court. G. Kūtris, Chairman of Constitutional Court, points out that: “Departments of Constitutional Court decline instituting of proceedings on about 36% occasions (in average) on the grounds of obviously insufficient legal substantiation. (...) It is therefore certain that application with higher legal quality would accelerate protection of the person’s rights.” Therefore, legal aid provided by the State in drafting application to Constitutional Court and representation in pending legal proceedings would ensure and accelerate protection of rights in case of low income persons.

3. Photo-Radars

Inspection proceedings were instituted in 2008 at the initiative of the Ombudsman R. Apsītis concerning the imposing of penalties for offences fixed by technical means (photo-radars). The purpose of such inspection proceedings was establishing whether or not the requirements of human rights are duly met when officials decide on imposing penalty on individuals. Summary and assessment of the collected information in 2009 enabled identification of shortcomings in the applicable normative regulations (Section 43⁶. of Road Traffic Law), since in case of offences fixed by such means may lead to imposing penalty on persons who are not to blame for commitment of the offence in question. Moreover, such persons are prevented

³² Award made by Constitutional Court of the Republic of Latvia on 26 November 2002 in proceedings No 2002-09-01 and Award made by European Court of Human Rights on 21 February 1975 in *Golders v United Kingdom*

³³ http://www3.acadlib.lv/greydoc/Rodinas_disertacija/Rodina_lat.doc

from contesting the protocol – decision, because they are not the addressees of such administrative act. Therefore imposing penalties for offences fixed by means of photo-radars may lead to infringement of the right to fair court guaranteed by Section 92 of Constitution of the Republic of Latvia and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Further, imposing minimum penalty for offences fixed without stopping the transport vehicle in question constitutes groundless breach of the prohibition of unequal treatment stipulated in Section 91 of the Constitution and Article 14 of the Convention.

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

Center for Public Policy "Providus" identified shortcomings in the existing regulations in their study "Proceedings of administrative offences committed in road traffic" conducted in 2011. Authors of the said study concluded: "Identifying the individual (addressee of administrative act) is among the key facts to be established by the competent authority prior to issuing the administrative act. (...) The existing regulation prevents the possessor or owner of transport vehicle from demonstrating their innocence. The protocol – decision is delivered in a form that indirectly obligates to make prompt payment of the imposed penalty, rather than to cooperate".³⁴

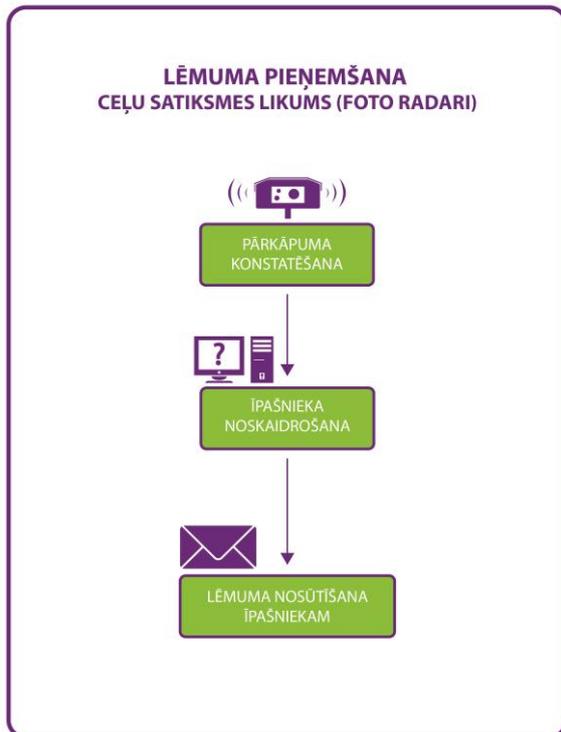
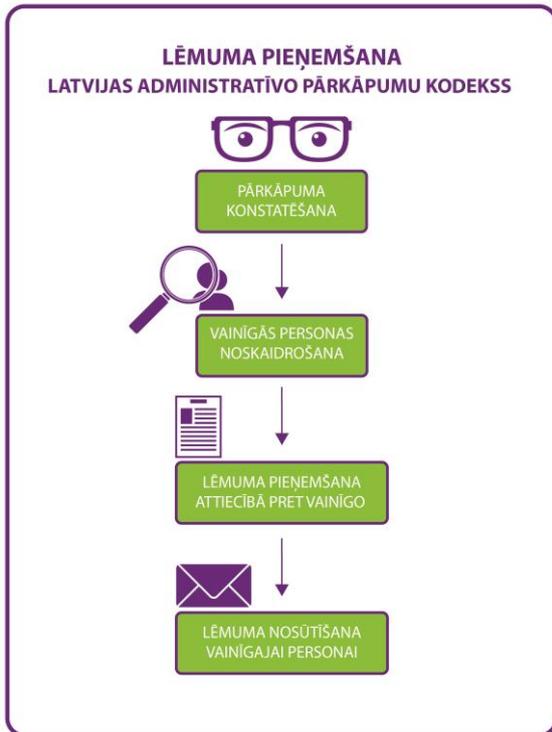
The tender "Introduction, installing and maintenance of measuring units for improvement of road traffic safety" announced by the Ministry of Interior was completed on 8 March 2011; as a result of such tender, the number of photo-radars in our country would be notably increased³⁵. E. Zivtiņš, Chief of Prevention Department of the state Police, and A. Lukstiņš, Director of Road Traffic Safety Directorate, have repeatedly informed mass media that, apart from fixing breaches of driving speed, the photo-radars are also intended to fix other breaches (driving without valid technical inspection and insurance, and ignoring red light signals). It may be therefore presumed that the number of decisions shall also increase on imposing penalties without stopping the transport vehicle and identifying the offender.

The applicable legal regulation:

Section 149.⁸ of Administrative Offence Code of the Republic of Latvia (hereinafter – AOC) prescribes the liability for exceeding the permitted driving speed. Section 43⁶ of Road Traffic Law (hereinafter – RTL) specifies peculiarities of administrative proceedings in case of breaches fixed by technical means without stopping the transport vehicle. The said Section prescribes that protocol – decision on payment of the minimum penalty – shall be delivered to the possessor/owner identified in certificate of registration of the transport vehicle.

³⁴ Aperāne K., Litvins G. Administratīvā pārkāpuma lietvedība ceļu satiksmē. Providus, 2011, p.p..

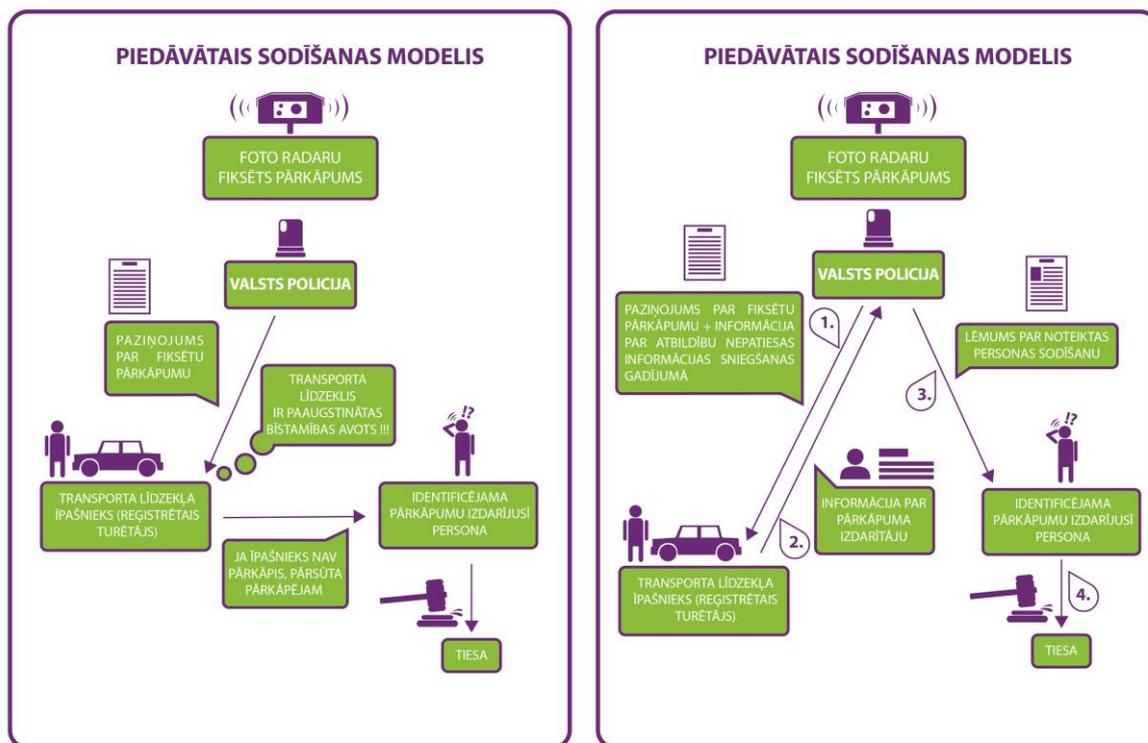
³⁵ http://www.iem.gov.lv/lat/aktualitates/informacija_medijiem/?doc=22690



The Ombudsman appealed on 26 May 2011 to the Saeima Chairperson of the Republic of Latvia for drafting amendments to Section 43.⁶ of the RTL by October 2011 in order to alter the procedure for imposing penalties in case of breach fixed by photo-radars, specifically to define that fixing of a breach by means of photo-radar constitutes grounds for institution of proceedings. An official shall send a notice (protocol) of the fact of breach to the owner of the involved transport vehicle and summon him/her to attend (for example: within ten days) and to provide identifying information about the offender (such option is already provided for by Section 20 of Road Traffic Law). Therefore, the State would have made the minimum actions necessary to identify the offender. Therefore, based on the breach fixed by photo-radar and on data provided by the owner, the official would be enabled to make impartial decision on imposing penalty on the offender. If, however, the owner fails to attend or fails (is unwilling to) provide the information necessary to make the relevant decision, he/she may be presumed to acknowledge his/her guilt in commitment of the offence in question. The official would therefore have the option and grounds to decide in accordance with the procedure prescribed by AOC on imposing penalty on the owner of transport vehicle.

The proposed models are not expected calling of absolutely all persons who have committed breaches to the account prescribed by law. They are, however, expected to ensure that the State would be enabled to reduce by minimum investigational activities the possibility of adverse consequences in respect of any person other than that who has committed the offence in question. The actions taken by the state would therefore comply with the principle of legal reliance. Moreover, persons would be subject to equal penalty regardless of the manner of fixing of the breach. This would enable preventing unequal treatment of persons who have committed equal offences. Imposing penalty exclusively on the offender would facilitate improvement of road traffic safety and prevent commitment of repeated offence.

The proposed model solutions:



The Ombudsman applied repeatedly on 4 November 2011 to the Chairperson of Saeima of the Republic of Latvia concerning the need to make the necessary amendments to legal acts.

The Ombudsman J. Jansons applied in December 2011 to the Saeima Commission for National Environment and Regional Policy proposing to amend Section 43⁶ of Road Traffic Law.

4. The Right to Property

The Ombudsman R. Apšītis established that the duty of person prescribed by Section 257, Part One of Administrative Offence Code of Latvia to ensure enforcement of pecuniary penalty, i.e., to continue possession of the transport vehicle until payment of penalty constituted incommensurable restriction of the right to property. Moreover, a person may incur material financial damage through lasting proceedings when exercising the right to contest unfavorable decision. Therefore the existing regulation constitutes infringement of the right guaranteed by Section 105 of Constitution of the Republic of Latvia and Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Ombudsman's opinion concerning the need to draft amendments to Section 257, Part One of the APC of Latvia was supported at the meeting of task force of the Ministry of Justice held in 2010. Ministry of Justice notified the Ombudsman by their letter No I-175342 dated 12 November of the intention to delete the legal regulation contained in square brackets in Section 257, Part One of the AOC, and to include the relevant legal regulation in Section 258 of the AOC. Further proceeding with the above-described matter was scheduled to January 2011.

The amendments were not drafted, however, by October 2011, and the Ombudsman's proposal concerning the amendments to Section 257, Part One of the APC received no support from representatives of the Ministry of Interior at the repeated meeting of the Task Force of the Ministry of Justice. Since no consensus was reached by the Task Force of the Ministry of Justice, the Ombudsman J. Jansons applied in December 2011 to the Chairperson of Saeima Commission for Legal Affairs with proposals to amend Section 257, Part One of the AOC.