

Year 2012, Political and Civil rights Division

Priorities of the Division of Civil and Political Rights:

- I Ensuring the rights of individuals with mental disorders
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- III Protection of the rights of prisoners in closed-type institutions
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I Ensuring the Rights of Individuals with Mental Disorders

In 2012 the problem situation has been repeatedly activated, which has developed in connection with governance of legal capacity not corresponding to human rights, of which the Ombudsman has already reported in 2008. Unfortunately, due to delayed acts of the authorities the new regulation did not become effective yet until 1 January 2012 as determined by the Constitutional Court. From February provisional regulation was in place instead. Provisional regulation resolved only the most topical problems in connection with the cases submitted to the court, but did not resolve such questions, that are associated, for example, with increase to the volume of rights of the persons already lacking legal capacity to act, still giving raise to violations of the rights of persons, what was also specified to the Saeima. The new legal regulation for restrictions of legal capacity was at last adopted in late 2012, by stipulating the date for it becoming effective – 1 January 2013. The previous legal framework envisaged, that for the person, lacking the largest part of or all mental capabilities, a legal capacity to act can be fully restricted. It meant that the person himself or herself can not take decisions in the matters important in his or her life, for example, where to live and with whom to live together, whether to establish a family, whether to bring up children et al. In accordance with the new legal framework, the court will not be able to restrict personal non-property rights of a person and the rights to represent himself or herself before authorities and in courts. In turn various decisions will exist in respect of property matters.

Even though the amendments do not fully comply with the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention) since the law does not contain a fully-fledged alternative for restriction of legal capacity, as, for example, a mechanism of supported ability to decide (support persons), but they will definitely improve the protection of human rights of the persons with mental disorders. As a result, the State is expressing the belief that every individual has human rights and he or she may not be discriminated due to the state of health.

Already in the last year several problems were also found in the regulatory framework that prevents persons with mental disorders accommodated in the State Social Care Centres (hereinafter referred to as the SSCC), to exercise their rights. For example, the persons in point of fact are being denied the right to leave SSCC, creating *de facto* restrictions to freedom. In 2011 the Ministry of Welfare was invited to promote specific amendments to the Social Services and Social Assistance Law.

Since MW has failed to act, already in this year a request to make the said amendments was sent to the Saeima, in particular, in June 2012 the Ombudsman has sent a request to modify Paragraph three of Section 28 of the Social Services and Social Assistance Law, suggesting a specific wording. On 6 December 2012 amendments to the Law were adopted by Saeima in the 3rd reading. Of course, this does not mean that the remaining provisions are very good, however, at least a short step is taken to diminish very serious violations of human rights, which have already been incorporated into the normative framework. This example also demonstrates how constructive and successful cooperation can be developed between the legislator and the Ombudsman.

Continuing on the problems addressed in the context of the SSCC persons with mental disorders, the Office also in 2012 continued inspections in the SSCC branches. At the end of this year, three branches of the State Social Care Centres were visited, together with external internationally recognized expert from Iceland, a psychiatrist who has also worked for many years in structures of the Council of Europe's Committee for the Prevention of Torture. As a result of the inspection visits carried out, infringements counted in the SSCC were summarized in order to prepare an interim report to the Saeima.

The question relating to application of compulsory measures of a medical nature was also updated. Within the framework of specific verification procedure it was established that personal freedom (placement into psychiatric hospital) has been restricted pursuant to decision of the court, but the review of the said decision has not taken place in accordance with Paragraph four of Section 607 of the Criminal Procedure Law.

Procedure No. 2012-347-3F. Opinion has found an infringement in respect of the obligation of the court once a year to review the decision on compulsory measures of a medical nature applied to the person. For the person a compulsory measure of a medical nature has been applied - treatment in a hospital in 2004. The court decision was reviewed only in 2008, 2010 and 2012.

Violations have also been identified in respect of actions of the court, not sending to the person decision on the application of compulsory measures of a medical nature; the obligation for the court once a year to review the question of the application of compulsory measures of a medical nature.

I would like to specify that the Ombudsman's Office has found several such cases and therefore the Chair of the Supreme Court was invited to send an Ombudsman's letter to all the courts of the Republic of Latvia or to include this question for discussion in the Judicial Council, in order the courts further in their work observe human rights of the persons with mental disorders.

In response to various established problems relating to the processes for application of compulsory measures of a medical nature (hereinafter referred to as the CMMN) the Ministry of Justice this August has set up a working group to assess the need for amendments to the Criminal Procedure Law in connection with the human rights violations found, which includes also representative from the Ombudsman's Office, who has presented its proposals on a number of necessary amendments to the Criminal Procedure Law (hereinafter referred to as the KPL) in respect of application

of compulsory measures of a medical nature. For example, it was indicated that the second sentence of the Paragraph one of KPL Section 606 must be deleted, which states that a person, against whom the proceedings for the determination of compulsory measures of a medical nature are performed, may appeal a decision by him or herself only then, if he or she has participated in a court session. The Ombudsman's representative has pointed out that this person should not be prevented to appeal the decision of the court.

In 2012, a number of opinions were also given on the rights of persons lacking capacity to act, for example, the right to associate, to select their own trustee, the right to get identity document, et al.

1) Administrative Court of the Republic of Latvia has invited the Ombudsman as an institution in the administrative matter No.A420336312 to deliver an opinion in connection with the rights of persons lacking capacity to act to join the association. The Ombudsman in his opinion has pointed out that the persons lacking capacity to act are entitled to join associations. Opinion was drawing attention also that one of the objectives of the association may also be to protect the interests of their members, consequently, by promoting protection of the rights of these persons. Thus denying the person himself or herself the right to join the association, restrictions are imposed not only on the right of the person to associate, but implementation of other rights are also precluded that particular association likely helps to promote and/or to protect.

Also the European Court of Human Rights in a number of cases has established violations to human rights when the State has automatically denied for the person various human rights, on the basis of overall restrictions to legal capacity.¹

Latvia has acceded to the UN "Convention on the Rights of Persons with Disabilities" (hereinafter referred to as the UN Convention), which Article 5 prescribes prohibition of discrimination, while Paragraph 3 of Article 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 29 of the UN Convention prescribes that States Parties shall promote actively for the persons with disabilities participation in non-governmental organizations and associations concerned with the public and political life of the country. Likewise Article 12 of the UN Convention determines that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

2) On the basis of submission by the person a verification procedure was initiated with regard to the rights of the persons lacking capacity to act to obtain personal identity documents, since the Office of Citizenship and Migration Affairs refused to issue a passport to the persons lacking capacity to act themselves. The Ombudsman in his opinion has concluded that a regulatory framework fails to establish the procedure for passport issuing and storage arrangements for the persons over whom guardianship has been established, as this is the case with the minors. Consequently, the restriction concerning adult persons is not laid down by law, but

¹ See, e.g., *Zehentner v. Austria*, Application No. 20082/02, 16 July 2009, *X v. Croatia*, Application No. 11223/04, 17 July 2008, et al.

the Office of Citizenship and Migration Affairs is using analogy when to adult persons with deprived legal capacity they are applying the legal framework applicable to minors. By limiting the rights of the person, one can rely on the framework that has not been adopted in relation to a particular group of people. Also the Department of Administrative Cases of the Senate in a number of judgments has concluded² that when restricting human rights, an administrative act can not be founded on the rule by analogy.

As regards the direction provided by OCMA with regard to general restriction to the rights of the persons lacking capacity to act to receive and to store property, in the opinion it is noted that although the persons lacking capacity to act, in accordance with the current legal framework, have a lot of restrictions, however, one cannot say that the persons lacking capacity to act on the whole could not receive and store any property. In addition, the passport or identity card is not considered to be property for its normal purpose due to the fact that this is a personal identity document. Passport by its nature is an object, which is withdrawn from private law circulation. Therefore the passport is a document and it cannot to be regarded as property in terms of article of private law circulation, since it is a public property.³ In addition, there can be different situations in which it is essential that the person would have a personal identity document and, where appropriate, the person could prove their identity, otherwise adverse effects can emerge (for example, the Police is entitled to detain the person for identification).

Article 18 of the UN Convention sets forth that States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification.

3) In Procedure 2012-47-4C submitter applied to the Ombudsman's Office since getting to know from the Orphan's Court that her daughter (with whom she lived) has submitted an application to the Court of justice for deprivation of a legal capacity. It was established during the verification that the Court has violated the procedural rules, without providing notification to the person on receipt of such an application, initiation of the civil proceedings, and designation of the Court sitting. After the Ombudsman's intervention, the Chair of the Court requested an explanation from the Judge and negotiated the matter in general meeting of judges so that, in the future, such violations are not allowed. During further proceedings opportunities had been provided to the person to participate and the Court decided on termination of the court proceedings.

4) Unfortunately, in a few cases also very fundamental violations of human rights have been identified during the process of the deprivation of legal capacity to act (it should be noted at once here that these processes in both cases had already taken place several years ago) that also resulted in the persons being deprived of legal capacity to act. In one of the procedures the Ombudsman addressed the Chairman of the Supreme Court of the Republic of Latvia, asking to submit a protest regarding a

² See, e.g., Judgment of 16 March 2009 in Case No.A42459905

³ Personal Identification Documents Law, Section 2, Paragraph two specifies: "Personal Identification Document is the property of the Republic of Latvia".

court adjudication that has come into effect, with which the person has been deprived of legal capacity, since during the process serious violations of human rights were permitted, for example, the person was not made aware of the court proceedings, the Court adjudications were not sent to the person, viewpoint of the person was not required, et al. Unfortunately the Supreme Court could not see that these very serious violations of the right to a fair trial would entail the need to submit a protest.

For a long time already one of the problems in the mental health area is a disarrayed legislation. Although certain things have been improved in recent years, for example, by amendments to the Medical Treatment Law relating to the compulsory placement of person into psychoneurological hospital. However, many things are still in disarray, thus leading to possible violations of human rights. For example, in psychoneurological hospitals where compulsory treatment is taking place, a number of coercive measures are applied and the right of individuals to privacy is also restricted. However, the regulatory framework practically does not exist - restrictions are imposed by the institution's internal procedural rules.

In order to the human rights restriction to be permissible, first, it should be defined by the law adopted under appropriate procedure. If human rights restrictions are laid down by internal procedural rules, restrictions are not imposed by law. As a result, it can be concluded that the restrictions do not comply with the Satversme.

Already in 2011, when identifying the problem in respect of restrictions imposed by internal procedural rules of the Compulsory Treatment Ward of the Riga Psychiatry and Narcology Centre, it was indicated to the institution that in order to further avoid such a situation, adoption of regulatory framework would be urgently required, to provide for possible human rights restrictions in the Compulsory Treatment Ward. It should be noted that Jānis Buģins, Chairman of the Board of Directors of the Riga Psychiatry and Narcology Centre, for a long time already is also the main specialist of the Ministry of Health in psychiatric issues – advisor of the Ministry of Health in the field of Psychiatry.

However, one can establish that the said situation in the field of legislative framework has not improved.

In view of the above mentioned, the Ombudsman has applied to the Ministry of Health and asked to provide information with regard to plans of the Ministry of Health in respect of development of legislative framework to further prevent human rights restrictions in psychoneurological hospitals without an adequate normative framework.

In 2012 opinion has been delivered in relation to observance of the rights of the persons in the Department of Psychiatric Expert Examinations. In procedure 2012 – 123-2A submitter complained about the conditions in the Department of Expert Examinations at Laktas Street. The opinion has found that people can not have free access to toilet facilities since the wards are locked, and no toilets are arranged in the very wards. In order to the persons subject to expert examination could get to the toilet, they first have to call someone from the medical staff, who should accordingly report to the Police officer in order the door might be opened and the person could be taken to toilet. Thereby it was found that RPNC has not fully taken into account the Ombudsman's recommendations provided in 2007 with regard to observance of the rights of the persons subject to expert examination.

In the same way opinion has expressed the view that as regards persons accommodated directly in the Department of Expert Examinations, laws and regulations would need a separate provisions on data processing in such institutions, specifically defining the cases in which and the extent to which it is possible to perform television surveillance, precisely determining the persons who has access to this information, how long such records have to be kept, and in which cases they have to be handed over to third parties. Thus, it was established that television surveillance of the persons placed in the Department of Expert Examinations, per se is not considered to be a violation of human rights, but the existing legal framework is not considered to be consistent with human rights.

Research

At the end of 2012, the research was conducted "Human rights of the patients when accommodated in psychoneurological hospital".

This research was aimed to study the human right standards binding for Latvia, when implementing hospitalisation and treatment of the persons without their consent in psychoneurological institutions (including also in respect of the persons, for whom compulsory measures of medical nature as well as forensic psychiatric expert examinations have been determined), to evaluate compliance of the Latvian regulations with these standards and to analyze legal frameworks of other countries, when searching for examples of good practice.

The research has resulted in a conclusion that the international documents (legally binding, as well as, in particular, the recommendations and principles) are providing a comparatively elaborated framework in respect of treatment of the persons with mental disorders without their consent. Several recommendations and principles in detail have defined criteria under which a person could be exposed to treatment, without his or her consent, as well as the circumstances and conditions when the physical means of limitation can be applied. Over the last few years also the European Court of Human Rights case-law has developed more extensively in this field, by setting standards that the countries should follow in order not to infringe Article 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Comparatively recent entry into force of the UN Convention on the Rights of Persons with Disabilities has been of particular importance for the development of international law in respect of the persons with disorders of mental nature. Its ratification at national level has constituted the basis of reforms in several countries (being in progress also today), by application of the regulatory compliance with the provisions of the Convention.

Upon evaluation of different national practices, it can be concluded that the laws and regulations are far more evolved and more detailed when compared to Latvia, however, it should be emphasized that also the laws of the countries concerned, as well as their implementation in practice, despite more sustained democratic traditions, is not perfect. For example, in England national court has found that the Code of Conduct of the Mental Health Act is not legally binding, which consequently leads to the equivalent problems in Latvia, as regards the lack of regulations at the law level in the field concerning application of the measures of

physical mobility to persons. While the Finnish regulations in a comparatively recent judgment have been criticised by the European Court of Human Rights, by identifying also lack of safeguards in the cases where coercive treatment has been determined for a patient. In the Netherlands, despite regulatory clarity, in practice there are problems with the large-scale patients' isolation in the institutions. In accordance with the statistical data, one of the four patients of psychoneurological hospitals in the Netherlands has experienced coercive isolation the average duration of which is 16 days.

Being aware of the fact that institutional care is always subject to certain risks of human rights violations, it is possible that one of the best solutions is to avoid stationing of the person as much as possible, by introduction of alternative mechanisms. Regulatory frameworks of several countries provide for coercive treatment in society,⁴ by leaving institution only as a last resort, when care outside the institution is not possible. Although, unfortunately, it will not be possible to apply such alternative in all the cases, it could be a positive solution in situations when the person's medical treatment may be ensured under less restrictive conditions.

The research has also resulted in provision of the following recommendations for improvement of the situation in Latvia:

- significant shortcomings are found in the regulatory framework in Latvia with regard to possible human rights restrictions of the persons who are placed in psychoneurological institutions without their consent. To prevent it, amendments should be drawn to the Medical Treatment Law, by providing a specific justification, as well as the mechanism, in which precisely identified human rights may be restricted;

- development of amendments to the normative regulations should identify both the persons to whom the restrictions would apply (by providing regulations also with regard to those persons to whom forensic psychiatric expert examinations and medical coercive measures are determined) as well as, covering all the institutions where such restrictions could be applied (including long-term social care centres);

- the regulatory framework should separate the person's stationing against his or her will from ensuring compulsory treatment, providing for certain decisions for each constraint, as prescribed by international human rights documents, as well as judgment of the European Court of Human Rights in the case *X.v.Finland*;

- in Latvia at the level of laws and regulations the framework for application of the person's physical restriction measures should be provided;

- events when physical restriction measures are applied in the institutions should be subject to external monitoring, for example, provided that the authority must report any such event to the Health Inspectorate;

- the person must be have a possibility to appeal the restrictions imposed on him or her, providing for efficient legal protection remedies, in particular with regard to such major decisions, as the provision of compulsory therapy and communication restrictions with the persons outside institutions;

⁴ Mental Health Law Online, Mental Health Act 1983, Article 17 and 20, available on: http://www.mentalhealthlaw.co.uk/Mental_Health_Act_1983#Part_I:_Application_of_Act (last accessed on 17.12.2012); Mental Health Act (Finland), 14.12.1990, available on: <http://www.finlex.fi/en/laki/kaannokset/haku/?search%5Btype%5D=pika&search%5Bpika%5D=menta+l+health&submit=Search>, Article 4, Paragraph two (last accessed on 19.12.2012).

- more attention should be paid to the Committee for the Prevention of Torture of the Council of Europe (hereinafter referred to as the CPT) reports on Latvia, as well as the results of monitoring by the Ombudsman's Office, which quite often reflect the same problems that are not addressed in the long term, for example, with regard to the treatment of children separately from adult persons;

- having regard to the CPT findings it results that cruel actions most often are the fault of the staff, not the medical personnel,⁵ effective control should be ensured over staff at all levels, as well as training of staff in human rights standards;

- to avoid disproportionate stationing of persons in the institutions, similar to practices of other countries, it should be included into the regulatory framework that the treatment of person in the institution shall be provided only if other methods are not adequate and effective. At the same time, provision should be made for the possibility to provide the treatment without consent of a person outside of the institution, by introducing effective patient's control mechanisms.

II Efficiency of Protection of Private Life

Content of the privacy consists of personal identity, physical or mental integrity, including honour and dignity, one's own living space, sexual activity and social relations, relations with other persons, including information about this relationship. It also includes the right to keep their private life secret from other individuals. The State is under obligation not only to avoid unjustified interference in the private life of individuals, but also to protect them from infringements of fellow-citizens and the media.

The Ombudsman's Office receives submissions on various breaches of privacy: unallowed disclosure of information, control over personal communications (post, e-mail, conversations), person's video-surveillance, the name representation in Latvian, the use of photos, etc.

Topics such as representation of personal names in connection with the prohibition to register persons with specific given names and last names at the Population Register and carrying out video-surveillance (partly) in public places should certainly be highlighted. Topicality of both these matters in recent years has not decreased, on the contrary - increased, as shown by litigations launched by individuals in the administrative courts.

To carry out an in-depth study of the said topics, in 2012 two studies were initiated and completed: "*Personal names spelling and human rights*" and "*Video-surveillance as restriction of the person's right to privacy and its permissible limits*", that are going to be available for a wider range of interested parties on the Office website.⁶

In the same way verification procedure No.148-5D/2010 should be noted among the verification procedures completed by the Ombudsman's Office in 2012, having been initiated to assess the possible infringement of privacy. In that case the

⁵ CPT Excerpt from the Eight General Report:
http://www.humanrights.org.lv/upload_file/CPT_standarti_LV.pdf, see p.41.

⁶ <http://www.tiesibsargs.lv/lv/petijumi>

matter referred for assessment was - whether there has been a breach of human rights ensured for the victim through publishing of materials of the criminal case adjudicated in a closed court sitting, revealing the identity and the privacy aspects of the victim of crime, in the book "Maniac" by A.Grūtups.

When evaluating the potential infringement of private life and privacy through publication in a book of the personal-related sensitive information from materials of the criminal case, the following aspects were explained: * what is meant by personal privacy and the way in which the protection of personal privacy and private life is settled, * whether in the particular case the law permitted infringement of the victim's privacy, whether it had a legitimate purpose and whether the privacy restriction was necessary and proportionate in a specific situation.

Opinion of that verification procedure has indicated that:

"personal data shall mean any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, by reference to an identification number or [personal identity number] or one or more physical, physiological, mental, economic, cultural factors or factors specific to social identity of this person. Processing of data shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, registration [recording], organization, storage, application [adaptation] or alteration, correction [retrieval], consultation [examination], use, disclosure by transmission [divulging through transmission], dissemination [through distribution] or otherwise making available, alignment or combination, blocking access, erasure or destruction. The data subject's consent shall mean any freely given specific and informed [based on knowledge of the conditions] indication[s] of his or her wishes by which the data subject signifies his agreement to personal data relating to him being processed.⁷

Not all the personal data as to their substance may endanger private life or appropriate person. Recital 33 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data refers to data which are capable by their nature of infringing fundamental freedoms or privacy and should not be processed unless the data subject gives his explicit consent, which means that not all the data are equal. Such sensitive data are data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, as well as data concerning health or sex life.⁸

With regard to the processing of personal data the following principles⁹ have to be mentioned - personal data must be (a) processed fairly and lawfully, (b) collected for specified, explicit and legitimate purposes, (c) further processing thereof should be compatible with those purposes. In the same way for processing of personal data it is required that they may be processed only if: (a) processing thereof is necessary for the

⁷ Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Article 2.

⁸ CEU judgment of 8 November 2007 in Case T-194/04 The Bavarian Lager Co. Ltd v Commission of the European Communities, Paragraph 8.

⁹ Principles for personal data processing may be derived from a range of EU regulatory enactments, i.a., from Regulation (EC) No 45/2001 of the European Parliament and of the Council, adopted on 18 December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

performance of a task carried out in the public interest or (b) processing is necessary for compliance with a legal obligation to which the controller is subject, or [.] (c) the data subject has unambiguously given his or her consent (.)

EU law reiterates the principle that personal data must be processed lawfully and for definite purposes and, in some cases, with the consent of the data subject. If to the data obtained in a closed court hearing, the restricted access information status is given and are processed in accordance with the granted permission for particular scientific or literary purpose, therewith the obligation of the data processor not to divulge data is not cancelled, particularly if they are reviewed in a closed court hearing on sexual offence being committed and can affect inviolability of private life (privacy) of a still living person.

Although in the framework of the verification procedure it was found that arrangements for organizing the documentation and paperwork in the courts of districts/cities and the regional courts are different from the order arranged in the Supreme Court of the Republic of Latvia, with regard to the third persons right to consult the materials and adjudications of civil, criminal and administrative matters there is effective procedure prescribed by the Law "On Judicial Power", Criminal Procedure Law (hereinafter referred to as the KPL) and the Freedom of Information Law with regard to access to materials of the criminal cases as the restricted access information.

Upon assessment of granting of authorisation for A.Grūtups to get acquainted with materials of the criminal case No. 41202882/K-57/83 in the Supreme Court of the Republic of Latvia, a conclusion has to be drawn that the access to the data processing was issued unlawfully. Verification procedure has failed to present any evidence that the access to materials of the criminal case, which are the restricted access information had been formally requested, request evaluated under appropriate procedure and processing materials of the criminal case has taken place with permission.¹⁰

In the same way it can not be said that the processing of personal data from criminal case No. 41202882/K-57/83 was carried out with a scientific purpose, since compatibility of the book "Maniac" to scientific paper is doubtful.

In assessment within the framework of the verification procedure of the proportionality of personal data processing and disclosure related to private life [of the victim], it should be noted - **first**, no permission of certain individuals [...] was given to the author to publicize data related with the privacy in book "Maniac";¹¹ in respect of these persons the author has not attempted to transform the data of victims for the purpose of protect them from identification possibility.

¹⁰ Protection of personal data is of fundamental importance in the rights of a person to enjoy inviolability of his or her private and family life, safeguarded by Article 8 of the ECHR. National law should provide a certain level of protection in order to prevent use of the personal data in the way that would be contrary to safeguards of the ECHR Article 8. National law in the same way must provide appropriate safeguards that the collected personal data will be efficiently protected against unauthorized or malicious use. Above conclusions are particularly important in respect of the protection of data of specific category and sensitive nature.

¹¹ Taking into account that memories of an individual in respect of his or her private life is building up of his or her moral capital, no one shall be entitled, even in good faith, to publish the same without clear and unambiguous permission of the person, which life is related; taking into account that although various considerations are applicable to public life of the person, since otherwise history could not be written, real events and incidents in private life of the person, especially of intimate nature, cannot be published without permission of such person.

Author of the book, when describing the criminal proceedings, has failed to change the victim's name [...], has precisely referred to her job and has provided sufficient numbers of other indications to the victim, therewith has allowed for a great opportunity to identify the victim.

Second, a conclusion has to be drawn that in this verification procedure the right to privacy ensured by Article 96 of the Satversme are juxtaposed against freedoms of expression, scientific, artistic creative activity ensured for the person by Articles 100 and 113 of the Satversme.

In the event of writing "Maniac" in the instance of publicizing emotional experience related to sexual violence, anonymity of the depicted person and higher protection of privacy had to be ensured when compared with freedom of artistic expression and speech,¹² since publicizing of facts entailing private life, personal data of the person may be justifiable only in cases when the right of public to information availability is of higher importance than the right to inviolability of private life ensured for the person.

In the said verification procedure violation of the right to inviolability of private life ensured for the victim was established and identified that author of the book "Maniac" when describing a historic person and detailed circumstances for committing crimes, inter alia, when mentioning the persons having fallen victims to sexual offences, for the purpose to achieve higher effect of plausibility and presence¹³, disproportionally publicized information of sensitive nature with regard to real, identifiable¹⁴ and living victims.¹⁵

III Protection of the Rights of Prisoners in Closed-Type Institutions

Imprisoned person is vulnerable, it is exposed to absolute subjection to authorities and therewith under the State protection. The consideration that the State has punished the person by deprivation of liberty for the committed criminal offence, does not constitute a basis to assume that this person - the offender, with the loss of freedom lose other rights arising from internationally accepted standards of human rights. This person like any person retains the right to a humane behaviour inoffensive to human dignity, free from moral and physical violence. In the way of treatment of prisoners the said principles must be met.

¹² Similar cases then the court must assess a provision of balance between the freedom of speech and inviolability of private life, frequently occurs in case-law of the European countries and of the U.S. Identical conclusions may be found also in the FRG Federal Constitutional Court (First Division) judgment of 5 June 1973 in Case BVerfGE 35, 202 FCC, as well as in Case *Briscoe v. Reader's Digest Association Inc.*, 483 P. 2d 34 (Cal. 1971) adjudicated by the Supreme Court of California in 1971, et al.

¹³ Interview by A.Grūtups to Dina Gailīte, Editor-in-Chief of the "Jurista vārds" journal. // „Jurista vārds” No.28 (623), dated 13.07.2010.

¹⁴ Recital 26 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data prescribes: "to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person". Indication to exact given name, surname, job position in the work of the author, when describing a specific historical time period, does not reduce the possibility to identify the person if surname is changed, since associative information overlap for the reader knowing minimum data of the person required for its recognition, allows high degree of identification of a person.

¹⁵ The right to act in respect of the privacy disappears only with the death of the particular person – the only proprietor of this right.

The Constitutional Court has recognized that the State in adoption of a regulatory framework that applies to prisoners, as far as possible should be guided by recommendations developed by the United Nations and the Council of Europe in this field.¹⁶

Thus the European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules) have emphasized that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society.

When the person is deprived from his or her liberty, then his or her existence, protection of the rights becomes fully dependant on the prison staff, administration and governmental officials. Thus the Ombudsman has always kept focus on the rights of prisoners and mechanism for protection thereof and its efficiency.

In protection of the rights of prisoners the Ombudsman exercises his functions and tasks when considering applications, visiting prisons (within one year 10 visits to prisons have been made), as well as participating in various working groups entailed with execution of criminal penalties and arrest as a security measure (the Working Group arranged by the Ministry of Justice on Execution of Criminal Penalties, Working Group on development of the legislative framework with regard to appealing/disputing the decisions taken during execution of arrest and execution of criminal penalties).

Like in previous years, also in 2012 significant numbers of submissions from prisoners have been received with regard to various issues related to execution of punishment and arrest as a security measure. Submissions were received mainly on the following issues:

- inadequate living conditions;
- health care issues relating to the quality of medical treatment and lack of timely access to physicians;
- frustration of the decisions taken by an administrative commission;
- request for transfer to another prison. There are two reasons for it:
 - 1) would like to be closer to the place of residence of their relatives,
 - 2) feel to be endangered from other inmates, especially if prior to imprisonment cooperated with the Police officers.
- violations of the principle of good administration - prison staff members do not explain the rights, do not listen, do not issue the necessary laws and regulations, take unjustified decisions;
- procedure for process and granting of short- and long-term meetings;
- correspondence censorship (do not send or check the contents of the letters);
- a request to send court adjudications (ECtHR, administrative courts);
- video-surveillance in the cells of lifers and excessively rigid regime;
- price differences of the prison store "Mego" and the lack of discounts as opposed to the equivalent stores operating outside prison;

¹⁶ Judgment of the Constitutional Court of 14 June 2007 in Case No.2006-31-01, p.14.2.

- disproportionately high electricity rates for the use of individual household appliances;
- problems of the internal hierarchy of the prison.

Non-compliance of social conditions with human rights requirements (in 2011 received 164 written submissions, in 2012 - 68 submissions)

Still submissions are received with regard to overcrowded living cells, insufficient ventilation, lighting, lack of hot water in cells, inadequate enclosure of sanitary unit. In order to use resources in a rational manner, employees of the Ombudsman's Office do not carry out an immediate review of individual complaints. The received information about each prison is collected and taken into account when making the monitoring visit. It should be noted that during the last year there has been an increase in the number of submissions where prisoners are asking to send former opinions by the Ombudsman's provided with regard the conditions in prisons. Most submissions of this nature are received from the Daugavgrīvas prison. Prisoners are making active use of the Ombudsman's opinions to safeguard their rights. For example, through recourse to administrative courts against actual actions of prisons, failing to provide the circumstances of treatment meeting human rights. At the same time there is a tendency present, that also the administrative courts are increasingly applying to the Ombudsman with a request to provide information about the findings during the visit.

In connection with implementation of the recommendations provided by Ombudsman, in the context of the living conditions found during the monitoring visits we can refer to an example of the Daugavgrīvas prison.

In 2011 after visit to the Daugavpils Unit of the Daugavgrīvas Prison, Ombudsman has issued an opinion that the recommendations issued in 2010 and relating to the conditions for quarantine and living cells have not been taken into account. Also in punishment isolation cells, it was found that enclosure of the sanitary unit does not provide the protection of personal privacy. In 2012 when revisiting the Daugavpils Unit of the Daugavgrīvas Prison, in relation to punishment isolation cells it was concluded that the recommendation has been observed with respect to the punishment isolation cells. While in quarantine cells enclosures of sanitary units with doors were installed, artificial lighting was improved. Prison employees pointed out that in the quarantine cells as minimum as possible numbers of prisoners are accommodated. A conclusion has been drawn that the provided recommendation has been taken into account.

1. Health Care Issues Related to the Quality of Medical Treatment and Access to Medical Assistance

In respect of health care in 2012, in most cases, submissions have been received where complaints are expressed about the medical care received in prisons – about actions of medical staff (for example, not referring to the State Medical Commission for the Assessment of Health Condition and Working Ability to determine disability or for performance of repeated disability expert examination and not referring to different procedures), about carelessness of medical staff resulting in deterioration of the state of health. The Ombudsman, after receipt of the submissions of such nature, shall forward the same for examination on their merits to the Health Inspectorate.

For several years a topical problem in the prisons is availability of dental assistance and dental treatment. Clause 2.2 of the Cabinet Regulation No.199 "Regulation on the Health Care of the Remand Prisoners and Convicts in Remand Prisons and Institutions of the Deprivation of Liberty" of 20 March 2007 prescribes: "Prisoners shall get the emergency denticare free of charge". To find out what is included in the emergency care, position of the Prison Administration has been received. The received reply has specified that in the course of development of the draft regulation, consultations have been carried out with the Dental Centre. According to viewpoint of the Dental Centre, emergency dental assistance includes acute cases, injuries of face, jaw and bleeding. Upon initiative of the Prison Administration in prisons the medical assistance in cases of dental pain was also included as emergency medical assistance, providing to the patient to be given assuagements, filling of a tooth with provisional plug or tooth extraction - without provision of dental treatment. At present the prisoners, like people in community, can treat their teeth or make dentures only at their own expense. The Prison Administration has expressed their view that it would not be proportionate, if prisoners in prisons could receive such medical treatment services completely free of charge, or covering only partially, for what other people is required to pay a significant sum of money. From Ombudsman's view the prison administration, in collaboration with a prisoner on a case-by-case basis, if the prisoner do not have financial resources, but need more extensive denticare, should find a solution in order to the prisoner is not exposed to long-term tooth pain. Otherwise, there can be found a breach of the prohibition of torture prescribed by Article 95 of the Constitution of the Republic of Latvia and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe. Analogous approach must be applied also for free making of dentures subject to individual evaluation and provided that the prisoner participates in solution of the issue, if there are evidence of medical nature that refusal to make free denture results in difficult food intake for the prisoner.

In 2012 also the question of the availability of dentist to the prisoners has become topical. Particularly many such submissions were received from Daugavgrīvas, also from Valmieras prison. For example, prisoners have indicated that a dentist is not available in the Daugavgrīvas prison. To assess the above information, employees of the Ombudsman's Office in January 2012 visited the Daugavgrīvas prison. During the visit, it was established that for about half a year there is no dentist in the Daugavpils Unit of the Daugavgrīvas Prison, but in the Grīvas Unit a dentist is employed on a part-time basis. Therefore prisoners should two to three weeks wait for the dental assistance. In the case of dental pain the prison doctors dispense assuagements or anti-inflammatories to the prisoners. At the same time during the visit documents were received attesting that Director of the Daugavgrīvas Prison in writing has applied to managers of dentistry institutions of the city of Daugavpils with regard to possibilities to provide paid services for inmates in prison, however, there has been no interest. The problems in provision of dental care are outstanding also in other prisons. For example, Valmieras prison for several years is looking for a doctor - stomatologist. Advertisements for a vacant doctor-dentist staff position were placed on the Employment State Agency website, on the Prison Administration website, however, no applicants have applied. Ombudsman has indicated to the responsible authorities that other solutions must be sought to ensure for the prisoners access to

doctor - stomatologist, otherwise, there can be found a violation of the prohibition of inhuman behaviour or even torture.

A number of prisoners have applied to the Ombudsman's Office with a request to provide information about treatment of type C virus hepatitis in prisons. In this context, the Ombudsman asked the Prison Administration to explain whether prisoners are entitled to receive the State-paid examinations of type C virus hepatitis and medication reimbursement. Response indicated that the inmates having hepatitis, including the chronic type C virus hepatitis in prisons receive medical treatment in accordance with the Regulations of Health Care for Remand Prisoners and Convicts. They are getting symptomatic treatment. At the same time it was indicated that the type of medical treatment of antiretroviral chronic hepatitis belongs to the tertiary health care, which is not included in the health care of prisoners. The said type of medical treatment in Latvia may be prescribed only by hepatologist from the Riga Austrumu Hospital Infectology Centre. In the case if antiretroviral treatment is prescribed to people in Latvia with medication reimbursement, the patient needs to make co-payment for medicines approximately as LVL 2609.00 (two thousand six hundred nine) plus patient contributions for a large number of examinations. The Prison Administration considers that they can not afford that prisoners could fully receive free treatment for which other people are required to pay a significant amount of money. Therefore a situation could develop that people who need treatment, might want to get to the prison, to get free specific treatment of type C virus hepatitis. Ombudsman partly agree to this view, holding the view that medical treatment and pre-treatment examination of type C virus hepatitis should be ensured similarly to the HIV/AIDS treatment and examination – within the framework of government programme - to all the people free of charge.

Already in 28 June 2010 the Ombudsman has given his opinion No.20 "On the availability of medical assistance in prisons". One of the issues activated therein was regarding the relationship of the organisation of medical care for prisoners with the overall public health care. Ombudsman concluded that the range of health care services paid for the prisoners from the State budget is by far less than for the persons in community whose income level prevents their access to health care services at their own financial expenses. Thus the existing health care system for prisoners does not comply with the guidelines outlined in the European Prison Rules. The opinion was sent to the competent authorities. In this context, the Ministry of Justice, in cooperation with the Ministry of Health, developed amendments to the laws and regulations and on 27 September 2006 the Cabinet Regulation No.744 "Amendments to the Cabinet Regulation No.1046 'Procedure for Health Care Organization and Funding' of 19 December 2006" (hereinafter referred to as the Regulation No.1046), setting a new division of competences between the Ministry of Justice and Ministry of Health with regard to funding of health care for prisoners. Subclause 17.2 of the Regulation No.1046 provides that the Ministry of Justice shall bear the costs for: (1) health care services of medical staff working in prison; (2) the patients' contributions and patients' co-payments for prisoners receiving health care outside prison. These amendments have approximated the rights of the prison doctors to the rights of the doctors working in community, by providing for the prison doctors the right to prescribe referrals for examinations to prisoners that will enable them to receive state subsidised outpatient and inpatient health care services in the medical treatment facilities outside prisons at the expense of the State budget, including also medication

reimbursement, in the same way as with the rest of population in community. Amendments were enacted on 1 January 2012. In order to get information about the current situation in the field of availability of medical assistance in prisons, the Ombudsman has applied to the Prison Administration. The Prison Administration has notified that the prisoners are able to receive medical treatment and medical examinations in the treatment institutions in the community. During the first two months of 2012 prisons have organised and provided outpatient – in 219 cases, inpatient - in 54 cases examinations and medical treatment of prisoners in the treatment institutions outside the prison. Also the medication reimbursement to the prisoners have been prescribed.

2. Good Administration Issues in Prisons

A large number of submissions have been received with regard to probable illegal actions of the prison staff against prisoners. For example, unfounded reports on the regime violations, on violations committed during search, on the rude and disrespectful treatment of the prison staff, prison staff members do not explain to the prisoners their rights, do not listen, fail to provide with the laws and regulations of interest, make non-substantiated decisions, on failure to send the correspondence to the addressee et al.

Section 10 of the State Administration Structure Law stipulates that the State administration in its activities shall observe the principles of good administration. Such principles shall include openness with respect to private individuals and the public, the protection of data, the fair implementation of procedures within a reasonable time period and other regulations, the aim of which is to ensure that State administration observes the rights and lawful interests of private individuals. In prison the good administration principle means that inmates have free access to the prison staff both in written and verbal form. While the prison administration has to respond to the complaints of prisoners in a good time, communicate with them actively, make aware of their rights and responsibilities, maximum efforts should be put to respond to the questions of interest to prisoners on their merits.

In several submissions the inmates have asked to explain the right to long-term visit with other people who are not relatives, according to provisions of the Sentence Execution Code of Latvia. It derives from Paragraph two, Section 45 of the Sentence Execution Code of Latvia that the administration of deprivation of liberty institution, to decide the question of granting visit for the convicted person with other people (who are not relatives, but with whom prior to imprisonment they have had cohabitation, or have common children) it is necessary to obtain information from local authorities where the person has lived prior to imprisonment.

For example, a complaint has been received from a convict that the municipality where the person has had his place of residence prior to imprisonment, for a long time (more than six months) has failed to provide to the prison administration information necessary to justify decision on the visit, which is favourable/unfavourable for the convicted person. Ombudsman pointed out to the municipality that, in accordance with Section 57 of the State Administration Structure Law, such a cooperation between the institutions is not considered to be due administration. In addition, it has been indicated that in accordance with Paragraph three of Section 10 of the State Administration Structure Law, the State administration shall act in the public interest and the public interest shall include also proportionate observance of the rights and lawful interests of private individuals. During examination of particular submission

the prison administration was drawing attention to the fact that such situations when the local government for a long time fails to respond (or responds after multiple requests) to the prisoner himself or to the prison facility, have been met fairly often in practice. In this connection an appeal has been sent to the Prison Administration for the development of uniform procedures (recommendations or guidelines) on how Section 45, Paragraph two of the Sentence Execution Code of Latvia should be applicable in order to facilitate the implementation of uniform practice in all the prisons by safeguarding the person's right to privacy and family life. Ombudsman has made also a recommendation in respect of compliance with good administration, requesting information from other institutions. Ombudsman will follow the implementation of recommendations.

In the course of the year several submissions have been received with complaints about the fact that the prison staff are using Russian language during negotiations with the prisoners, whose native language is Latvian. Prisoners at the same time have indicated that some employees really do not have knowledge of the official language. Submissions of this nature are mostly received from the Daugavgrīvas prison. On this issue Ombudsman has repeatedly indicated to the Daugavgrīvas prison administration. Since submissions of this kind are still received by the Ombudsman's Office, this matter will be activated.

Inmates have indicated that short-term visits are taking place behind the glass wall. Neither the Sentence Execution Code of Latvia, nor the Cabinet Regulation of 30 May 2006 prescribes such a delimitation. Constitutional Court of the Republic of Latvia in its judgment of 23 April 2009 in the Case No. 2008-42-01 "On compliance of the words of Section 13, Clause 6 of the Law on the Order of Keeping in Custody "one hour long" and "in the presence of prison administration representative" with Article 96 of the Constitution of the Republic of Latvia" with regard to remand prisoners has drawn a conclusion that laws have prescribed that the court or the investigating judge may limit the scope of persons which the prisoner may meet, and to lay down what security precautions, including delimitation with the glass wall, can be applied during the visit. It is considered to be less restrictive measure than the automatic physical delimitation of all the remand prisoners and visitors. In the light of the above, the fact that in the prisons in the short-time visit room the remand prisoner and the visitors are separated by a glass wall, is considered to be a disproportionate restriction of the right to a private life. However, although such disproportionate restriction exists, it does not follow from the contested provision. The contested provision determines only that the visit may take place in the presence of a representative of the prison administration, but that does not mean that the prisoner must be separated from the visitor with a glass wall. The provision can be implemented also in the way that the representative of remand prison administration quite simply is present in a meeting room, but the space is not divided by a glass wall.¹⁷ Ombudsman believes that this must also *mutatis mutandis* apply to the convicted persons. Conditions existing in the visiting rooms (glass walls) should be tailored in accordance with conclusions and findings of the Constitutional Court. For a prison administration there is no legal basis for separation of prisoners from visitors with a glass wall during the short-time visit, however, the glass wall is still used during short-time visits to the prisoners. Presence of glass delimitation is an

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Judgment of the Constitutional Court of 23 April 2009 in Case No.2008-42-01, p.17.3.1.

established practice that is difficult to change. This issue is discussed in the Working Group for Execution of Criminal Punishment and the Prison Administration was requested to change this practice.

In prisons the question of objects authorised in parcels and storage has been activated. Namely, prison authorities quite often are applying grammatical interpretation of the list of items allowed for the convicted persons to be stored and to be received in parcels, specified by annexes to the Cabinet Regulation No.423 "Internal Procedural Rules in the Institutions for Deprivation of Liberty" of 30 May 2006, avoiding to view them systemically with the purpose and substance of the regulatory framework.

For example, the Ombudsman's Office has received a submission, which indicated that the person A. wanted to deliver a judgment of administrative district court as a parcel to the person serving his sentence in the Daugavgrīvas prison. However, the Daugavgrīvas prison administration has removed it on the grounds that the consignment contained items (copies of documents) that are not included in Annex 11 to the Cabinet Regulation No.423 "Internal Procedural Rules in the Institutions for Deprivation of Liberty" of 30 May 2006. Ombudsman has applied to the Prison Administration, indicating that the prohibition to receive copies of the court judgement or case-law of any other courts in a parcel does not satisfy the requirements of human rights, *as well as* objectives and spirit of the law and rules issued on the basis thereof. At the same time, it was indicated that the prohibition to receive a judgment, which could be applied to him and can help to safeguard his rights and interests, moreover, is publicly available on the Internet, is not only contrary to the human rights requirements, but is also deemed to be a violation of the principle of good administration. The said letter has been sent for information also to the Ministry of Justice.

During the second half of the year there was a sharp increase of the prisoners' submissions with regard to the Cabinet Regulation No.282 of 28 April 2012, enacted on 28 April 2012. The said Cabinet Regulation has amended Cabinet Regulation No.327 "Regulations on Pricelist for the Paid Services Provided by the Prison Administration" of 25 April 2006, by prescribing higher payments for the use of electricity in prisons, and other paid services provided by the Prison Administration. Prisoners is of the opinion that payment for the use of electricity is abnormally high and does not conform to the actual electricity consumption. Ombudsman in this respect, on his own initiative has launched a verification procedure on compliance with the principle of good administration of the Cabinet Regulation No.327 of 2 April 2006. Verification procedure is under the examination stage.

In 2012, it was found that the Latvian Council of Sworn Advocates, considering the complaints of a prisoner about the lawyer's work, when sending a reply, addresses it to the prison administration instead of the prisoner himself. Ombudsman in his recommendation to the Latvian Council of Sworn Advocates has specified that such acts does not comply with the principle of good administration and has asked for further observance of the rights of prisoners.

In 2012 several complaints have been received where prisoners indicated that the prison authorities fail to ensure timely delivery or acceptance of the correspondence, resulting in reduced time for the persons, for example, to prepare documents for the

court, or documents are received late by the court authorities. It was found that such action may affect the person's right to a fair trial. In some cases, appraisal has to be given to the fact that the courts, upon assessment of specific cases, have renewed the procedural terms, and therefore the right of the person for access to court has been secured.

Breach of the principle of good administration has been also found in actions of prison staff and the Police officers by carrying out multiple searches of the person prior to escorting. Namely, the prisoner indicated that before he and his possessions were moved to another prison, the prisoner has been searched twice. Initially the person was searched by the prison staff, immediately after that by the State Police staff. Ombudsman has concluded that when the staff of two institutions with a short interval is operating with a single purpose (public order and security of a person), it is not considered to be effective and appropriate use of time and resources. In addition, during these activities the rights of the person have been disproportionately restricted. Therewith a conclusion has to be drawn that such acts of the authorities are contrary to the principles of good administration. Findings of the opinion were communicated to the Ministry of Justice.

3. Security Issues

The question of the safety of prisoners has become topical in the Ombudsman's Office. Namely, a number of submissions have been received from the prisoners, where they pointed to the fact that in the course of criminal proceedings or after the court verdict of guilty has become effective they have cooperated or are cooperating with various law enforcement authorities. As a result, when placed in prisons, they are exposed to risks from other prisoners, and pretty often they fail to see proper support for their security from the prison staff. Employees of the Ombudsman's Office, when visiting prisons, have concluded that there are outstanding problems of violence in prisons and in particular for certain categories of prisoners, which also includes the prisoners who have cooperated with the investigating authorities. Specific prisoners have pointed out that, in this context, they have been exposed to physical influence by other prisoners, but no prison staff has recorded bodily injuries. Ombudsman in these cases have applied to the Prison Administration with a request for verification to be performed. The fact of threat is not confirmed, however, cooperation of the prisoner with law enforcement authorities has been confirmed. Aims of the officials are to detect and to prevent criminal offences in community, consequently a public interest, and also a prisoner with participation in these activities entails a danger for the rest of the time he will spend in prison. Thus cooperation between the law enforcement institutions is essential to prevent possible risks of threat. It should be noted that also the European Court of Human Rights in the case J.L. against Latvia has noted to the lack of adequate cooperation between responsible public authorities to protect the prisoners having cooperated with the investigating bodies in detection of other criminal offences, from subsequent physical revenge in prison.

The Ombudsman's Office has received several submissions from prisoners about the cases of violence from the prison staff. These submissions have been forwarded to the Prison Administration with a request to check and to notify the Ombudsman. In its replies the Prison Administration has communicated that there have been discussions made with particular prisoners and either they have ceased to have claims against actions of the staff, or they have withdrawn their submissions. It is known that

prohibition to be subject to inhuman or degrading treatment included in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe imposes to the State a positive obligation to thoroughly investigate and to carry out checks in any event of violence, and to provide a sufficiently plausible explanation for the origin of the bodily injuries incurred by the prisoners. Otherwise, there is a reason to believe that a breach of the human rights of prisoners has occurred. Given that the Ombudsman has become suspicious of ineffective checks, the said was notified to the Ministry of Justice. In response, the Ministry of Justice has indicated that they will call for the Prison Administration not to terminate the proceedings of submissions and to respond, irrespective of whether they are or are not withdrawn.

From the submissions received and also from the verification visits to the prisons, a conclusion has to be drawn, that the internal hierarchy of prisoners is still topical, creating moral and physical violence. Already in the previous years, the Ombudsman has brought these problems to notice of the prisons, the Prison Administration and the Ministry of Justice. However, signals are still received from prisoners of the events of mutual violence.

4. Problems of Lifers

The Ombudsman's Office during the last six months have received a number of submissions from lifers, who are serving their sentence in the Daugavgrīvas prison. Submissions have indicated to an excessively severe regime for execution of punishment, video-surveillance in cells. In order to assess the information received, employees of the Ombudsman's Office have visited the Daugavpils Unit of the Daugavgrīvas prison. The visit was aimed at video-surveillance of lifers as one of the means of supervision, individual risk assessment and conditions for serving sentence in the lifers' block. During the visit, violations of human rights have been found.

Conclusions and recommendations:

1. According to normative regulations in Latvia, the lifers are isolated from other prisoners, but it is important to allow them to communicate at a sufficient level. There is a need to improve the role of the prison staff in the process of execution of punishment for the lifers. The Prison Administration and the Daugavgrīvas prison authorities were asked to take appropriate measures to balance the security measures with resocialization, as well as mutual communication between the prisoners.

2. Supervision of the lifers in Daugavgrīvas prison is realised via video-surveillance. Video-surveillance has been installed in all the living cells (both at the lower, and at the medium regime level), and all the lifers are exposed to it round the clock. Video-surveillance is also installed in the corridors and exercising areas. Video-surveillance of the prisoners' is associated with privacy of the person. Even though the Sentence Execution Code of Latvia requires increased supervision of lifers, however, it does not provide for video-surveillance of the prisoners as one of the types of supervision. Also the Committee for the Prevention of Torture of the Council of Europe (hereinafter referred to as the CPT) in several its reports has emphasized that a prisoner may not be kept under stricter regime for longer than this is necessary, due to the risk caused by his behaviour, by indicating that in many countries the lifers are not considered more dangerous than other prisoners. At the same time explaining that many of these prisoners have long-term interests of stable and peaceful environment without conflicts. The above presents evidence that the

strengthened supervision provisions (compared with other inmates), including video-surveillance, from the point of view of human rights can only be permitted by making individual risk assessment.

From the human rights point of view the practice cannot be acceptable that video-surveillance as means of supervision is used in relation to all the lifers, building on the punishment applied to them as the sole criterion. Thereby the Ombudsman has asked the Daugavgrīvas prison authorities to carry out individual risk assessment for each convicted person, which should include an assessment of the prisoner's behaviour, including the description and the analysis of the committed violations of the regime for serving the sentence, or where the desire to work, to study has been expressed, how the rest of the time is spent. The Prison Administration was recommended to ensure that also in Jelgavas prison for the lifers and those to whom the court of first instance has imposed the life sentence, an individual risk assessment should be made. At the same time recommendations were proposed to the Ministry of Justice to include in the Sentence Execution Code of Latvia (hereinafter referred to as the SIK) regulatory framework with regard to the possibility of using video-surveillance as additional measure of supervision by exact stipulations of criteria, in which cases video-surveillance of the prisoners in living accommodations is permissible.

Within the Standing Working Group for Execution of Criminal Punishments of the Ministry of Justice, which also involves representatives from the Ombudsman's Office, discussions have been launched with regard to incorporation of video-surveillance in prisons into the normative regulations, by precisely providing the cases in which and the criteria by which in living cells it is permitted as an additional measure of supervision. By 20 December 2012 amendments to the Sentence Execution Code of Latvia, normative regulations are included for individual risk assessment of the lifers when applying special measures - handcuffs. At the same time, it is expected that such an assessment is carried out not less frequently than every six months. However, the issue still remains unresolved with regard to separation of the lifers from other inmates. Ombudsman still considers that the issue of separation of the lifers should be reviewed, which is also indicated in the above opinion. Namely, the responsible authorities were asked to change the penal policy with regard to persons who have been sentenced to life. From the point of view of human rights this category of prisoners must not be isolated from others, only on the basis that the court has applied the custodial sentence-life imprisonment. Each slightest risk must be evaluated individually. Moreover, the Committee for the Prevention of Torture of the Council of Europe already in 2007 has urged Latvia to revise this separation policy. While after the 2009 visit to Latvia has repeatedly highlighted that the separation of lifers from other prison inmates is not justified, solely on the grounds of their sentence.

5. Resocialization

At the beginning of 2012 amendments have entered into force to the Sentence Execution Code of Latvia, providing for individual assessment of risk and needs, on the basis of which resocialization plan for a convicted person must be developed, which once a year should be reassessed. These amendments have opened a new page in the penal policy, directed towards progressive, effective execution of punishments with a view to promote law-abiding life of the prisoners after returning to community. In visits to prison, special attention has been paid to activities for implementation of

resocialization processes of the persons sentenced with a deprivation of liberty. During visits to prisons (for example, Daugavgrīvas prison, Brasas prison), by becoming cognizant of assessments already performed, after negotiations with staff the most directly involved in the development of resocialization plan, employees of the Ombudsman's Office have concluded that, practically, the new framework does not function or functions formally in practice. Also the prison staff members have acknowledged that it is possible that the individual risk and needs assessment in future will bring positive change in the execution of sentence, but at present, taking into account the current financial situation and the number of employees in prisons (for example, in Brasas prison there are 80-90 prisoners per one senior inspector) this work is performed superficially. It is important to understand that only by including the concepts "resocialization", "individual risk assessment", "resocialization plan" in the regulatory framework, the objective of these amendment in the Sentence Execution Code of Latvia will not be achieved. Activities prescribed by law must be filled with content, by creating awareness of the nature of resocialization in prisons and making the implementation of the tasks laid down in the law possible (financial resources for additional staff positions, salaries of the employees). Also in 2013 the Ombudsman's Offices will pay special attention to the process of implementation and ensuring of the prisoners' resocialization.

6. Progressive System of Deprivation of Liberty Sentence and Efficiency of Appeals to Decisions Taken within its Framework. Work of Administrative Commissions

During the first half of the year a large number of complaints has been received related to amendments to the Sentence Execution Code of Latvia on the transition from the three levels of serving sentence to two in a semi-closed prison. Previously in the highest level of semi-closed prison there was no period defined, for how long time a prisoner must spend there, in order to qualify for the open prison. Right now the law provides that one quarter of sentence must be served. Prisoners believe that thus their rights are being infringed. Ombudsman is of the opinion that these amendments are not making the situation of convicted persons worse, since the principle of progressive execution of punishment does not provide for the automatic mitigation of the regime for serving sentence. The administrative commission shall have the right to examine all the criteria laid down in the law and the resocialization level achieved by the convicted person, but is not under obligation to mitigate the regime for serving sentence. Moreover, the convicted persons, irrespective of the regime for serving sentence unchangeably retain their right to request conditional release prior to the term of sentence. It should be noted that these amendments, by reducing the levels, were aimed at making execution of the deprivation of liberty sentence more flexible and simpler. Previously the differences between the regimes for serving sentence were represented by the extent of the rights of convicted persons - incidence, duration of visits, the number of phone conversations et al. Such a fragmented multi-level system restricted the possibilities of convicted persons to engage in resocialization programs, namely, they were unable to complete a training course undertaken or one of resocialization programs due to the change of regime.

In 2011 the Ombudsman has provided his opinion, where it has been concluded that a mechanism is ineffective for appeals to decisions on disciplinary penalties applied against convicted persons and decisions made by administrative commissions. Findings of the opinion were discussed in the Working Group arranged by the

Ministry of Justice on improvement of the normative regulations for disputing/appealing decisions made during the period of execution of arrest and criminal punishment, where also representative of the Ombudsman's Office have participated. The Working Group has elaborated three possible models to improve the effectiveness of appeals against the disciplinary actions and decision of the administrative commissions.

1. Decisions of the Director of the Prison Administration with regard to disciplinary penalties imposed to the convicted persons appealed before the Administrative Court have to be adjudicated over a short period of time, thereby accelerating adjudication of complaints of the convicted persons about the applied disciplinary punishments;

2. Decision about imposition of the disciplinary penalty is not an administrative act, but internal decision of the institution, by providing that the disciplinary penalty imposed on the convicted person shall be subject to dispute before the Director of the Prison Administration, whose decision is final and not subject to appeal to the court;

3. The disciplinary penalties imposed on the convicted person are internal decisions of the institution, however, if the decision of the Commission that is unfavourable to the convicted person and based on the imposed disciplinary punishment is appealed to the Court, then the Court when examining the decision of the Commission, shall also consider lawfulness of the disciplinary punishment. That is, if the Commission takes a decision on the aggravating of the regime for serving the sentence or refuses to mitigate the existing regime for serving the sentence on the basis of the applied disciplinary punishment, the convicted person shall be entitled to appeal against the decision to the District (City) Court under procedure prescribed by the Criminal Procedure Law. Therewith the court at the same time has to assess justification and lawfulness of the applied disciplinary punishment and the decision by the Commission made on the basis thereof.

Ombudsman has supported the 3rd option, at the same time pointing to several weaknesses. The Working Group was invited to continue the discussion on development of this option, upon careful evaluation thereof. The Working Group has accepted it and discussions are still going on for evaluation of the amendments required for implementation of the 3rd option. Work on the putting appeals mechanism into order will continue also in the next year.

The aforementioned opinion has activated also a question that in the cases when a convicted person has appealed to the court against a decision of the administrative commission and the court has set it aside, the administrative commission, when examining the specific matter anew, quite often fails to take into account indications of the court of justice and is repeatedly making identical decisions. In a law-governed state such a situation is not acceptable, and the obligation to comply with the decision of the court is derived both from the Constitution of the Republic of Latvia and from the Law "On Judiciary Power". However, the Ombudsman's Office still receives submissions from the prisoners with complaints about the fact that the administrative commissions are not taking into account the deficiencies identified by the court in the decisions being made. Therewith examination of this matter will continue also in 2013.

During the last few months the question has become topical of the fact that administrative commissions when deciding on the proposal of motion to the court of progress of the convicted person towards conditional release prior to the term of

sentence are setting as a compulsory criterion a requirement to the convicted person to produce the employer's certification of the fact that after release from prison, he will be provided with a job. Criteria that should be taken into account by the administrative commission, when deciding about change of the regime for serving sentence of the convicted person and his progress towards conditional release prior to the term of sentence, are governed by the Cabinet Regulation No.282 "Regulations on the Operational Procedure of Administrative Commission and Criteria for Decision-Making" of 31 March 2009. The Regulation does not provide for the existence of paid employment outside prison as a compulsory criterion that must be evaluated by the administrative commission when deciding about proposal of motion to the Court with regard to conditional early release of the convict. Ombudsman is of the opinion that this situation is not acceptable, moreover, the person while being in prison, cannot find a job. Ombudsman will draw to the attention of Prison Administration that such practice is unacceptable.

It should be noted that in the course of this year several verification procedures have been completed that were initiated in 2011 with regard to the prisoners' topics. For example, the verification procedure, which was initiated on 24 August 2004 with regard to restrictions prescribed by the Cabinet Regulation No.740 "Regulations Regarding Stipends" for prisoners to get stipends. Ombudsman concluded that there is no legitimate objective visible in the prohibition imposed by Regulation No.740 to get a stipend for educatees that are prison inmates or acquire extramural professional education programs (vocational training). Thereby the above Regulations allow for unjustified different treatment of persons who are in the same comparable conditions. Therewith there is a breach of the rights guaranteed by Article 91 of the Constitution of the Republic of Latvia. In response to the Ombudsman's Opinion, the Ministry of Education and Science has recognised the need to prepare amendments to the said normative enactment, in order to also the trainees acquiring vocational training in prisons should be able to get a stipend.

IV Respect for the Rights of Persons during Pre-Trial Investigation

In 2012 the Ombudsman's Office has received 67 written submissions with regard to the actions and decisions of a person directing the proceedings during the pre-trial stage of investigation in the criminal proceedings. The nature of complaints varies and affects both actions of a person directing the proceedings during performance of various investigative activities (for example, on a search to be carried out), and decisions made by a person directing the proceedings (for example, for the imposition of an attachment on property). In some cases, submitters are not satisfied with, in their opinion, wrong qualification of an offence determined by a person directing the proceedings.

Example:

Submitter S.L. was detained by the State Police officers and criminal proceedings were initiated. S.L. was released the next day and learned that the car belonging to him has been seized and inspected. From S.L.'s point of view the seizure was aimed at getting his admission in committing a criminal offence. S.L. has indicated also that during the period of three months no procedural activities were carried out with him. With complaints about actions of the person directing the

proceedings S.L. was approached to the supervising Aizkraukle district Prosecutor's Office and the Prosecutor's Office of Zemgales Court Region, however, he has got no substantiated reply of the reasons which would prevent the return of his car. Upon assessment of information being at disposal of the Ombudsman's Office, there was no reason to doubt that the State Police officers have seized and inspected the car owned by S.L. within the framework of the launched criminal proceedings. Even though restriction of S.L.'s rights to property and privacy has taken place, the said right is not absolute and under the procedure prescribed by law can be reasonably limited to attain a legitimate purpose. Investigation and disclosure of criminal offence is considered to be a legitimate purpose.

The Ombudsman's Office has received also certain submissions from victims in criminal proceedings, which are of the opinion that the criminal proceedings are lasting too long, are not taking place actively enough or else have been delayed. In cases when the submitters have not exercised their rights prescribed by Criminal Procedure to make complaints of this nature to the supervising prosecutor, these rights are explained to them, and they are invited to use them. In some cases, submitters are applying to Ombudsman, for example, when supervising authorities have already established the fact of delayed criminal proceedings and officials have already been punished for the allowed violations. In such cases, Ombudsman is not undertaking repeated evaluation of the allowed human rights violations.

Example:

Submitter O.A. has applied to the Ombudsman's Office, by complaining about actions of a person directing the criminal proceedings failing to provide responses to submissions in a timely manner and to provide information about the progress of criminal proceedings. At the same time, a complaint was expressed of the protracted course of criminal proceedings and that the responsible officer has got disproportionately soft disciplinary punishment. In the course of making cognizant with the documents attached to the submission, no violations were found in relation to responses given to the submitter. However, from replies of the supervising prosecutor it was evident that in particular sections of criminal proceedings delays have been found, but the responsible officer has become a subject to disciplinary liability. Ombudsman did not evaluate the circumstances specified in the submission once again, but concluded that there has been violation of the rights of O.A. as a victim for timely completion of the criminal proceedings, which has already been established by the supervising prosecutor. At the same time, the Ombudsman has explained to the submitter that a natural person shall not have the right to require that the public official is punished in any particular way. To O.A. her right was explained to apply to the court for compensation for damage incurred, if any.

In certain submissions the submitters have complained also with regard to decisions of the supervising prosecutor or higher-level prosecutors that have been made without reason, or are not sufficiently justified. When receiving submissions with complaints about decisions or actions made by a person directing the proceedings or by a prosecutor, the Ombudsman shall refrain from assessment of the same to their merits, namely the qualification of criminal offence or presence of constituent elements, lawfulness of performance of investigative operations, as well as admissibility of evidence. In these matters the Ombudsman might examine the matter

concerning availability and efficiency of the mechanism for protection of rights established in the Criminal Procedure Law.

However, although the Ombudsman Law defines for the Ombudsman a comprehensive right to supervise observance of human rights, including also in criminal proceedings, an objective obstacle to examination of such cases is too narrow interpretation of certain provisions of the Criminal Procedure Law and quite often also irregular practice and deprecatory attitude of the law enforcement authorities towards such right for the Ombudsman, which often has made the Ombudsman's powers to carry out the monitoring of respect for human rights in criminal proceedings to be only declaratory. Section 375, Paragraph one of the Criminal Procedure Law prescribes that the officials who perform the criminal proceedings, as well as the persons to whom the referred to officials present the relevant materials in accordance with the procedures provided for in this Law, shall be permitted to familiarise themselves with materials of the criminal case. Law enforcement authorities have repeatedly indicated that the Ombudsman is not among these persons.

Example:

The Ombudsman's Office has initiated a verification procedure due to the submitter's A. submission. The submitter has stated that already for 70 days he has not received answers to his submissions about the actions of the person directing a process within the criminal proceedings, as well as the Investigative Judge's decision. Verification procedure was initiated in order to assess the effectiveness of the mechanism for protection of rights available in the country. Within the framework of verification procedure information was requested from the supervising prosecutor asking to send copies of individual documents, with which A previously has been made cognizant, however, they were not at his disposal. On the basis of Section 375, Paragraph one of the Criminal Procedure Law, this Ombudsman's request was rejected. Also the Chief Prosecutor of the supervising Riga City Ziemeļu District Prosecutor's Office, as well as the Chief Prosecutor of the Riga Region of Court considered that Ombudsman is not among the officials, which are entitled to access to the materials of pre-trial criminal proceedings, while provisions of Section 13 of the Ombudsman Law providing for the Ombudsman the right to become cognizant of all the documents required in the verification procedure, are not binding to the law enforcement authorities. Given that without reviewing the requested documents it was not possible to provide an objective assessment of circumstances relevant for the verification procedure, the verification procedure has been terminated.

In connection with the said, the Ombudsman has applied both to Saeima and the Ministry of Justice with the proposals for amendments to the Criminal Procedure Law to provide for the Ombudsman the right to acquaint with certain types of materials from criminal case also during the pre-trial investigation.

V Legal Status and Protection of the Detained Foreigners and Asylum Seekers

When compared to the previous reporting period, in 2012 the number of complaints to the Ombudsman's Office about the person's legal status has been diminished. The fact that there is no increase for this indicator in statistical summaries of the Office from year to year, may be explained by several factors. In relation to

certain groups of people, for example, asylum seekers and refugees, the Ombudsman has limited options to provide assistance due to the extent of his mandate, therefore, asylum seekers with complaints for refusal of protection and refugees and the persons to whom alternative status has been granted with requests to help in solution of social problems are basically applying to non-governmental organisations providing to the said persons the required assistance, including legal assistance within the framework of projects of the European Refugee Fund.

Despite the fact that few written complaints are submitted by the refugees and the asylum seekers to the Ombudsman's Office, in the past two few years during verbal consultations a problem has been found in the area of social protection for the persons being granted the alternative status. Therefore in 2012 the Ombudsman's Office has carried out a study on access of the persons being granted the alternative status, to social assistance and social services. The main findings and conclusions of the research clearly identify problems for the persons being granted the alternative status with integration in the country and the range of issues precluding to accelerate this integration.

First, at the national level no mechanism is operating, to facilitate faster learning of state language in the said group of people. This finding likewise can be equally applied to the persons having received an alternative status and the refugees, as well as to the immigrants initially staying in the country with temporary residence permits and over time are becoming eligible to qualify for getting a permanent residence permit.

Second, the state language learning problem sequentially makes difficult access of the said persons to the market and vocational training, leading this group to social isolation. This is an unacceptable situation that the persons having received protection in the country after expiration of the term for receipt of the state benefit (9 months) are automatically channelled to queues of the social assistance claimants in municipalities that do not receive additional funding to work with this group from the government or other sources.

In the same way the research points to issues such as difficulties for the persons being granted alternative status to settle the issue of the place of residence, access to information and obtaining health care, that are of no less importance and their resolution should have required immediate action by the responsible authorities.

The range of issues that are constantly invariable in the proportion of complaints submitted to the Office, is related to refusals to issue residence permits to foreigners or their cancellation, if the members of family of the foreigner are living in the country and in the case of refusal of residence the right to inviolability of family life guaranteed for the person could potentially be restricted.

Thus in 2012 the Ombudsman's Office has received several verbal and one written complaint with regard to cancellation of the repatriant status and residence permit for the persons whose family - parents, brothers, sisters and other immediate family - is living in the Republic of Latvia and for them a constant sustainable relationship has developed with that country, despite the fact that they are born outside Latvia and have arrived to Latvia only in the mid-1990s as a result of the repatriation process.

In practice the Ombudsman's Office has hardly ever assessed the cases when a residence permit is cancelled for repatriants because of their criminal record. One of the cases of complaint, when the residence permit was cancelled for the repatriant

having sentenced for deprivation of liberty, a verification procedure has been initiated. However, in view of the fact that the Office of Citizenship and Migration Affairs have renewed a residence permit for the person, there was no basis for continuation of the verification procedure.

In other cases, there have been verbal complaints received about deprivation from the residence permit and the repatriant status, which was based on criminal conviction, however, the submitters did not ask for the Ombudsman's Office to become involved in resolving the problem, since they on their own have disputed under the appellate procedure the deprivation of repatriant status at the court.

Deprivation of residence permit due to the reasons of national and public order and safety and attempts to balance this limit with the right to inviolability of family life guaranteed for the person¹⁸ is presenting a problem not only in Latvia. Also in other countries of the European Union addressing this dilemma has led to a sharp political discussions,¹⁹ and it is likely that evaluation of different aspects of this problem in the near future might more frequently become to the Ombudsman's sight.

In addition to the above it could be noted that the Ombudsman's Office annually receives a small number of complaints from foreigners, who for health reasons are unable to get through the Latvian language test and to receive a permanent residence permit (or to get citizenship of the Republic of Latvia). These complaints basically are also expressed to the Ombudsman's Office *viva voce* without any request for initiation of the verification procedure. In these cases, the persons have got recommendations to engage the unused law enforcement mechanisms - appeal against the decisions before the authority or the court.

No complaints about unreasonable deprivation of citizenship or prohibition to get a citizenship were received by the Ombudsman's Office in 2012, however, the cases have still been identified during verbal consultations, when the process of deprivation of citizenship is initiated against the persons, since another state automatically in the early 1990s, has granted citizenship to these people.

1. On the Observance of Forced Removal

On 16 December 2008 Directive 2008/115/EC of the European Parliament and of the Council has adopted on common standards and procedures in Member States for returning illegally staying third-country nationals, where (Article 8 (6)) it was prescribed that Member States shall provide for an effective forced-return monitoring system.

By virtue of Amendments to the Immigration Law of 1 July 2011, more specifically, Section 50.7, the Ombudsman of the Republic of Latvia was entrusted with observance of the forced removal process.

In order to create an effective system of observance, the Ombudsman's Office within the framework of the European Return Fund 2011 project, in 2012 has completed development of the methodology for questioning of foreigners, and when continuing development of the observance mechanism, in 2013-2015 intends to develop a similar methodology in respect of the other tasks contained in the

¹⁸ Rights of the person to family life shall cover also the aspects such as entering into marriage, inviolability of family life, right to form a family et al.

¹⁹ "Theresa May 'picking a fight with judges' on immigration"// <http://www.bbc.co.uk/news/uk-21489899>, as well as "Theresa May says judges are 'ignoring' deportation" //law<http://www.bbc.co.uk/news/uk-21489890>

observation process - the survey of detention places of the persons subject to removal and observance during the actual removal.²⁰

During the period from 1 January 2012 to 31 December 2012 the Ombudsman's Office has received for execution 58 decisions on the forced removal of foreigners, of which in 9 cases the observation could not be put into practice since the Ombudsman's Office was not notified on the expulsion of foreigners in due time or due to lack of time it was not possible to find an interpreter who could ensure communication with the foreigner subject to removal.

During observation process the problems were identified, to which the foreigners subject to removal have pointed out:

1) information about the removal is provided late, and the persons have not received information about the rights guaranteed to them for defence and appeal against the decision in an understandable and a timely manner;

2) there is a problem to communicate with one's family and acquaintances to notify on extradition and return to their home country, because there are limits imposed on the use of personal cell phones or the persons themselves have no phones or money to communicate with relatives at home.

3) at the place of detention of the foreigners subject to forced removal at Rudolfa Street, Riga premises are not designated for long-term detention. A few foreigners subject to removal have pointed to deficiencies in the isolator equipment, thus, for example, it was indicated that the shower required for personal hygiene is not ensured. Complaints were also received about the quality and quantity of food.

Given that for majority of the foreigners forced removal is performed through the "Riga" International Airport, and the temporary accommodation premises used by the State Border Guard in Riga are not entirely suitable for long-term accommodation of foreigners subject to forced removal, consideration should be given to the need to arrange appropriate detention facilities in Riga, or in the vicinity, where the persons subject to forced removal, might be detained for longer than 3-4 days.

Also in 2012, in conjunction with data obtained through the observation process, the Ombudsman's Office has initiated two verification procedures on possible violations of human rights in the forced removal process where the decision about forced removal was adopted with regard to persons who:

- due to mental illness did not fully control their actions, and removal was intended to the country, in which the reigning regime carried out brutal repressions against their own nationals (authorities committed serious human rights abuses, including mass arrests, killings without a court sentence, arbitrary detentions, violent disappearances, torture of prisoners, including children, and ill-treatment of them);

- asked them not to be expelled to their country of origin, where they were threatened to physical violence and exposure to torture or other inhuman acts.

²⁰ Section 50.7, Paragraph two of the Immigration Law prescribes that the observation of the forced removal process shall include:

1) visiting of the detained foreigners subject to forced removal at their place of accommodation in order to evaluate the conditions of accommodation and maintenance, also the provision of medical assistance and the satisfaction of other needs;

2) a questioning of the foreigner in order to determine his or her awareness of the progress of the forced removal process, his or her rights and the possibility for implementation thereof;

3) observation of return of the personal property of the detained person seized at the time of detention, transportation from the accommodation centre of detained persons to the departure point, handing-over and registration of luggage, as well as participation in the actual implementation of the forced removal process in order to evaluate the observance of the human rights of the foreigner to be removed.

In respect of both cases investigation is going on in the Ombudsman's Office, and provision of opinions in them is provided for 2013.

VI Guarantees for Protection of the Rights of Persons in Contacts with the Police

In 2012 employees of the Ombudsman's Office in cooperation with the State Police College have arranged for the training "*Compliance with Human Rights in the Work of State Police*". Within the framework of the said project employees of the Ombudsman's Office have visited several (11) State Police institutions in various regions of the country (Riga, Liepaja, Daugavpils, Jelgava, Gulbene, Kuldiga, Rezekne, Cesis). During these visits employees of the Ombudsman's Office have conducted classes for the Order and Criminal Police staff (in total, approximately 200) on compliance with fundamental rights in their daily activities. During the classes the Police officers were made cognizant of the tasks and scope of the Ombudsman's Office, as well as the following topics were reviewed:

- (1) Compliance with anti-discrimination in the work of Police;
- (2) Fixing of the racial, ethnic features, when instituting criminal proceedings;
- (3) Investigation of criminal offences prescribed by Section 78 of the Criminal Law (triggering national, ethnic or racial hatred)
- (4) Application of the principle of good administration in the State Police work;
- (5) Aspects of prohibition of inhuman treatment in contacts with the Police. Specific character of detention of the persons with mental disorders;
- (6) Securing of the right of person to inviolability of private life (in the work of Police). Compliance with the presumption of innocence principle in communication of the Police with mass media;
- (7) The respect for the rights of minors in the work of Police;
- (8) Respect for the rights of the child in contacts with the Police (specialist training, subjects, delivery of a child to the police station, etc.);
- (9) The right of parents to participate in any actions undertaken with their child;
- (10) Initiation of criminal proceedings pursuant to Section 174 of the Criminal Law (Cruelty Towards and Violence Against a Minor).

After completion of the said training classes, the State Police College has shown interest in further cooperation with specialists from the Ombudsman's Office.

In 2012 employees of the Ombudsman's Office have visited a temporary place of detention (hereinafter referred to as the TPD) of the State Police (hereinafter referred to as the SP) Jurmala Station, as well as repeatedly visited TPDs of Riga, Jelgava and Dobeles Stations. The purpose of the said visits was to assess compliance of conditions in the TPD with the human rights requirements, to observe compliance with the Constitutional Court judgment in the Case No.2010-44-01, as well as to provide their views on the improvements to be made. Activities of SP for improvement of living conditions in TPD, as well as the fact that administrations of individual TPD (in Riga) and regions comply with the recommendations provided by the Ombudsman's Office has to be appreciated.

In 2012 the Ombudsman's Office has received complaints about Jelgava, Aizkraukle, Ogre, Dobeles, Jekabpils and Talsi TPDs. In their submissions the persons request for the Ombudsman's opinion or evaluation to be sent or provided with regard

to living conditions in SP TPDs. The said information is often used to submit a claim to the administrative court with regard to actual actions of SP, failing to ensure living conditions in TPD compliant with the human rights requirements. The observed increase in the number of applications in this matter could be linked to judgments of administrative courts positive for the persons (for example, judgment of the Administrative Regional Court on Kuldīga TPD²¹ and Ventspils TPD²². Judgments of the Administrative District Court on Jelgava TPD²³, Aizkraukle TPD²⁴ un Jekabpils TPD²⁵).

Ombudsman's Office has evaluated also compliance of the normative enactments governing the work of Police with the human rights requirements.

In 2012 shortcomings were identified in the normative enactments governing the work of TPDs (in the maintenance provisions the quantity of vitamins does not comply with the Ministry of Health standards). Ombudsman has applied to the Ministry of Interior to make the necessary amendments to the Cabinet regulation. However, the Ministry of Internal Affairs rejected the said proposal, indicating that person's temporary accommodation in TPD is not likely to cause any damage to health.

Section 257, Paragraph one of the Latvian Administrative Violations Code (hereinafter referred to as the Code) prescribes that an instrument for the committing of a violation shall be removed if such administrative violation has been committed, which is provided for in Section 149.⁴, Paragraph seven; Section 149.⁵, Paragraph four or Section 149.¹⁵ of the Code (except for the violation provided for in Paragraph six) up to the implementation of the fine applied. Therefore, the said provision imposes on the SP an obligation to remove and to store up to payment of the fine also vehicles of the offenders. According to Annex 4, Clause 1.1 of the Cabinet Regulation "Regulations for Handling the Property and Documents Seized in the Administrative Violation Case" of 7 December 2010, storage of the vehicle seized in the administrative violation matter costs 8 LVL per 24 hours. While the fine for driving a vehicle repeatedly within a year, if there is no driving licence or there is a prohibition on the utilisation of the driving licence (Section 149.⁴, Paragraph seven of the Code) is LVL 400, failure to comply with a person's repeated request to stop the vehicle (for fleeing), who is authorised to inspect the vehicle driver's documents (Section 149.⁵, Paragraph four of the Code) is LVL 800 - 1000, driving of a vehicle under the influence of alcohol or narcotic or other intoxicating substances (Section 149.¹⁵ of the Code) is LVL 150-1000. Therefore the costs for storage of the vehicle within the period of four months will be equal or exceed the maximum fine prescribed by the sanction. Accordingly, the Ombudsman has found that the imposed limit unreasonably restricts the rights of the person to the property. In view of the above, the Ombudsman has referred to the Saeima (Parliament), asking to amend Paragraph one of Section 257 of the Code. Even though the Ombudsman's proposal was referred to additional discussion to the Ministry of Justice, however, on 12 December 2012 the Constitutional Court of the Republic of Latvia, after receipt of petition from a private person has decided to initiate the case of compliance of Paragraph one of Section 257 of the Code with Article 105 of the Constitution.

²¹ Judgment of AAT of 11 May 2012 in Case No.A42974609 AA43 -0496-12/11

²² Judgment of AAT of 2 July 2010 in Case No.A42510707 AA43-0885-10/19

²³ Judgment of ART of 16 November 2012 in Case No.A42 06266 11

²⁴ Judgment of ART of 8 January 2013 in Case No.A42042012

²⁵ Judgment of ART of 22 January 2013 in Case No.A420475612

On 26 May 2011 the Ombudsman applied to the Saeima of the Republic of Latvia, asking to draw up amendments to Section 43⁶. of the Road Traffic Law (hereinafter referred to as the RTL) (Photo Radars), but on 20 December 2011 submitted proposals for amendments to the RTL Section 43⁶. However, the Saeima Economic, Agrarian, Environmental and Regional Policy Committee in its meeting of 11 January 2012 decided not to support (not to move forward), these proposals for consideration in the Saeima. In view of the above, on 29 May 2012 the Ombudsman has submitted a constitutional complaint to the Constitutional Court, where asked:

1) to find that the decision-making procedure prescribed by the RTL Section 43⁶, Paragraph three and five does not comply with Article 1 and 92 of the Satversme;

2) to declare that the RTL Section 43⁶, Paragraph two does not comply with Article 91 of the Satversme;

3) to declare that the RTL Section 43⁶, Paragraph seven and eight does not comply with Article 92 of the Satversme.

On 29 June 2012 the Constitutional Court decided to institute the proceedings No.2012-15-01 with regard to compliance of the RTL Section 43⁶, Paragraph three, five seven and eight with Article 92 of the Constitution of the Republic of Latvia.

The Ombudsman's Office still receives submissions from the persons with regard to cruel or inhuman actions of the Police officers as well decisions and actions taken or carried out within the framework of criminal proceedings or administrative proceedings. Although there are not many complaints received by the Ombudsman's Office about the actions of the State Police officers, however, in several verification procedures Ombudsman has established that:

1. The complaints of persons about inhuman treatment were not investigated effectively by the SP:

For example: A person was escorted from the Riga Central Prison to the Riga Regional Court. While meeting with employees of the Ombudsman's Office, the person indicated that during the said escorting the State Police officers unduly applied their physical strength and special measures against him. In the Riga Central Prison Medical Unit bodily injuries were found for the person. SP Internal Security Office (hereinafter referred to as the ISO) has performed a departmental examination in total for one year and seven months, which substantially exceeds the time limit laid down by the Law "On Police". In view of the above, a conclusion has to be drawn that departmental examination is not carried out within a reasonable period of time and is not considered to be an effective in the context of Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Violation of the prohibition of inhuman treatment:

For example: in connection with the injuries incurred during the detention, individual was placed in a hospital, where several State Police officers have guarded him. At the same time against the person special measures were applied - handcuffs and legcuffs. Upon evaluation of materials of the verification procedure, it was found that the use of handcuffs and legcuffs against a person whose mobility has been made significantly difficult, as well as his strapping to the bed, despite continuous guarding by several police officers, is considered to be a disproportionate set of security measures. Taking into account the period of time (one month), when the said security measures (means) were applied, it was found the minimum level of suffering is exceeded and actions of the officers has to be assessed as an infringement of Article 3

of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. Breach of the principle of good administration:

For example: on 1 March 2006, the Court sentenced the person to punishment - administrative arrest. However, its execution was commenced only on 16 September 2011. During this period the person within initiated criminal proceedings has participated in 30 procedural acts in the SP, in the Prosecutor's Office and in the Court. As well as to him a security measure – arrest – was applied. SP officers for 377 times have requested information about this person (including, on the day when he was arrested). Upon assessment of materials of the verification procedure, it was found that actions of the State Police, when executing the court decision in an administrative violation case more than five years later, do not comply with the principle of good administration.

On 10 January 2013 at the meeting of the State Secretaries a draft concept "On solutions for transformation of the State Police Internal Security Office to an institution under supervision of the Minister for the Interior". The Cabinet of Ministers has supported transformation of the State Police Internal Security Office to an institution under supervision of the Minister for the Interior, by giving to it the status of operational subject. Ombudsman on several occasions has found inefficiency of the verifications carried out by the SP ISO. Also the European Court of Human Rights in the case *Jasinskis against Latvia* has indicated that the official investigation could not be considered as an appropriate in cases where there is an alleged eventual ill-treatment within the meaning of Article 3 of the Convention. Therewith the wish of the Ministry of Interior to create a body independent from the State Police, to carry out checks of lawfulness of actions of its employees from the point of view of institutional independence has to be appreciated.

VII Topicalities of the Division of Civil and Political Rights

1. Right to Fair Trial

The Ombudsman's Office every year receives submissions concerning the right of the person to a fair trial. When making analysis of the content of submissions, a conclusion has to be drawn that these applies to different aspects of a fair trial – access to the court, right of the person to high-quality and effective defence. Like in 2011, the largest number of submissions on this topic (67 submissions in writing) concerns fair hearing of the case, when people are not satisfied with adjudication of the court. The key problem, however, emerging from the received applications is related to the right of person to hearing in fair court within reasonable period of time, by additional activation of the question concerning deadlines for development of full court judgment. In relation to the latest issues, the Ombudsman has issued also opinions on identified breaches in a number of inspection proceedings.

1.1 Access to the Court

In 2012 there were 32 written submissions received that access to the court is denied, since the court does not relieve the persons from state duty payment, thereby denying to the person the right to a fair trial. It should be noted that in a number of cases also the imprisoned persons have addressed the submissions of such content.

However, no violations have been found, because the substance of the issue was perceived in the fact that the persons themselves have not provided sufficient information to the court about their financial situation. The fact should be appreciated that the courts in their decisions extensively explain and indicate to the persons how the person would have act and what documents should be submitted in order to the court it should be possible to make a objective decision (for example, information has to be updated on granting of the status of low-income or needy person, etc.). While in relation to the prisoners in administrative matters there is an evident trend that the court itself requires information from prison on the prisoner's income. In some cases, the prisoners have pointed to the problem, that the prison administration personnel fail to send procedural documents to the court in a timely manner, resulting in limitations of the right of the person for access to the court. However, in the examined cases, although the problems have been perceived in the organization of work of prisons, violations of the rights of prisoners for access to the court were not found. The courts had recognised the conditions for delay to be valid and had resumed procedural time limits for submission of the procedural documents.

1.2 Reasonable Deadlines

A long-term problem, indicated by the Ombudsman during recent years, is examination of matters within reasonable terms. Mainly applications are being received with regard to examination of criminal proceedings in the long term, but this trend is evident also in the process of examination of civil and administrative matters.

For example, in one of the verification procedures it was found that in the first instance a civil matter is adjudicated now for more than 12 years already! Legal proceedings in the matter in the first instance within a period of 12 years is not yet over, and overall potential period for adjudicating in the matter may be extended for another indefinite period of time, if the matter will be directed to adjudicating under the appellate and the cassation procedure. During the verification procedure Ombudsman has found violation of the right to fair trial, more specifically, to the timely adjudicating the case. Furthermore, it was found that due to conduct of the court, adjudicating is lingering to the extent that due to the death of parties in the matter replacement of parties in the matter has begun, which even more has extended consideration of the matter.

There is one still topical question of time limits for adjudicating the matter in an appellate instance. In some cases, the Ombudsman has established that for the people who have been convicted by a judgment of the court of first instance and continue to be in detention, since they have appealed against the judgment of the court of first instance, the appellate proceedings are lasting for years, sometimes the period spent under arrest is approaching the sentence for deprivation of liberty awarded by the court of first instance.

Ombudsman has brought to notice of the courts the fact that the European Court of Human Rights has noted in its practice that the main thing to be assessed, with a view to decide, whether the right to a hearing within a reasonable time is complied with, is - are there disproportionately long periods of time in the matter, when there are no actions taking place in the matter at all. In a number of events it was found that there are disproportionately long wait periods from one court sitting to the next one, when no other actions are carried out in the matter.

For example, the District Court has postponed the adjudication in the matter due to examination of other matter and the next court sitting was stipulated in a year. After a year the parties failed to appear in the court sitting, since the court had not sent the summons on the time and place of the sitting to the parties in the matter. Despite the fact that the matter was not dealt with due to the fault of the court, the next court sitting was repeatedly stipulated in a year. The same trend is evident also in a number of other matters when the next court sittings, regardless of the reasons for postponement of the court sitting, are stipulated after the disproportionately long time.

It should be noted, however, that Ombudsman has also has found positive examples as well, where the court finds solutions to correct mistakes.

For example, a complaint was received from a convicted person, where the person pointed to the fact that the court sitting, where the question of person's early release had to be decided, did not take place because the Court had failed to appoint the escort, thus denying to him the right to attend the court sitting. However, there was no violation perceived in the specific case, since the Court immediately and without delay has stipulated the next court sitting in a week, as well as ensured attendance of the prisoner in the court sitting and the matter was adjudicated on its merits.

Although most criticism in this event relates to the executive power, which does not provide the courts with a sufficient number of judges and assistants in order to carry out examination of the matters in a timely manner, however, there are deficiencies demonstrated in the work of the courts.

1.2.1 Disproportionate Extension for Preparation of the Full Text of the Court Judgment

In several verification procedures the Ombudsman has identified problems with the KPL Section 530 providing rights to judges after preparation of an abridged judgment to extend the time for preparation of full judgment. A conclusion has been drawn that the provision is not elaborated in sufficient details and gives judges too much and uncontrolled freedom to its application.

The first sentence of Article 92 of the Constitution of the Republic of Latvia prescribes that everyone has the right to defend his or her rights and lawful interests in a fair court. The right to a fair trial, includes also examination of the matter within a reasonable period of time. The KPL Section 14, Paragraph one provides that each person has the right to the completion of criminal proceedings within a reasonable term, that is, without unjustified delay. The completion of criminal proceedings within a reasonable term is connected with the scope of a case, legal complexity, amount of procedural activities, attitude of persons involved in the proceedings towards fulfilment of duties and other objective conditions.

Paragraph one of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) guarantees for the person rights to a fair trial, including the rights of persons to timely proceedings in the matter, i.e., progress of the matter in a reasonable time. These rules are aimed at "*protection of all the parties to proceedings [...] from excessive procedural delays*",²⁶ to prevent excessively long legal uncertainty, as well as to

²⁶

See Judgment of the European Court of Human Rights in Case *Stögmüller v. Austria*, (1969).

maintain confidence in the efficiency and reliability of the judicial system.²⁷ In criminal proceedings the term for examination of the matter, in accordance with the European Court of Human Rights (hereinafter referred to as the ECtHR) case-law is calculated from the stage of investigation rather from the date when the case comes before the court. ECtHR has defined that the time calculation in criminal proceedings shall begin when the "*competent authorities have notified to certain person to be a suspect in committing of crime*",²⁸ or "*condition of the person has been substantially affected*",²⁹ namely, the rights of individual within criminal proceedings have been significantly restricted.

KPL Section 530 prescribed (Paragraph three of the Section in such wording was in force until 1 July 2012) that:

„(1) A court may prepare a judgment in an abridged form, consisting of an introductory part and an operative part.

(2) If a court has prepared an abridged judgment, the court shall prepare the full judgment within 14 days, announcing the date of the availability thereof.

(3) If due to plausible reasons a full court adjudication is not drawn up in a specified time, a judge shall notify a public prosecutor, accused, victim, defence counsel and representative when a full court adjudication will be available.”

For example, one of the verification procedures has found that abridged judgment of the court in a criminal matter was pronounced on 18 March 2011, by announcing that the date for preparation of full judgment is 1 April 2011. While on 1 April 2011 the Court announced to the parties stated that the date of receipt of the full judgment is stipulated on 2 June, but on 2 June 2011 the date for receipt of the full judgment has been set for 14 July 2011.

Upon assessment of the legal and factual circumstances of the particular case, the Ombudsman has pointed out that, by restricting the freedom of the individual, on the basis of the court judgement, he has the right not only to receive a reasoned judgment, but also to receive it in time, in order to make use of the procedural protection measures specified by the KPL, for example, to submit appellate or cassation complaints. Extended hesitation to prepare and to issue to the accused person the reasoned adjudication of the court:

1) may affect the total term for adjudicating the matter and hence also adjudicating the matter within a reasonable period of time;

2) leave the accused person in a state of legal uncertainty, which is not acceptable from the point of view of the right to a fair trial;

3) may interfere with the right to liberty. Any arrest must be substantiated and effective control over the arrest must be in place. The reasoned part for alteration of the security measure can be established only from the full judgment, therefore, long-term imprisonment of the person on the basis of an abridged judgment may deny the accused person access to disputing the altered security measure.

²⁷ Judgment of the European Court of Human Rights of 28 July 1999 in Case *Bottazzi v. Italy*, application No. 34884/97.

²⁸ See Judgment of the European Court of Human Rights in Case *De Veer v. Belgium* (1980).

²⁹ See Judgment of the European Court of Human Rights in Case *Ekle v. FRG* (1982).

Upon evaluation of the legal and factual circumstances of particular verification procedure, Ombudsman has perceived infringement of the right of the person to a fair trial.

Similar violations were found also in other verification procedures.

For example, during the verification procedure it was found that the District Court on 10 November 2011 has adopted the guilty verdict when adjudicating the criminal matter. The judge has notified that the full text of the judgment will be available on 25 November 2011, but the full judgment of the court for the person was available only on 18 July 2012. The judge failed to notify the parties in the proceedings of the reasons why the full text of the judgment has not been prepared within the required time limit and failed to notify availability of the full judgment at a later date. The accused person was under arrest for entire this time period, which in accordance with repeated conclusions in the ECtHR case-law is an additional condition for the court to show due diligence and to take all the necessary measures in the matter in order not to allow for undue delay. The lack of availability of the full judgment text for more than six months has denied for the accused person an opportunity to lodge an appellate complaint against the judgment, thus creating a significant infringement of the right to a fair trial. It should be added that this was not the first case in practice of the particular judge. However, the Ombudsman has welcomed the fact that the Judicial Disciplinary Committee also duly responded to this case. Such cases not only creates the basis for the claim of the person for compensation against the State, but also undermines the judiciary authority as a whole.

With the aim of preventing deficiencies in provisions of the KPL Section 530, the Ombudsman has appealed to the Ministry of Justice with a request to initiate amendments to the said provision, and this initiative has resulted in amendments to the KPL Section 530, Paragraph three that have improved the wording of the Section. From 1 July 2012 KPL the KPL Section 530, Paragraph three provides that:

"If due to the volume, or legal complexity of the matter, or other objective reasons full court judgment is not drawn up in a specified time, a judge shall notify a public prosecutor, accused, victim, defence counsel and representative when a full court adjudication will be available. Drawing up the full court adjudication may be postponed only once."

During the discussion on the amendments to the KPL Section 530, Paragraph three there was not sufficiently many evidences at disposal of the Ombudsman's Office on consistency throughout the judiciary system with unjustified and long periods for drawing up the full judgment, therefore a proposal to set a maximum term for drawing up of the full judgment was not supported. On the other hand, if the complaints of such content from parties of the proceedings will be submitted to the Ombudsman's Office also in the future, a possibility will be assessed to repeatedly apply to the Ministry of Justice with the proposal to specify the extension for drawing up the full judgment laid down by the KPL Section 530, Paragraph three.

2. Positions provided to the Constitutional Court with regard to Fair Trial

Ombudsman in 2012 has provided several positions to the Constitutional Court in relation to compliance of separate legal provisions with Article 92 of the Constitution:

1. The Constitutional Court in Case No. 2011-21-01 has assessed compliance of Section 8, Paragraph two of the Law on Reparation of Damages Caused by State Administrative Institutions with fundamental rights set out in Article 92 of the Constitution of the Republic of Latvia, namely, the right of individual to appropriate reimbursement. Ombudsman has provided his view in this case, where indicated that the current framework in the contested provision is not just disproportionate per se, but whereas the right to commensurate compensation is inseparably linked to the provision of other human rights, also limits effective exercise of the rights of the other. Thereby pointing to the fact that the contested provision does not comply with Article 92 of the Satversme.
2. The Constitutional Court in Case No. 2012-06-01 has assessed compliance of the Civil Procedure Law Section 128, Paragraph two, Clause 3, 5 and 7 to Article 90 and 92 of the Constitution of the Republic of Latvia. Ombudsman, by giving his views on all the issues which at the Ombudsman's discretion may play a role in the case, indicated to the Constitutional Court that only the fact that from the submitter's viewpoint a different civil procedure would be more rational, does not mean that the existing process is contrary to human rights.
3. The Constitutional Court in Case No. 2012-10-01 has assessed, whether words of Section 17 of the Law on Reparation of Damages Caused by State Administrative Institutions "*however, no later than within five years from the entry into force of the illegal administrative act of the institution or the day when illegal actual action has been performed*" complies with Article 92 of the Constitution of the Republic of Latvia. Expressing his views, Ombudsman pointed out that taking into account the time limits for adjudicating the matters in administrative courts as a less restrictive means for rights and legal interests of the person to attain the legitimate goal should be regarded extension of the time limits laid down in Section 17 of the Reimbursement Law. While the most effective means have to be considered the national obligation to arrange the work of judicial system with a view to reducing the terms for adjudicating administrative matters.
4. The Constitutional Court in Case No.2012-07-01 has evaluated compliance of Section 179, Paragraph one of the Credit Institutions Law to Article 105 of the Constitution of the Republic of Latvia, and compliance Section 179, Paragraph two of the Credit Institutions Law to the first sentence of Article 92 of the Constitution of the Republic of Latvia. Ombudsman expressed the opinion that the contested provision corresponds to Article 105 and the first sentence of Article 92 of the Satversme.