



REPUBLIC OF MACEDONIA
O M B U D S A M A N

ANNUAL REPORT 2004

Skopje, March 2004



Our motto:

We help citizens to realize their rights on easier way, public administration to become real service and to improve relations toward citizens.

Our principles:

We follow and supervise work of the authorities on transparent, honest and professional way.

We have equal relations with everyone.

Professionals in our work open for suggestions and ready for permanent progress.

***Ombudsman
Ixhet Memeti***

INTRODUCTION

For the degree of securing respect, promotion and protection of the constitutional and legal rights of the citizens by the bodies of the public administration and by the other bodies and organizations which have public authorization and for respecting the members of the communities in the bodies of the public administration, the bodies of the units of the local self-government and the public institutions and services conclusive to article 36 of the Law of the Ombudsman ("Official gazette of the RM" No. 60/03), the Ombudsman has a duty to inform the Assembly of the Republic of Macedonia with an annual report and publish the same in the media.

That is why the Ombudsman, based on all undertaken activities during 2004, submits this report which contains the facts concerning the organization, the manner of working, the staff and the means of conducting work, the statements of the degree of respecting the constitutional freedoms and rights of the citizens and other persons, description of relevant problems, statistic data for received, processed and complaints which are still acted on, description of certain specific cases of violation and other activities of the Ombudsman.

Finally, the Ombudsman considers that the content of this report of the Assembly of Republic of Macedonia, as a representative body of the political rule, that is the parliamentary democracy should serve as an instrument in acting out the political control and supervision in the Government's workings, as a carrier of the executive rule in the application of the Constitution, the laws, other regulations and international agreements ratified in accordance with the Constitution in the matter of realization of the rights of the citizens on one hand, and also to introduce the general public to the actions undertaken by the Ombudsman in the process triggered by the submitted complaints to give an additional contribution in the creation of suggestions for securing the responsibility of all the carriers of public and other functions, i.e. the public administration in whole regarding the fact that the public above all is a public and anti bureaucratic process, on the other hand.



1 ORGANIZATION, PERSONNEL AND FUNDS

1.1. Organization and work methods

Starting from the constitutional disposition the organization of the Ombudsman is based according to the classic model of national parliamentary ombudsmen in European countries and represents a separate, solitary and independent institution.

The Internal organization and the scope of work of the institution are organized in accordance with the responsibilities of the Ombudsman stated in the Constitution and the Ombudsman Law, all of which is for securing a work system for creating quality in the realization of the goals and tasks of the organizational forms and the function of the body in whole, based on the principles of lawfulness, responsibility, efficiency, economy, transparency, equality, fairness and predictability.

With that, in accordance with the Rulebook for work organization and systematization of the jobs and tasks, the Expert service of the Ombudsman is comprised of: a general secretary, three internal organizational units for: expert-analytic matters and acting on complaints of citizens, public relations and general matters together with the Department for protection of children's rights and six regional organizational units-chambers of the Ombudsman in Tetovo, Kichevo, Bitola, Strumica, Shtip and Kumanovo.

Also, the organization confirmed in this manner and method of work in the following periods should suffer certain changes, which will be directed toward a different manner of organization and personnel supply of the institution.

1.2. Personnel

For the most of this report period the Ombudsman has functioned with, the carrier of the function Ombudsman, four deputies and 32 executives in the Expert service of which 17 in the Organizational unit for expert-analytical matters and acting on complaints from citizens, 3 in the PR Organizational Unit and 12 executives in the general matters Organizational Unit.

According to the Qualification structure of the staff 21 of them have college diplomas, 10 have high school diplomas and one has an elementary school diploma. The sex structure is 19 women and 13 men, and nationality-wise the structure is: 27 Macedonians, two Albanians, two Serbs and one Vlach.

With that, parallel to the implementation of the new Law for the Ombudsman, new staff was employed and spatial, material, technical and financial conditions for the functioning of the Ombudsman were created, and enabling the employees in the regional offices for a responsible and successful overtaking of the responsibilities which lead to an opening of the respective offices in November 2004.

Despite the punctual delivery of the requests, the Ministry of finances didn't supply the necessary consents for employing the necessary staffs, as in the seat in Skopje, so in the regional offices, that is a consent was received only for a small number of job positions for which during the month of June by the Agency of public administrators a notice was published which after the completion of the total process were employed: 11 executives with the status of public administrators (10 executives for the offices as regional organizational units and also six public counselors and four junior referents-stenographers and one executive high collaborator for economic and financial matters in Skopje), and at the same time a reception was made of two executives-drivers in the expert service without the status of public administrators and one junior collaborator without issuing a notice as a result of the previously conducted training for working in the public administration in accordance with the decision made by the Government of the Republic of Macedonia, with which the year was completed with a total of 45 employees.

The office of the Ombudsman is lacking in necessary personnel, especially the regional offices which, according to plan should become operative and begin executing the tasks the moment the country starts the process of decentralization which should lead to constructing a local self-government able to regulate and govern the local public affairs. The surpassing of this condition represents a matter of high priority, which should be resolved as soon as possible.

1.3. Funds

The funds of the Ombudsman are secured by the Budget of the Republic of Macedonia, and for the first time in 2004 the Assembly of the Republic of Macedonia voted for the splitting from the Budget intended for the Ombudsman separately. But, despite that fact, the predicted funds were insufficient for the successful functioning of the institution. The donations from the Organization for security and cooperation-Mission in Skopje (OBSE), the Department for development of the Embassy of Canada and the Embassy of Italy helped to secure a normal functioning of the institution.

That is why it must be noted that this manner of financing is inadequate for the responsibilities and functions of the Ombudsman because the same depends largely on the Ministry of finances, with which its independence is decreased and represents an obstacle for the realization of the function.

Because of this, this problem must be resolved in the most adequate manner with the construction of a new, modern and transparent system of financing the Ombudsman.



2 REALIZATION OF THE SCOPE OF WORK

A prefix for the successful functioning of the Ombudsman is the existence of a certain level and quality in the workings of the public administration and the judiciary in a way which the regulations in which are predicted the rights and liberties of the citizens will be respected and carried out in reality.

The analysis of the all-around conditions from the functioning and acting of the Ombudsman regarding the respect for the citizens' rights leads to a conclusion that in the majority of the cases the legal norms aren't being respected or are being applied incorrectly, which leads to violations on the people's liberties and rights, and with that the trust in the institutions diminishes and the number of complaints directed toward the Ombudsman grows.

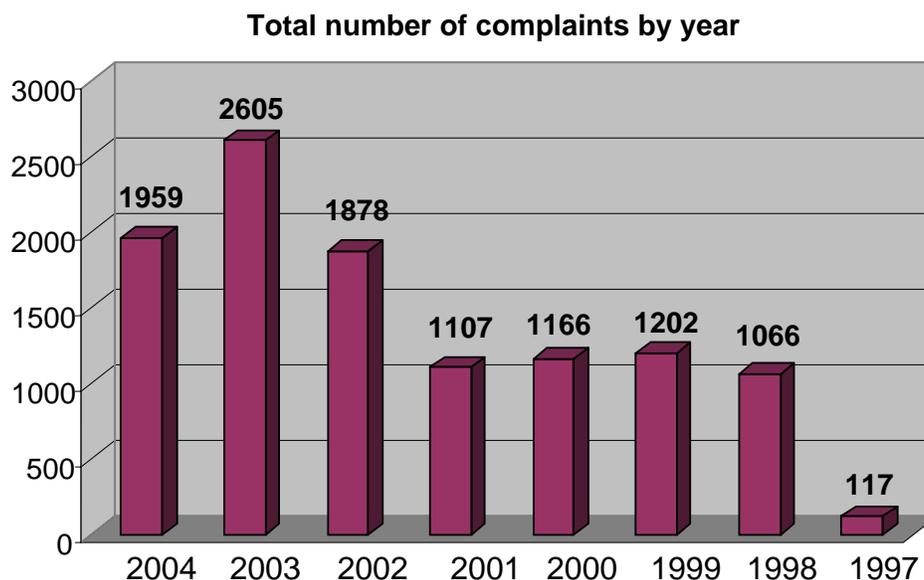
In fact, the facts say that the conditions in the Republic of Macedonia are very unfavorable because of which the construction of a lawful state, as a main element of a modern and democratically oriented society, goes slowly, insecurely and incompletely in our country and as a result of that we have an unfinished and inefficient public administration and judiciary which aren't able to perform their duties, that is to secure the interests of the citizens for providing lawfulness, responsibility and quality of work, i.e. the protection of the basic rights and freedoms as the foundation of the new constitutional order of the Republic of Macedonia.

2.1. Scope of work

This report year the Ombudsman acted on a total of 3.202 complaints of which 1.959 complaints were submitted in the report period by 2.299 citizens. The Ombudsman in 26 cases started a process on his own initiative. Aside from this 2.840 citizens were received for conversations in the office, and also in the regional offices of the Ombudsman, and more than 6.00 phone calls were answered.

If the data is analyzed for the number of received complaints regarding previous years it can be noticed that this year also the number of received complaints is quite high. Of the practical working and undertaken activities of the Ombudsman in the past years it can be said that we have the highest number of complaints in the year in which a media campaign was carried out in which the citizens had the opportunity to better acquaint themselves with the responsibilities, role and meaning of the institution Ombudsman in the protection of their constitutional and legal rights.

Chart No.1



2.2. Review of lodged complaints by field

The majority of complaints with which the citizens requested protection of their rights are: in the judiciary 385 or 19,65%, in the field of protection of rights in the police procedure 243 or 12,40%, the working relations 227 or 11,59%, in the property-legal field 217 or 11,08%, in the field of consumer rights (communal and other bills) 152 or 7,76%, in the field of social rights 126 or 6,43%, in the field of construction and urban planning 123 or 6,28%, in the field of retired and disabled persons' insurance 111 or 5,67%, apartment relations 92 or 4,70%, in health care 50 or 2,55%, in the protection of children's rights 47 or 2,40%, in the field of education, science, culture and sport 26 or 1,33%, in the finance and finance workings field 21 or 1,07%, in the environment field 12 or 0,62%, the rights of communities which are not majorities 11 or 0,6%, the rights of military persons and military bonds 6 or 0,31, in the field of customs 2 or 0,10% and also in other fields in which 108 or 5,51% complaints were lodged (**Review No.1, page 8 and Chart No.2, page 7**)

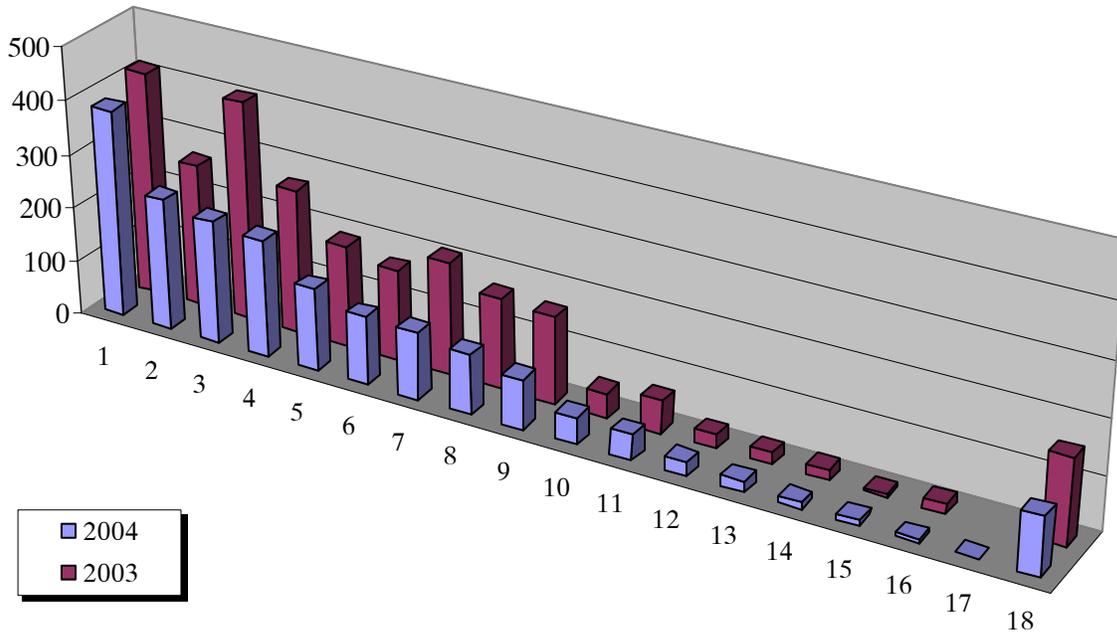
The review of lodged complaints in regard to last year shows that that relation isn't significantly changed, that is there is an insignificant increase or decrease of the number of complaints regarding certain fields. Regarding the bodies and organizations which the complaints are referring to, it is noticeable that the majority are in regard to the acts and activities chart no.2 undertaken and passed by the Ministry of justice, the Ministry of internal affairs, the Ministry of transportation and communication, the Ministry of labor and social politics, the Ministry of finances etc.

We must mention that the majority of complaints received in the report period are referring to bodies and organizations which have public authorizations.



Chart No.2

RECEIVED COMPLAINTS ACCORDING TO FIELDS



1. Protection of the rights in the field of judiciary
2. Protection of the rights in Police proceedings
3. Protection of the rights in the field of labour relations
4. Protection of the rights in the field of property rights
5. Protection of consumers' rights
6. Protection of the social rights
7. Protection of the rights in the field of urbanism and construction building
8. Protection of the rights in the field of pension and disability insurance
9. Protection of the rights in the field of housing relations
10. Protection in the field of health insurance and health protection
11. Protection of children's rights
12. Protection of the rights in the field of education, science, culture and sport
13. Protection of the rights in the field of finances
14. Protection of the rights in the field of environment
15. Protection of the rights of the communities which are not in majority
16. Protection of the rights of army officers and draftees
17. Protection of the rights in the field of Customs
18. Protection of the rights in other fields

According to ethnicity of the submitters of the complaints, the majority are Macedonians 1716 or 75,50%, 326 or 14,34% are Albanians and the smallest number, 4 or 0,18% were submitted by Vlachs, and 44 or 1,94% didn't declare their ethnicity (**Review No.2, page 9**).

Review No.1

OVERVIEW OF THE FIELDS															
Received, resolved and pending cases from 01.01.2004 - 31.12.2004															
	Received complaints in 2004	Number of submitters	Number of complaints i transferred from 2003	Total number of submissions processed	Handling method						Information to the minister	Information to the Government of the RM	Informations to other organs and agencies with public mandates	Total No. of resolved complaints i	Pending complaints i
					Number of complaints i and rejected anonymous	Complaints by stated violations on which organs and agencies acted	Rejected on other grounds	Ascertained violations							
								Issued opinions, suggestions, recommendations	Complied with the Ombudsman's interventions	Not complied with the Ombud. Interv.					
Protection of the rights of the communities which are not in majority	11	11	7	18		8		1	1				9	9	
Protection of the rights in the police proceedings	243	251	160	403		206	8	66	51	15	3	2	265	138	
Protection of the rights in the field of judiciary	385	429	170	555	2	421	9	67	61	6	2		2	493	62
Protection of the rights of army officers and draftees	6	6	8	14		5		2	1	1	1			6	8
Protection of the rights from the field of social rights	126	146	84	210		116		27	24	3	2			140	70
Protection of the rights from labor relations	227	282	276	503	2	257	7	64	40	24	9		2	306	197
Protection of the rights from housing relations	92	102	45	137		75		23	6	17	3	23	1	81	56
Protection of the rights from the field of health care	50	52	18	68		29	1	25	21	4	3		1	51	17
Protection of the rights from the field of pension and disability insurance	111	112	83	194		117	1	37	37		2	1		155	39
Protection of the rights from the field of education, science, culture and sport	26	58	15	41	3	21		7	7		10	1		31	10
Protection of the children's rights	47	53	34	81		36	9	24	24		2	2	2	69	12
Protection of the rights from the field of urbanism and construction building	123	171	88	211	4	122	9	18	9	9	3			144	67
Protection of the rights from the field of environment	12	23	3	15		11	1	3	2	1				14	1
Protection of the rights from the field of finances	21	21	19	40		24		8		8	1			24	16
Protection of the rights from the field of customs	2	2	1	3		3		0						3	0
Protection of the rights from the field of property rights	217	239	77	294	1	106	5	133	82	51	56	86	21	194	100
Protection of consumers' rights	152	167	86	238		147		59	50	9	1		4	197	41
Protection of the rights in other fields	108	174	69	177	13	124		5	1	4	4	1		138	39
TOTAL	1959	2299	1243	3202	25	1828	50	569	417	152	102	116	33	2320	882



Review No.2

OVERVIEW OF SUBMITTERS IN 2004 (MEMBERS OF THE COMMUNITIES WHICH ARE NOT MAJORITY IN THE REPUBLIC OF MACEDONIA)															
		Received complaints in 2004	Number of received anonymous complaints	No. of formed cases on his own initiative	Number of submitters	MEMBERS OF THE COMMUNITIES WHICH ARE NOT MAJORITY								Others	
						Macedonians	Albanians	Serbs	Roma	Macedonians - Muslims	Bosnians	Vlachs	Turks		Ethnically undeclared
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Protections of the rights of communities not in the majority	11			11	2	3		2	1	1		1	1	
2	Protection of the rights in police proceedings	243		4	247	83	123	3	12	1	10		10	4	1
3	Protection of the rights from the field of judiciary	385	2	3	426	340	47	16	2	2	4	1	7	6	1
4	Protection of the rights of army officers and draftees	6			6	4	1		1						
5	Protection of the rights from the field of social rights	126		2	144	86	42	4	7	2	2		1		
6	Protection of the rights from labour relations	227	2	2	280	245	20	3		5		2	1	4	
7	Protection of the rights from housing relations	92			102	84	8	5		2	1		2		
8	Protection of the rights from the field of medical protection	50			52	37	10		4	1					
9	Protection of the rights from the field of pension and disability insurance	111		2	110	77	15	10	4	1	1			2	
10	Protection of the rights from the field of education, science, culture and sport	26	3	1	57	55	1	1							
11	Protection of children's rights	47		2	51	30	12	5	1					2	1
12	Protection of the rights from the field of urbanism and construction building	123	4		171	155	7	6						3	
13	Protection of the rights from the field of environment	12		1	22	20		1						1	
14	Protection of the rights from the field of finances	21			21	20		1							
15	Protection of the rights from the field of customs	2			2	1								1	
16	Protection of the rights from the field of property rights	217	1	3	236	197	23	9	1				3	3	
17	Protection of consumers' rights	152		6	161	138	7	7			4	1		4	
18	Protection of the rights in other fields	108	13		174	142	7	8	2	1				13	1
19	TOTAL	1959	25	26	2273	1716	326	79	36	16	23	4	25	44	4

According to the place of residence of the submitters the majority that is 1.104 are from Skopje, and the other major cities in the Republic of Macedonia follow.

Review No.3

OVERVIEW OF SUBMITTED COMPLAINTS ACCORDING TO CITIES							
No.	Cities and states	No. of submissions in cities and states		No.	Cities and states	No. of submissions in s cities and states	
		2003	2004			2003	2004
1	Berovo	12	6	27	Prilep	85	50
2	Bitola	117	88	28	Probistip	34	14
3	Bogdanci	2	-	29	Radovis	47	22
4	Valandovo	6	5	30	Resen	5	11
5	Veles	74	33	31	Skopje	1271	1104
6	Vinica	11	7	32	Struga	46	12
7	Debar	13	8	33	Strumica	52	29
8	Decevo	20	16	34	Sveti Nikole	27	5
9	Demir Hisar	12	7	35	Star Dojran	3	-
10	Demir Kapija		1	36	Tetovo	106	64
11	Dojran	1	3	37	Stip	58	57
12	Gevgelija	34	12	38	Australia	1	-
13	Gostivar	60	78	39	Austria	4	2
14	Zletovo	3	1	40	Great Britan	2	-
15	Kavadarci	69	48	41	Greece	1	-
16	Kicevo	82	42	42	Denmark	2	-
17	Kocani	48	28	43	Japan	1	-
18	Kratovo	7	10	44	Kosovo	1	3
19	Kr.Palanka	30	17	45	Republic of Albania	2	2
20	Krusevo	9	6	46	Republic of Bulgaria	1	-
21	Kumanovo	110	85	47	Republic of Slovenia		1
22	M.Kamenica	15	2	48	Republic of Serbia and Montenegro	1	1
23	Mak.Brod	15	8	49	Turkey	2	1
24	Negotino	21	16	50	Sweden	2	1
25	Ohrid	77	49	51	Spain	1	-
26	Pehcevo	3	3	52	Switzerland	-	1
					TOTAL	2605	1959

2.3. Handling method and deciding on the complaints

The Ombudsman acted and decided on the complaints with urgency. If it was noticed that the complain could be acted on without making further research, it was immediately intervened upon, and if additional research and checking was necessary, it was made with a request to the Authoritative bodies, to the submitters for its clarification, then checking the files of the authorities, responsible, official and other persons were called in for conversations, and also other means were used for the proper and complete confirmation of the factual status.

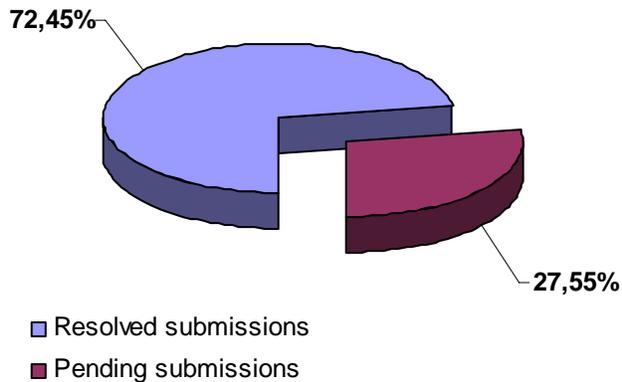
From the practical workings it can be stated that the relation of the official persons towards the requests of the Ombudsman are still unsatisfactory, of which according to law to accelerate and improve the conditions to the bodies and organizations with public authorizations were directed 33 information of which 13 are accepted, to the responsible Ministries were directed 102 information of which 39 are accepted, and to the Government of the Republic of Macedonia 116, of which were accepted 49.

Using the legal possibilities for a more efficient intervention and action, this year of a total of 3202 complaints 2320 were completed, and for 882 complaints the procedure is being carried out.



Of the completed 2320 complaints, 1828 or 78,79% are complaints for which a process hasn't been raised or it has been stopped, in 417 or 17,97% of complaints violations of the constitutional and legal liberties and rights of the citizens were noticed on which the bodies and organizations with public authorizations acted after the intervention of the Ombudsman, and 50 or 2,16% of complaints were resolved in another manner.

Picture No. 1



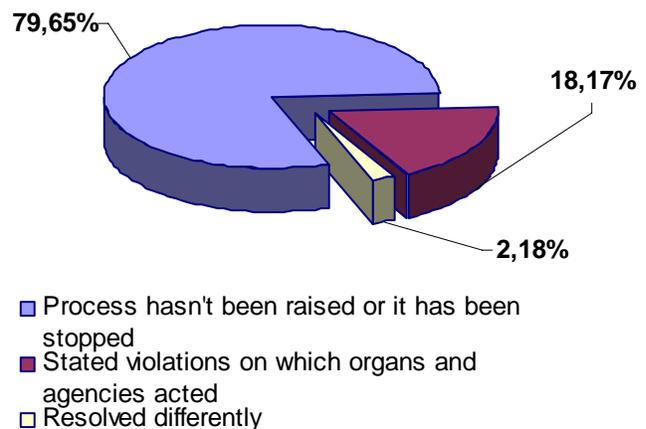
In the majority of complaints the Ombudsman didn't note a violation of the rights, and so in 683 cases he decided that there is no basis for starting a process, and in 1.141 complaints after the research the Ombudsman stopped the procedure because of confirming that there is no violation of the basic liberties and rights. An insignificant number, or 25 complaints were lodged by anonymous submitters.

The Ombudsman considers that the majority of complaints which didn't lead to a process or the process was stopped is due

above all to the insufficient awareness of the citizens regarding their rights, and as their wish to check the lawfulness of the passed act or action by the responsible body and through the institution of the Ombudsman.

Regarding the complaints for which the process by the Ombudsman is being acted on, that is it is in the phase of investigation, a section of them aren't completed due to the complexity of the problem and the need to gather more information or evidence by several bodies and organizations, and unfortunately a significant part due to the untimely response to the requests of the Ombudsman.

Picture No.2



In this context, it should be pointed out that there were cases where some of the submitters reacted that the process with the Ombudsman lasts for an extended period of time, although it was due to the untimely acting of the bodies of the public administration to the requests of the Ombudsman.

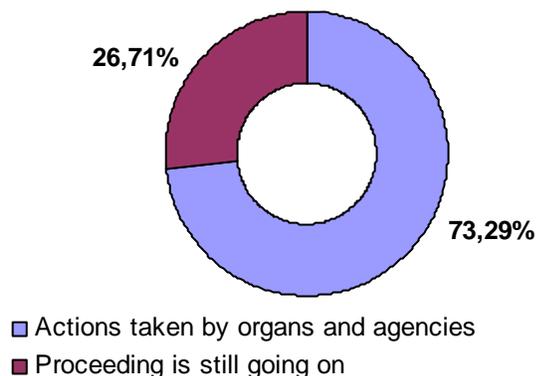
Although with the passing of the new law for the Ombudsman mandatory deadlines were set in which the responsible bodies must reply to the Ombudsman, it can be stated that in most cases, the predicted deadlines aren't being met and in none of the cases the bodies and organizations didn't request for an extension of the deadline.

Generally viewed and compared to previous years, it can be stated that there is an improvement in the efficiency and effectiveness in the acting on the requests of the Ombudsman which should be the main trait and goal in the acting of this institution.

2.4. Ascertained violations of citizen's rights

According to law, if the Ombudsman after the examination of the complaints ascertains violations of the constitutional and legal rights of the citizens with recommendations, opinions, suggestions, requests and other similar interventions by the responsible bodies requests for the irregularities to be removed for the citizens to be able as economically and efficiently as possible to realize their violated right. In this direction are also the interventions of the Ombudsman which

Picture No1 - Ascertained violations-2004.



should contribute to the improvement of the organization and the working of the expert services in the bodies of the public administration and the other bodies and organizations which have public authorization.

In the report year the Ombudsman stated violations of the constitutional and legal rights of the citizens in 569 cases, of which in 417 or 73,29% of the stated violations the bodies of the public administration and other bodies and organizations with public authorizations acted on after the intervention of the Ombudsman, and in 152 or 26,71% the process is still going on.

Of the total number of stated violations in previous years by the Ombudsman in 94 cases the bodies and organizations with public authorization acted on the interventions, in 168 cases a solution was found in some other manner, in 79 cases the process was left without a subject, and in 123 cases the process is still going on. **(Review No.4, page 13)**

The majority of stated violations in the report year were in the field of property-legal relations 133 or 23,37% of which in 82 cases or 61,65% the bodies and organizations with public authorization acted after the intervention of the Ombudsman; then follow the complaints in the field of the judiciary 67 or 11,78%, of which 61 or 91,04% cases were acted on; in the field of police procedures violations were stated in 66 cases or 11,60%, of which in 51 or 77,27% the interventions of the Ombudsman were accepted; in the field of work relations violations were stated in 64 or 11,25% cases of which in 40 or 62,50 were acted on after the intervention of the Ombudsman etc. **(Review No.1, page 8).**

When we speak of the nature of the stated violations of the citizens' rights, as in the past year, it can be noticed that the most of them are referring to violations of procedural regulations of the law, that is, on the extension of the procedure in which the citizens realize their rights. Of the total number of stated violations almost 80% refer to precisely the extension of the regulatory and judicial procedures. In other words, in over 80% of cases the responsible bodies didn't respect the deadline for deciding on the requests of the citizens, and in a significant number the institution silence of the administration was abused.

With the purpose of removing the stated violations, the Ombudsman submitted to the responsible bodies 152 interventions, among which: 71 recommendations, 545 pointing-outs, 13 opinions and 4 suggestions. Along with this, the Ombudsman submitted 5 requests for the ceasing of execution of administrative acts, 2 requests to the public administration for starting a proc-



ess for the confirmation of a penal responsibility, 2 requests for taking initiative for a disciplinary process against an official person, an several suggestions to the bodies and organizations for the improvement of the working and behaving with clients etc.

Review No.4

OVERVIEW OF ASCERTAINED VIOLATIONS OF CITIZENS' RIGHTS									
FIELDS	Ascertained violations in 2004			Ascertained violations in the previous years					
	TOTAL	Proceeded by bodies and organizations	Not proceeded by bodies and organizations	TOTAL	Proceeded by bodies and organizations	Not proceeded by bodies and organizations	Proceeding is groundless	Resolved differently	
1	2	3	4	5	6	7	8	9	
1	1	1		1				1	
2	66	51	15	25	6	12	3	4	
3	67	61	6	8	2	1		5	
4	2	1	1	1		1			
5	27	24	3	43	8	23	5	7	
6	64	40	24	93	13	21	25	33	
7	23	6	17	54	3	11		40	
8	25	21	4	13	4		2	7	
9	37	37		14	1	2	2	9	
10	7	7		10	3		2	5	
11	24	24		16		1	6	9	
12	18	9	9	51	6	7	18	20	
13	3	2	1	2	1			1	
14	8		8	2		1		1	
15									
16	133	82	51	96	39	36	5	16	
17	59	50	9	24	8	5	6	5	
18	5	1	4	12		2	5	5	
19	TOTAL	569	417	152	465	94	123	79	168

2.5. Reception of the citizens in and out of the Ombudsman's office

This year as well, as an established work method, the Ombudsman had reception for the citizens every working day during which he, his deputies or the employees in the competent services received for an interview over 2840 citizens. After the interviews, when it was suspected that there may be violations of the citizen's rights, official notes were made and further proceeded upon, or the citizens were advised where and how they can realize their rights.

Review No.5

OVERVIEW OF RECEPTED CITIZENS IN THE OMBUDSMAN OFFICE													
	january	february	march	april	may	june	july	august	september	october	november	december	TOTAL
Total number by month	250	228	311	280	248	301	284	105	152	359	199	123	2840

Near the end of the report year, the Ombudsman opened his own branch offices in several cities throughout the Republic: Tetovo, Kumanovo, Bitola, Shtip, Strumica and Kichevo. Despite the fact that the offices still haven't been equipped with the necessary personnel they are open to the public and are continuously working in realizing the human rights of the citizens when their rights and liberties are violated by the bodies of the public administration and other bodies and organizations with public authorizations.

The number of received complaints is the largest in the Ombudsman's office in Skopje and is 1924, 19 complaints were received in the office in Bitola, 6 in Kichevo, 5 in Strumica, 2 in Tetovo and 1 in Kumanovo.

Review No.6

OVERVIEW OF ADMITTED SUBMISSIONS IN OMBUDSMAN'S OFFICES								
Ombudsman's office in	Skopje	Bitola	Kichevo	Strumica	Tetovo	Shtip	Kumanovo	TOTAL
Total received-complaints	1924	19	6	5	2	2	1	1959

This small number of received complaints in the offices of the Ombudsman in other cities is due to the still incomplete staff requirements, and also to the lack of appointed deputies to the Ombudsman which according to law should govern the offices.



2.6. Transparency

Considering the role of the Ombudsman as a mechanism which not only acts for the protection of the constitutional and legal rights of the citizens, but also represents a mediator among the citizens and the bodies of the public administration, that is, the transparency is a basic condition for the successful execution of the constitutional and legal competencies.

Hence, the question arises: to what extent was the Ombudsman transparent in his work during the report year and how much he used the media as an instrument for additional pressure on the work of the public administration in the direction of respecting his interventions and with the purpose of realizing the constitutional and legal rights of the citizens in the Republic of Macedonia?

In the past year the institution alone and also the Ombudsman as a carrier of the function were transparent to a sufficient extent, because the Ombudsman's office was open and available not only to the citizens, but to the representatives of the media as well.

The press and electronic media as means for mass and public informing of the citizens were constantly in direct communication with the Ombudsman's office at his request for all questions regarding the conditions of respecting and realizing the constitutional and legal rights of the citizens of the Republic of Macedonia.

In that sense, the Citizens of the Republic of Macedonia were regularly informed about the Ombudsman's work through press conferences, statements, interviews, announcements to the public and other kinds of informing, as well as with appearances in the electronic media.

With the purpose of complete informing and transparency in the work of the Ombudsman, and his assessments about the workings of the state bodies, we issue this annual report which the Ombudsman submits to the Parliament of the Republic of Macedonia and certain parts of which are presented through the media. The cooperation with the Macedonian Information Agency (MIA) also represents an opportunity not only for the affirmation of the institution of the Ombudsman but also for greater transparency in its work.

The necessity for greater introduction of the institution, that is, its work in the general public, required that during the report year measures be taken for forming of the organizational unit for public relations.

In that direction, it should be mentioned that in the new Law for the Ombudsman a legal decision is predicted according to which, if the bodies of the public administration and other bodies and organizations with public authorization do not respect the Ombudsman's decisions and interventions, the case can be published in the media on the expense of the body that has violated the constitutional and legal rights of the citizens which will partially solve the stated financial problem for publishing the Ombudsman's announcements and it creates possibilities to expect positive results in this direction.

2.7. Education of the citizens

Regarding the fact that the citizens of the Republic of Macedonia require greater education about their constitutional and legal rights, the Ombudsman undertook and realized a number

of activities in the education and informing of the citizens, although he has no legal obligation to do so.

Regarding the fact that during the report year the Ombudsman didn't make visits to the cities because of the forming of the regional offices, the citizens, while visiting the office in Skopje, continued to be taught how, where and in which way to realize their rights.

During the report year, the Ombudsman held lectures in the Police Academy on his role in the responsibility and control of the police, and also workshops were held in the organization of OHO on the subject "The Ombudsman as a mediator between the citizens and the public administration".

Also, in this year non-government organizations extended invitations to the Ombudsman and his deputies to participate with their views in several educational seminars, workshops and similar meetings.

Estimating that the children represent the most vulnerable groups that must have a special education on their rights, this year again the Department for protection of children's rights undertook measures for their education.

Namely, in cooperation and support of the Office of UNICEF in Skopje a Board of children with representatives from primary and secondary schools was created and continuous meeting were held not only for their education, but also for expressing their opinions and suggestions for improving the situation regarding the respect of children's rights in the Republic of Macedonia.

In that direction the Ombudsman is giving lectures on the place and the role of the Institution for the students of the faculty of Law.

Regarding all the activities in this field, it was ascertained that in spite of the noticeable progress, conscious, informing and knowledge of the citizens of their rights and the mechanism for their protection, it isn't on a needed level yet, though in the Republic, on this plan, a great number of local and international NGOs that work on promotion and education of citizens' rights are acting.

Hence, we consider that in spite of the activities that the Government of the Republic of Macedonia undertook with the support and individual activities, on this plan the issue of the education of citizens' rights must have more serious and more systematic approach, perhaps by implementing as a school subject in primary and secondary schools.

2.8 Cooperation, contacts with international organizations, associations, study trips symposiums and seminars

Appreciating that the exchange of experiences for the institution of the Ombudsman has presented itself as a condition without which it cannot be possible do upgrade the methods and means of working, the Ombudsman in the report year realized meetings and contacts with the other Ombudsman institutions and international organizations.

Like previously, the meetings and contacts aside from being realized in the organization of the International Ombudsman Institute, European Ombudsman Institute, the Council of Europe



and the EU, the same also on an informal level were organized by the Ombudsman institutions in the region as a result of the estimation that the cooperation on a regional level can yield only positive results for the institutions while promoting the need for the existence of these kinds of institutions in the countries where the same have not still been founded.

During 2004, in the Ombudsman's office there were meetings with the representatives of: the Organization of the United Nations, the Organization for Security and Cooperation in Europe (OSCE), NATO, IFES-International Foundation for Election System, UNHCR, International Red Cross, Delegation of the European Commission, ECRI-European Commission against Racism and Intolerance, the American Attorney Chamber (ABBA-CEELI), ECMI-European Center for Minority Issues, the project EUNOMIA and others.

From realized study trips, symposiums, and the meetings out of Macedonia, we can mention the following: Cappadokia-"The Ombudsman's role in the countries which are governed by the principle The rule of Law" organized by the Council of Europe, Directorate for Human Rights and the Great National Parliament of Turkey, Quebec-"Eighth conference of the International Ombudsman Institute organized by the Ombudsman office in Quebec and the International Ombudsman Institute", Seoul-"Seventh international conference for institutions which work for the protection of human rights-Protection of human rights during conflicts and dealing with terrorism", Belgrade-project EUNOMIA-"The mandate of the Ombudsman and the Rule of Law", Cardiff-"Annual meeting of the European Network of children's Ombudsman", and Flansborough-"The minority Issues in Europe-European Center for Minority Issues".

2.9. Participation, cooperation and meetings of the Ombudsman on seminars and reunions held in the Republic of Macedonia

Within the activities of the Ombudsman's interest, there was an active participation in many seminars and meetings in the R, of which we discern the following: "Introduction in European Integrations and the Basics of the Law of the EU" organized by the Association of Judges, round table "Decentralization in the Health viewed from the aspect of financing future investments", round table "The Youth and the Unemployment", "Changes and supplements of the legal regulation for Citizenship" organized by OSCE and UNHCR, frame program for the education for 2004 organized by the Association of Judges, seminar: "People trafficking with an emphasis on the national mechanism for resending" organized by the National Commission for fighting people trafficking and illegal migration, seminar: "The police in the multi-ethnic community: challenge, necessity or inevitability?" organized by the Center for Open Communication, round table for the Law for free access to information organized by Transparency-Macedonia, "Regulation and self-regulation in the media"-Agency for information, Council of Europe, The Pact for Stability, and "Accessibility to official information" organized by the Agency for information.

Also, the Ombudsman actively participated in the preparation of the answers for the Questionnaire of the European Commission.

2.10. Cooperation with NGOs and citizens' associations

This year, again, the Ombudsman established a close collaboration with many NGOs and deems that this cooperation should strengthen and deepen in the future, as well as to provide conditions and to find new manners, forms and methods for its permanent development and acting. NGOs, especially those which firmly and argumentatively stand in the defense of human rights and democratic processes in the state in general, will always have the support of the Ombudsman, and of course such a support the Ombudsman expects from the NGOs.

To that end, during this report year, a cooperation with many NGOs was established and continued, especially with: The UNICEF Office in the Republic of Macedonia, the Organization of Consumers, the Union of the Women Organizations in the Republic of Macedonia, the European center for minority issues, the Mission of OSCE, the Open Society Institute, "Caritas" representation in Skopje, the Council for preventing Juvenile Delinquency in Kratovo, The Alliance for the Care and Education of Children, the Organization for the protection of children's rights in Skopje, The humanitarian and charitable association of the Romas in Gostivar "Moon", the First Children's Embassy "Megasi", the Organization of Macedonian women's Organizations, the Macedonian center for international cooperation, the Association of Economy Attorneys, the Association of social workers and others.



3 A REVIEW OF THE CONDITION REGARDING THE SECURITY, RESPECT AND PROTECTION OF HUMAN RIGHTS VIEWED BY FIELD WITH ESTIMATIONS AND RECCOMENDATIONS

3.1. Protection of the rights of the representatives of the communities not in majority in the Republic of Macedonia

The suitable and lawful representation of the citizens pertaining to all communities in the bodies of the public administration and other public institutions, with the amendments of the Constitution of the Republic of Macedonia in 2001, becomes a new foundational value of the Constitutional order of the Republic of Macedonia.

With the constitutional amendments in 2001, no other public institution was given responsibilities regarding the protection and promotion of the rights of the communities, like it was given to the Ombudsman.

The institution of the Ombudsman, among other things, dedicates special attention to the protection of the principles of nondiscrimination and suitable and lawful representation of the representatives of the communities in the bodies of the public administration, the bodies of the units of the local self-government and the public facilities and services. The new responsibilities of the Ombudsman show that in a multiethnic and multicultural community like the Macedonia, there is always a present danger and possibility of discrimination of the representatives of the communities which are not minorities on a local and national level and danger from other discriminations based on sex, race, tone of skin, national and social background, political and religious persuasions, property and social stature.

Discrimination is the core of all violations of human rights.

The Ombudsman also has a significant role regarding the constitution of the Comity for relations between the communities with the Parliament of the R. of Macedonia. With the Constitution of the Republic of Macedonia it is predicted that if some of the Communities has no members in the Parliament, the Ombudsman after consulting the relevant representatives of those communities will suggest the others members of the Comity.

The constitutional decision to expend the responsibility of the Ombudsman showed how important his role is as an independent and solitary institution regarding the protection and promotion of the rights of the communities in a society in which the representatives of the communi-

ties are not a majority. In this case the Ombudsman **represents a controlled mechanism and the greatest guarantee for the protection and promotion of the rights of the communities.**

Despite the fact that that statement that all citizens are equal in front of the Constitution and the Laws is an acknowledged statement, the Republic of Macedonia still has no legal regulation in which would be defined the terms discrimination and discriminatory relations towards the citizens, that is, towards the representatives of the community. The statement of non-discrimination is not so well promoted among the citizens especially among the representatives of the communities. Among these conditions it is very difficult to take care and to discover the cases of discrimination.

The care for carrying up the principle of non-discrimination and protection of the rights of the representatives of the communities is a complex and specific process and requires special attention and dedication a suitable amount of personnel in the Ombudsmen's office, and the exchange of experiences with other international Ombudsmen institutions. For that purpose the Ombudsman will carry out a suitable **strategy** for the successful acting and realizing of the responsibilities regarding the protection of the rights of the representatives of the communities.

According to the Ombudsman's Law a forming of a new network and the equipping of the ombudsmen offices with personnel is in progress in: Tetovo, Kichevo, Bitola, Shtip, Strumica, and Kumanovo which during 2005 will finally be completed. It is evident that a large number of citizens from this region and during 2004 refer to the above-mentioned offices daily with requests for protection of their constitutional and legal rights. The purpose of these offices is not only to bring the Institution of the Ombudsman closer to her citizens but also to have a preventive role of the Institution in improving the relations between the citizens of this region with the bodies of the public administration, the bodies of the units of the local self-government and the public facilities and services. The selection of deputies of the Ombudsman which will govern the regional offices will be a priority of the Ombudsmen in 2005.

The application of the statement of non discrimination and the adequate an lawful representation of the representatives of the communities in the bodies of the public administrations and the public facilities and services comprehends above all a fair representation of the communities in the Institution Ombudsmen it self. Oppositely the Ombudsmen won't have the credibility to give out recommendations and opinions to the other institutions regarding the carrying out of both statements. Because of that and because the current state with the representation of the representatives of the communities in the Institution of the Ombudsman is unsatisfactory the carrying out of the statement for suitable and lawful representation will be a priority of the Ombudsman in the forthcoming period.

For receiving a general estimation of the representation of the representatives of the communities in the bodies of the public administration, the bodies of the units of the local self-government and the public facilities and services in the Republic of Macedonia in the report year the Ombudsman started collecting information regarding the representation in the relevant bodies and institutions. According to the general information which were submitted to the Ombudsmen the statement of **suitable and lawful** representation is **more successful and more accelerated** in the sectors for internal affairs and defense, where the international community yields a close contribution. Regarding the collection of information represents a complex process this will be the subject of the report of the Ombudsmen for 2005.



The agency for public employees of the R. of M. has obligated all public bodies and institutions to create a program by the end of April 2004 for the suitable and lawful representation of the representatives of the communities, and so during the reporting year "The program for training of expert-administrative public employees for work in the public administration- PACE" has been carried out with which about 600 representatives of the communities have successfully completed the training.

These trainees have already been distributed through out all the bodies in the Republic, that is, they are already in a regular working relation.

It is noticeable among the complaints delivered to the Ombudsman that the number of complaints submitted by the representatives of the communities, has increased, which shows that the trust of the citizens in this institution is growing. During 2004, 11 complaints were received in which the representatives of the communities complained of violation of the statement of non-discrimination and suitable and lawful representation. After a detailed reviewing of these complaints, the Ombudsman stated a violation of the statement of nondiscrimination and suitable and lawful representation in one case. In the case where a violation of the rights was stated, the Ombudsman directed a recommendation which resulted with a positive resolving of the submitter's request.

For the more successful and more efficient realization of the statement of nondiscrimination and suitable and lawful representation of the of the representatives of the communities in the bodies of the public administration, the bodies of the units of the local self-government and the public facilities and services and protection and promotion of the rights of the of the representatives of the communities, the Ombudsman **recommends:**

- Supplementation of the legal regulative with passing a law for nondiscrimination;
- The bodies of the public administration, the bodies of the units of the local self-government, the public enterprises, facilities and services in the margins of their responsibilities to confirm, follow closely and take realistic measures for the carrying out of the statements of nondiscrimination and suitable and lawful representation;
- To strengthen the media campaign, especially in the media in the languages of the of the representatives of the communities with the purpose of confirming the statements of nondiscrimination and suitable and lawful representation, and in this direction also the responsibilities of the Ombudsman;
- The bodies of the public administration, the bodies of the units of the local self-government, the public enterprises and the public facilities and services while carrying out a procedure for employment, to follow closely the statement of suitable and lawful representation.

3.2. Protection of rights in Police proceedings

The relation of the Police with the citizens is always under special monitoring by the Ombudsman. This interest is derived above all because the fact that the Police is the only body of the state which acts through means of legal force, and also because of the specifications of the working and attitude of the Police of Republic of Macedonia. It is widely known that no other body with its acting can influence the physical and mental integrity of the person and citizen like the Police does.

The life, physical and moral integrity of the person are undisputed, and the liberties and rights of the persona and citizen can be limited only with cases determined by the Constitution. Every citizen is guaranteed respect and protection of his privacy of his personal and family life, of his dignity and reputation, of the safety of his home and personal information. These rights and liberties have a fundamental and existential relevance for the personal and social status of every citizen, that is, the degree of democracy depends greatly on their realization or limitation by the public bodies.

During 2004, the complaints of the citizens regarding the work of the police were among the most numerous.

In the working as the most serious regarding police procedure the Ombudsman has identified the following violations: use of physical violence on the citizens during arrests, during their stay in the police station or in other confined spaces, cases of brutal police procedure with elements of criminal activity against the rights and liberties of the person and citizen, cases of unlawful arrest, torture and other cruel and degrading acting and punishing or mistreating in the carrying out of the service. Situations of police action are still present where there is a violation of rights as a result of unnecessary use of force, although the same are in the context of the arrest according to law or prevention of escape of a person deprived of freedom on base of the law. There are still cases of violating the right of safety of family life with unsuitable procedures and acting of the responsible official persons while searching a home or person based on a decision of the court, illegal acting of the official persons of the body while conducting official actions, such as: failure to confirm or reveal the identity of the official persons, failure to announce the purpose of the action in the language the citizen understands, unnecessary material damage to homes and citizens, incorrect attitude especially towards citizens which are representatives of the communities, failure to submit evidence from the official evidence of the body for the purpose of realizing court protection of rights and other violations of the legal and sub legal procedure, cases of unlawful detaining for more than 24 hours in the police station and other facilities without the possibility of receiving adequate medical, legal or other help and protection. The negative examples continue for all kinds of methods used on the detained persons with the purpose of extracting information regarding a perpetrator criminal act. There are unappreciated and unharmonized legislative and administrative procedures which directly and indirectly have a negative influence, especially while realizing the statute issues: citizenship, civil registration, status regulation of a foreigner and the like. In the Ministry of internal affairs there is still a negative concentration of responsibilities, of which closely depends the realization of the guaranteed rights of the citizen, for which the Ministry has a lack of necessary professional personnel and resources. The inefficiency is concerning in the prevention of the execution of criminal acts and the unveiling of the perpetrators and their delivery to the authorities, especially in the clearing of criminal cases implying murder.

For all the cases for which the Ombudsman secured plausible evidence that on certain citizens the official persons of the police applied physical force with criminal elements against their rights and liberties, the Ombudsman submitted a request for court procedure to the responsible public prosecutor offices for the purpose of confirmation of their penal responsibility. For only one penal report an answer has been received, and for the others the prosecution either dropped the charges as unfounded or hasn't still replied. It is concerning that for some of the requests for which the Ombudsman considered that there were sufficient elements for the prosecution of a police officer, the public prosecution didn't do so. The public prosecution should keep in



mind that the Ombudsman points out the need for taking action after he has confirmed serious violations of the rights and liberties of the citizens and after previously gathered material evidence. It is characteristic for all these cases that as submitters of complaints are found representatives of the communities which are not minorities.

Also, for some of the cases the Ombudsman to the services of the Ministry of internal affairs made an initiative for initiating a procedure for disciplinary responsibility against police officers for which he considered should be taken responsible according to regulations for the police's work, during which he encountered no cooperation and adequate answers. The sector for internal control and professional standards in a biased and improper manner investigates the statements of the citizens and the Ombudsman which has the consequences of inadequate punishment of the police officers which have violated the constitutional and legal rights and liberties of the citizens. The Ombudsman considers that it is obligatory the deepening of the cooperation with this sector because the same should represent an important preventive body. After the previously realized procedure by the office of the Ombudsman in two cases initiative has been taken for the confirmation of disciplinary responsibility of police officers which have violated their official authorizations and have used physical force on the submitters of the complaints.

The Ombudsman considers that the sector for internal control and professional standards, after completing the investigations, contacts the Ombudsman to explain that there have been no confirmed violations of the official authorizations without presenting the foundations for such a thing. There is an impression that the employees in the sector consider the Ombudsman as their adversary although they acknowledge his significance as an external controller.

The citizenship still represents a problem for the persons which haven't regulated that status. It is a fact that with this problem are facing especially the representatives of the Albanian community, especially in Skopje and Kumanovo. The persistent and close dedication of the Ombudsman to this problem, of which depends the realization of a number of other rights, resulted with complete trust in the institution of the Ombudsman. The Ombudsman requested that the law for citizenship of the Republic of Macedonia be changed, and the same be made in accordance with the European convention for citizenship. This project results in the acceptance of the changes in the law for citizenship in March 2004. As a result of the changes made to the law for citizenship a large number of citizens during 2004 asked for help from the Ombudsman for the realization of this right. The Ombudsman established a daily communication and cooperation with the **Sector for administrative and supervisory affairs and his department for citizenship**.

The Ombudsman took measures and activities and regarding the working of the **Special Commission of the Government of the Republic of Macedonia for confirming the condition knowledge of the Macedonian language**. Because of confirmed mishaps in the workings of this commission, the Ombudsman submitted a recommendation to the Government for relieving the president of the commission of her function and reevaluation of the workings of the other members, but after two urgencies the recommendation was not accepted.

The inadequate and bureaucratic working of the **services for public safety** which in the procedures for citizenship should give an opinion regarding the fulfillment if the condition that the person does not endanger the safety and defense of the state and continues to be one of the main reasons for the prolonging and increased difficulty of the procedures for acceptance in citizenship. The Ombudsman considers that it is high time that the employees in these services act

according to the principle of the rule of law and to the requests to act in the predicted legal deadlines.

The changes made to the law for citizenship and the collaboration with the Sector for citizenship results in an increased number of positive solutions, which in the end reflects positively on the rights of the persons which asked the Ombudsman for help and protection.

From several observations in the village of Sopot, the Ombudsman states that for some of the citizens of the village the unregulated citizen statuses create serious problems in their legal life, such as: failure to be noted in the civil registers, failure to obtain documents for personal identification etc. Regarding the seriousness of the problem the Ombudsman requested from the Ministry of internal affairs and the Ministry of education, each in the margins of their respective responsibilities, to undertake measures and actions to surpass the problem. The information which the Ombudsman has shown that this problem still persists.

The initiative of the Ombudsman for the elimination of all formal obstacles in the reporting of the domiciles of the Macedonian citizens didn't find a suitable answer from the Ministry of internal affairs and the respective minister. Of the submitted complaints the Ombudsman stated that the administrative services of the Ministry very often deny the requests of the citizens for regulating their factual domicile. While resolving each request, the administrative body should always regard the fact the universality of the freedom of movement and population of the person and citizen, and not for the body to decide his place of residence. The body for internal affairs should only carry out the control function regarding the true place of residence. The Ombudsman considers that the citizens are obstructed in the realization of their rights and liberties, and for those reasons a harmonization is needed with European standards for the legal concepts of the terms: place of residence and domicile.

Regarding the fact that the failure to recognize the documents of the administration of UNMIK-Kosovo by the Government of the Republic of Macedonia, created serious problems of the citizens which based on these documents should have realized rights before the state administrative bids in Macedonia, especially while regulating the citizen conditions, the Ombudsman submitted to the Government of the Republic of Macedonia an information regarding the seriousness of the problem, after which conclusions were made for the accepting and recognizing the documents of UNMIK.

The Ombudsman during 2004 had successful cooperation with the Sector for foreigners with the Ministry of foreign affairs regarding certain rights of foreign citizens.

Aside from the cooperation with the sector for administrative-supervisory affairs, the cooperation of the Ombudsman with the other sectors of the Ministry of internal affairs, such as the sector for public security, and especially the sector for state security (counter-intelligence) is difficult, uncooperative and inefficient. In this direction, the absence of readiness of these bodies in cooperating with the Ombudsman is concerning. For the improvement of the communication and the fulfillment of the obligations towards the institution of the Ombudsman, in the beginning of 2004 a work meeting was realized between the Ombudsman and responsible officers of the Ministry of internal affairs, on which were constructed methods of future cooperation which up until now doesn't yield positive improvements.

Although the citizens came to the Ombudsman with great trust and hope and with the purpose the same to protect their violated rights in a police procedure, because of the inadequate



cooperation by the Ministry of internal affairs, the efficiency of the acting of the Ombudsman is lacking. It has been noticed that the employees in the body of internal affairs do not reveal the information and identity of the authorized official persons which participated in the violation of the liberties and rights of the citizens, because of which concrete procedures cannot be suggested for the confirmation of their responsibility, which are in the jurisdiction of the Ombudsman. In that direction it is important to deepen the cooperation with the Sector for internal control and professional standards because the same represents an important prevention body in the frames of the Ministry of internal affairs.

From the current acting on the cases from the field of police procedure arise the estimations and statements that there is a great disrespect towards the requests and decisions of the Ombudsman by certain sectors and services of the Ministry of internal affairs and the Ministry itself in whole. The reasons range from the insufficient information and education of the employees of the Ministry regarding the status and authorizations of the Ombudsman, to the conscious ignoring of the institution by the governing officers of this ministry.

For the surpassing of these conditions the Ombudsman finds great support and help from the international organizations and representations in the Republic. It should especially be pointed out the current cooperation with the missions of OBSE-Mission in Skopje, ICITAP and PROXIMA in the field of the protection of the rights in police procedures and the education of the police officers for the role and work of the Ombudsman.

It is also noticeable the participation of the office of the Ombudsman in the projects of international organizations for the implementation of the Codex of police ethics and for the coming reforms to the Macedonian police which is of high priority for the Ministry of internal affairs of the Republic of Macedonia. The office of the Ombudsman is adequately represented and actively participates in the Work-counseling group for promoting the cooperation between the Ministry of internal affairs, the NGOs and the Ombudsman i.e. the MINOP group governed by the office of the High commissioner for human rights of the United Nations in Skopje.

From the abovementioned statements the statement arises that the employees in the Ministry of internal affairs, insufficiently respect the guaranteed constitutional and legal rights and liberties of the citizens. For surpassing these conditions, the Ombudsman recommends:

- The Ministry of internal affairs to be an efficient service for the citizens, it is necessary to relieve some insubstantial functions;
- The issue of firearm use and other means of force to be governed by law;
- To follow closely the regulations in the procedure while summoning, detainment, taking in and arresting in the police procedure;
- To strengthen and fully carry out the instruments of confirming responsibility of the police officers for which it will be confirmed that they violate the basic rights and liberties of the person and citizen;
- To enforce a continued education and expert training, especially for the representatives of the uniformed police which have authorization for use of force and firearms;
- To develop projects for the cooperation of the police and the local population;
- To take measures for the timely and efficient carrying out of the administrative procedures in which the citizens realize rights which are in regard to their citizen conditions;

- To pass a sub law act for the application of the decisions of the law for citizenship of the Republic of Macedonia;
- The commission of the Government of the Republic of Macedonia responsible for the confirmation of the condition knowledge of the Macedonian language to have a more flexible approach to senior citizens;
- To follow closely the law for the reporting of domicile and place of residence by the Ministry of internal affairs according to the constitutionally guaranteed right for the citizen to choose his place of residence for himself;
- The Minister of internal affairs to submit a written order to all organizational unit of the Ministry of internal affairs to cooperate with the Ombudsman as is established in the Law on the Ombudsman.

3.3. Protection of rights in the field of the administration of justice

One of the fields which represent an area of acting, realization and function of the legal responsibilities of the Ombudsman is the field of the administration of justice in which are processed the complaints of the citizens submitted regarding actions or miss actions by the carriers of the judiciary or the administration of the judiciary bodies. More specifically, those are complaints regarding above all to the judiciary bodies, but also to the working of the public administration as a separate state body for prosecution of the perpetrators of criminal acts, the notary service, the attorney representation, the public attorney representation as a service of the Government for the protection of the property interests of the Republic of Macedonia and the penal-correction and education-correction facilities.

3.3.1. Judiciary

As in the past period, with the legal authorizations in which is predicted the possibility for taking actions and measures for protection from the unjustified prolonging of the court procedures, or the irresponsible workings of the court services, the Ombudsman may without violating the principles of independence of the court authority, to give his contribution in the improvement of the conditions in the field of the judiciary when regarding the duration of the court procedures and the correct functioning of the administration of justice.

Based on these responsibilities, although the communication with the courts for the examination of the statements in the complaints the Ombudsman delivers in written form, in certain cases, when he has estimated that the examination of the statements can be executed more quickly and efficiently, the Ombudsman does that with phone calls and based on a close examination in the court scriptures.

During last year in the office of the Ombudsman the majority of complaints were registered in the field of the judiciary. Most of them were in regard to matters for which the Ombudsman had no authorization, and the same had the higher court instances, but a large number was in relation to prolonging of court procedures for which the Ombudsman used his authorizations of the law. The results of these actions confirmed what years back was a notorious fact, which is well known not only to the clients in the procedures and to the Ombudsman, but to the relevant



factors in the judicial, executive and lawgiving authority, which is that the Macedonian judiciary is inefficient and that the citizens and other subjects in a large number cases realize their rights with great difficulty, and sometimes it seems that **justice is not at all attainable.**

Although in past years changes have been made to the legal regulative especially in the segment of procedural actions, the principle **judging in a reasonable time frame** accepted through them in the statement **efficiency** of the procedure doesn't yield the desired results. Because these aren't statements of the Ombudsman only, the question arises are the changes real and is only the legal regulative the reason for the prolonging of the procedures or does subjectivity influence these conditions. If we take for an example the case on the subject of the Basic Court Skopje 2-Skopje K. no. 796/98 where the first degree verdict was reached in 1999, the same was denied by the Appellation Court in Skopje and the subject was brought back for redeciding before the first degree court in December 2002, and from then until today the subject has not been redecided, if the fact that the District Attorney, as a client in the procedure, took no interest for the extension of the procedure is taken into consideration, and that the defendant is a person with a criminal record, then the question arises if only the objective factors are the reason for the length of the procedures or does the subjective element have an influence in the matter. The question also arises do all citizens have **equal access** to justice and is the doubt not justified of the existence of the often mentioned corruption in the judiciary of which are very sensitive the carriers of the court function.

As long as these conditions exist as in this case and until foundational changes are made in many segments for surpassing the same, we cannot speak of regaining the lost trust in the judiciary.

The reform strategy in the jurisdictional system and the action plan for its carrying out is an inevitability which should be implemented as soon as possible in order to build an efficient and functional system of the administration system based on European legal standards and not only for the desire to membership in the Euro Atlantic integrations, but above all because of the obligation towards the citizens of the Republic of Macedonia to provide to them legal security which is a foundational value of the constitutional order, and for them to feel that they are living in a society which is **governed by law and in which a legal state functions.**

The submitted statements are founded on conclusions derived from the subject working and the general impression which for the conditions in the field of the administration of justice is present in the public, The Ombudsman appreciates the efforts which are being taken for the surpassing of the problems, to insist in the name of the citizens for fundamental reforms in the judiciary, regarding: completion of the legal regulative, especially in the field of procedure administration of justice, improvement of the internal organization in the courts and their technical equipment, the election and demission of the carriers of the court function for the total independence from the lawgiving and executive rule, the need for constant education of the court staff and the assisting staff, raising the morale of the judge and other court functionaries, and the improvement of the material condition of the carriers of the court function which is also an important element for raising the consciousness, conscience and non-corruptive behavior.

3.3.2. Public prosecutor's office

The proper functioning of the Public prosecutor's office as a segment of the jurisdictional system, also is especially significant for the protection of the basic rights and liberties of the citizens and is an organization which has an immense contribution for their legal security.

Although for its functioning to the Ombudsman during the report year were submitted a very small number of complaints, that which is a problem in the judiciary also is in regard to the public prosecution. Also to this body are related the remarks for insufficient professionalism and consciousness in the acting which manifests itself with the insufficient following of the procedure from the receiving of the accusatory report up to the passing of the verdict by the court which contributes to the prolonging of the procedure before the public prosecutor, and sometimes due to the aging of the case.

The Ombudsman hopes that the social efforts and measures for improvement of the situation of the judiciary are going to improve the situation in the public prosecutor's office as well, which represents only a part of the system of the government where the citizens request a solving of the social problematic conditions.

3.3.3. Public attorney, legal representation and notary

The public attorney, legal representation and notary as separate services before which the citizens also realize rights and interests, during the previous year were not pointed out at all as violators of the constitutional and legal rights. The reason for this probably does not come from the fact that no violations have been made by them to the rights of the citizens or they function impeccably, but probably from the fact that the public attorney still represents a service which protects the property interests of the Republic of Macedonia, the legal representation the legal rights of the citizens and other subjects, and the notaries decide inarguable matters, and that the connection between the citizens on one hand and these services on the other is of a different nature than their relation with the courts and the public prosecution.

Another reason which influences the lack of complaints to these services is the insufficient information of the citizens that in the case of violation of their rights by these services, they can ask for help from the Ombudsman which points out the need for him to direct greater attention towards their education in the forthcoming period.

3.3.4. Houses of correction and borstal institutions

The protection of the rights of the citizens which based on court decision have had their freedom of movement limited is one of the most subtle spheres which are in the domain of the function of the Ombudsman. Because of the limitations of the freedom of movement, it is completely expected the detained and convicted persons to face problems in the communication with the outside world, especially with the institutions of the system for the realization of certain rights and interests when they are not limited or taken away based on a court decision.



The authorizations and the obligations arising from article 31 of the new law on Ombudsmen according to which the Ombudsman follows the situation, observing and protecting the constitutional rights of the detained persons, detainees and persons serving a sentence or educational corrective measures in the houses of correction and the borstal institutions, are a big step forward towards a more inclusive protection of the rights, but also a possibility for preventive influence on the reduction of the possible violation of the rights of this category of citizens. This is thus due to the possibility of the Ombudsman to realize such obligations and authorities in any time, without prior announcement and approval, as well as to have conversation with the detainees and convicted persons without presence of an official and the provided secrecy of the written communication between the persons with restricted freedom of movement and the Ombudsman.

In practice, after of enforcing of the Law there were certain misunderstanding regarding the new authorizations of the Ombudsman but after one year it can be said that they are in the past and that the Ombudsman has no interferences in the realization of his function with which to this category of citizens is guaranteed more easily and with more freedom to refer to him when they consider that their liberties and rights have been violated by the official persons in the facilities in which they have been placed under court decision.

In the report year the Ombudsman realized several visits to the largest Correctional Institution "Idrizovo"-Skopje. In which almost constantly are staying about a thousand convicted persons and a Penitentiary in which are placed persons with shorter sentences, detained persons and which is still functioning the borstal facility "Tetovo"-Tetovo.

The purpose of the visits was to make a note of the conditions under which the detained and convicted persons are serving their prison or detainment sentences of which: regarding the accommodation itself, health protection, legal help which the facility is obligated to provide them with, the possibilities for keeping the collective and personal hygiene, the providing with clothes and footwear, the conditions and possibilities for recreation, the work engagement, the quality of food, education, and if the process of resocialisation enables their competence after the served sentence to be reinstated in society with the best chances for an independent life according to Law .

The general impression is that the Macedonian society in the penitentiary system did not create conditions for true resocialisation of the convicted persons and the serving of the sentence is viewed as revenge of the state toward those who violated the legal norms. In spite of the fact that in certain segments of the correctional Institution "Idrizovo" with the sanitations and accommodations made there have been certain improvements of the conditions in the accommodation area, such a thing can not be mentioned which is over crowded because of the limited capacity of this facility.

In the segment of the closed ward of the correctional institution "Idrizovo " and the penitentiary "Skopje"-Skopje, regardless of the opinions of the detained and convicted persons, it is more than obvious the low level of collective and personal hygiene, the low accommodation standard and the insufficient heating in winter conditions. Also, to the detained and convicted persons are provided minimal standards and rights regarding open movement and nutrition despite the same being prepared under confirmed criteria. It has also been noted the inadequate health protection, lack of true education, and even the restrictive use of the privileges predicted in the Law for sanctions even when there are conditions and possibilities for that.

In the close conversations of the Ombudsmen with the convicted persons made on their request or based on a phone call, it has been stated many times that the necessary legal health is not provided, that the correctional service doesn't function at all and that the introduction of narcotics is a problem which the correctional institution "Idrizovo " handles with great difficulty. This conditions under which the convicted and detained persons serve detainment or prison sentences represent before the Ombudsman one of the reasons for them to some times attempt to take away the most valuable- their own life.

All of this, points out that fundamental changes in the penitentiary system of the Republic of Macedonia are needed which at the moment relies on the Law for sanctions of 1997.

To secure rule of law as a basic condition for the functioning of a legal state, and with that the realization of the basic human freedoms and rights and the realization of the market economy, the Ombudsman considers that urgent and fundamental changes are needed in the entire system of the administration of justice starting from the judiciary system through reforms in the public prosecution, the legal representation, all the way to the penitentiary which above all should encompass:

- Changes in the organizational position and the responsibilities of the courts, reforming the material and procedural legislative and its harmonization with the European with which the burden would be removed from the court bodies of less significant subjects, mandatory solving of cases from different fields with an adhesive procedure, unpenalization of certain criminal acts against the honor and reputation, finishing the staff equipment in accordance with the scope of work and introducing computer technology with which would be created reports of the subjects in the law to be provided with greater legal security and a faster approach to justice;
- Strengthening of the independence of the carriers of the court and prosecuting functions through changes in the procedure for electing and relieving of duty, financing and rewarding;
- Establishing a system for continued education of the carriers of the legal profession, especially in the judiciary and public prosecution, and the constant education of the administrative personnel;
- Raising the ethics and morale of the administrative personnel and the uncompromising in the battle against corruption in all segments of the system of the administration of justice;
- Taking urgent measures for the extension of the reconstructing, sanitizing and equipping of the correctional institution "Idrizovo", the penitentiary "Skopje"-Skopje and other correctional facilities with the purpose of improving the conditions for stay of detained and convicted persons;
- Improving the hygiene, quality of food and heating in the correctional facilities, enabling the flow of fresh air, recreation and use of the privileges according to law;
- Improving the staff equipment in these facilities for the providing of a more adequate health service for detained and convicted persons and the improvement of the quality of the correctional process itself to enable the convicted persons a successful introduction to society after the served sentence;
- Creating control units and mechanisms which would exclude the possibilities of torture, inhumane treatment of the detained and convicted persons;



- Changes in the penal legislative with the purpose of creating conditions for the introduction of a system for taking alternative measures and probation system according to international standards
- Providing presumptions for operationalization of the constitutional principle for syitable and equal representation of representatives of the communities in the correctional facilities, courts, Public Prosecution and other services in the jurisdictional system .

3.4. Protection of rights from the field of property and legal relations

The property and legal field which above all encompasses the ownership and legal relations in the state, as a basis of every economy system is a prerequisite of the legal state and the market economy. Precisely because of this, the basic purpose of the Ombudsman in this report period also was the actions and measures which he undertakes before the bodies of the public administration and the other bodies and organizations which have public authorizations to be in contribution to the efficient, rational, functional and timely execution of the matters for their objective acting and deciding with the purpose of securing the rights of the citizens.

Property is a basic economy and legal category whose form is determined by the structure of the social order and not coincidentally its legal protection is treated as one of the fundamental values of the constitutional order of the Republic of Macedonia.

Precisely this significance of property in practical life leads to many problematic property and legal relations with a legal and practical nature between the citizens and the state, that is, the third parties and that is the basic reasons for the citizens to request an opening of a procedure for the protection of rights from the field of property and legal relations, most often in the following areas:

- **Denationalization**-the returning of ownership of nationalized property.
- **Securing rights of constructional land**-especially the procedure for the transformation of the right of use of constructional land in the right of property
- **Noting the property right of real estate** and other real rights of real estate of the cadastre of the real estate, and also in the registries in which are made changes to the users of the land.
- **Expropriation of the ownership and the rights which are derived from it** of land, buildings and other objects for the construction of objects and the carrying out of other matters of public interest, confirming the public interest and the determining of the legal refund for the expropriated real estate.

The Minister of finances, who according to law is a body of denationalization and by him the formed commissions for denationalization, the institution for property and legal matters with its organizational units, as a body in the frame of the Ministry of finance, the state institution for geodetic matters with the departments for measuring and the cadastre and also the Ministry of transportation and communication with their organizational units, along with the respective commissions for the solving of administrative matters of second degree of the Government of the Republic of Macedonia are responsible bodies which lead the procedure in the context of the re-

quests of the citizens from the field of the property and legal relations and before which the Ombudsman responsibly acts.

The general estimation for the conditions regarding the concrete field is that the constitutionally proclaimed objective for private property has not yet been achieved as a foundation of the economic and social system, because the process of privatization of the social, that is, the state property in the Republic of Macedonia in several segments is still going on, as is the denationalization of the former ownership, and the matter of privatization of the constructional land, that is, the ceasing of the category right of use of constructional land as heritage from the former social and political system, which the constitution of the Republic of Macedonia, the law for ownership and other real rights, and also the law for constructional land do not predict is at its beginning. With that, of course, the basic reasons for the ceasing of the dynamic of the privatization of the abovementioned process, doesn't arise from the nonexistence of interest of the subjects to become owners of the property, but the reason lies either in the nonexistence or, in most cases, in the misapplication of the legal regulative which together leads to the disrespect and constant violation of the constitutional and legal rights of the citizens, that, is, their difficult realization.

Regarding this, the Ombudsman from the subject acting states that:

- The procedures based on the requests of the citizens and other persons are not being carried on in the most conscious, most simplified and most efficient manner;
- There is a tendency for the obstruction of the realization of the rights and interests of the citizens;
- While executing their official duties and making decisions, the bodies and organizations are governed by an erroneous, unjustified or unreasonable estimation of the factual condition;
- Equal treatment of the citizens is not provided while executing the official duties
- There is no synchronization between the work of the state bodies and organizations and the bodies and organizations with public authorizations;
- The responsible bodies very often do not submit to the Ombudsman the requested explanations, information and evidence, do not report to him about the undertaken measures for the carrying out the requests, suggestions, opinions, recommendations nor do they bring the submitted decisions.

Also, in this report period, the majority of the submitted complaints were in regard to the realization and protection of the rights of the citizens in the process of **denationalization**, as well as in the procedure for returning the property and the type, the conditions and the measures for the refund of the taken property by the state. With that, an inarguable statement is that this procedure unjustifiably repays itself which creates a sentiment of doubt in the true purpose of the state for the complete carrying out of the process of the denationalization in the expected deadline of 6 years.

Namely, acting on the lodged complaints whose content is realization of right of denationalization, a general impression is that the body for denationalization as in the first instance procedure so in the procedure on the lodged complaints does not at all respect the deadline for reaching a decision on the subject requests i.e. complaints which of course leads to unobtainable harmful repercussions, that is, loss of trust of the citizens-former owners or their heirs that the state finally will remove the historical injustice which was made to them.



Also, for the cases when a legal executive administrative act was brought with which is accepted the submitted request of the citizens for the returning of the nationalized real estate, with various excuses is avoided the obligation of taking measures for its execution and presenting to the former owners, that is, their legal heirs. With that the rules of the procedure are not at all respected and eventually, if the body considers that the execution will produce irreparable damage to the rights of third parties or the state, it is necessary to pass an administrative act with which the execution will be put off in due time, and with that would be provided the use of the constitutionally guaranteed right of complaint.

This is also in regard to the legal decisions in which is determined that a refund is made of the same type for the repossessed property, but that the refund will be determined with an additional decision with which there is almost no case on which the Ombudsman acted, and the body for denationalization acted in that direction. Violations are made to the rules of procedure during the making of first and second degree decisions because the facts have been confirmed incompletely and erroneously and the material right is incorrectly applied, and as an illustration of that acting we stress the following:

- The requests for denationalization are denied as unfounded, only because the submitters of the complaints in their requests for denationalizations did not submit evidence for property, nor an act of repossession;
- are not accepted as solitary evidence the certificates and other confirmations for the facts for which official evidence is kept, issued in accordance with the information of the official evidence which have the significance of a public certificate;
- in the procedure actions are not taken at all if thee act for repossession of property and the evidence of ownership the requester cannot submit despite the fact that the body for denationalization is due to report them by official duty, as long as they are in the possession of the current user or another body or organization;
- the requests for denationalization are denied with the explanation that a subject of denationalization cannot be repossessed property for which it has been paid, that is, a refund given with which the first degree administrative body only states that for the repossessed property-subject of denationalization of the prior owner was determined a refund, but does not enter any supplemental confirmation of the fact if the refund determined in that manner was paid in the meantime.

For all this, despite the existence of subjective reasons with the administrative officers which act on the submitted request, certainly contributes the existence of an objective factor, and that is the insufficient staff equipment of the departments for property and legal matters i.e. the Department for property and legal matters in the frame of the Ministry of finance.

Very often a selective approach has been noted in the procedures of the commissions for denationalization in the deciding on the submitted requests, that is, the procedures for some of the more complex subjects are resolved quickly, while a large number of requests remain undecided for a prolonged period of time, so there are cases of procedures lasting up to several years. Also, cases have been noted of different acting on identical requests for denationalization, that is, a different application of the material law. That means that oftentimes the administrative officials, which act on the requests of citizens, their work obligations and authorizations execute unconscientiously, inexpertly, inefficiently and with bias, because of which is imposed the issue of **corruption**.

Regarding the **rights of constructional land**, as is known, until 1991, that is, after the passing of the Law for altering the Law for constructional land, the constructional land was in social ownership with which the Republic of Macedonia became the carrier of the ownership of the constructional land, and so assumptions were created regarding its privatization because for the most part there is a right of use for physical and legal persons which have obtained it in the sense of the content of the regulations with which the social ownership was constructed.

During 2001 a new Law was passed for constructional land, but in this report period also for the majority of subjects the application of its normative decisions was still restricted which are in regard to the transformation of the right of use for constructional land in the right of ownership, regarding the fact that the state, through the carrier of the legislative authority- the Parliament of the Republic of Macedonia, has still not filled the legal void made by the decision of the Constitutional Court of the Republic of Macedonia with which a part of the decisions of the Law, as from the Decision on the manner and conditions of transformation of the right of use of constructional land property of the Republic of Macedonia in the right of ownership or right of long-term lease are denied, among other things, with the explanation that with the legal concept for transformation is brought to question the legal security of the citizens, as an element of the constitutional principle of the rule of law and the constitutional statement of the equality of the citizens before the Constitution and the law.

But, the representatives of the Department of property and legal matters of the Ministry of finance and the Ministry of transport and communication continue to publish information in the media and the means of public informing, that the citizens which will not submit a request for buying constructional land in accordance with the Decision for the manner and procedure for the alienation of constructional built land ownership of the Republic of Macedonia will lose that right in the manner that the same will be transformed in the right of long-term lease or will be sold on market terms.

In the report period the model of transformation of constructional land was not executed completely in a clear, precise, understandable and consistent manner, and because in this case it is a matter of recognition and obtaining rights of the citizens (right of ownership) the conditions and procedure of its obtainment and realization, can only be arranged by law, and not with a sub-law act with which can only be finished the working and precisement of certain legal arrangements in the function of their execution. From this, in the correlation with all of the previously stated the conclusion can not be deduced that with the running out of the deadline of its application the citizens will lose that right.

Regarding the procedure for **inputting rights of real estate in the cadastre of real estate**, that is, the land continues to remain in the repeatedly mentioned statement that the same continue to be put off, there is an unprofessional attitude of the employees and the extreme disrespect and ignorant behavior towards the interventions of the Ombudsman especially in the sector for measuring and cadastre in Skopje for which are in regard almost all of the lodged complaints.

Cases have been noted where there is no respect at all for the legally conditioned procedure of **expropriation**, that is, the establishment of the right of administration and the limitation of the constitutionally guaranteed right of property and rule, on one hand, and on the other the citizens realize their right of payment of the set just compensation for the expropriated property with great difficulty even when for the same they possess appropriate documents, agreements or other court decisions.



Departing from this condition, with the purpose of adequately solving the abovementioned matters, and for securing the close application of the prescribed procedure in the context of securing the efficient realization and protection of the rights of the citizens in the process of denationalization a special information has been submitted to the official which governs the Ministry of finances. A special information has been submitted also to the secretary of the second degree administrative organ-the Commission for resolving in an administrative procedure of second degree on the subjects of measuring, cadastre and the inputting of the rights of real estate regarding that in the past period for none of the cases a return reply has been received for the undertaken measures and decisions made on the submitted letters and the lodged complaints by the citizens submitters of the complaints.

Also, for a large number of cases the chairman of the State institute of geodetic matters, especially in regard to the working of the Department for measuring and cadastre from where very rarely are received the requested data and information.

It is indubitable that in the intentions to give as much contribution as he can in the simplifying of the realization and protection of the rights of the citizens, the Ombudsman continually attempted to establish regular contacts and close cooperation with the responsible bodies, in the function of the surpassing of the problems of the citizens of the sphere of property and legal matters. Regarding the fact that immediate contacts have not been established, the Ombudsman points out a part of the problems, such as:

- Sluggishness, great bureaucracy and a high degree of subjectivity while executing the administrative procedure;
- Incompetence, and in certain cases it can be said the lack of knowing the regulations of the property and legal relations by a large number of employees;
- Uncooperative and unprofessional attitude towards the subjects included in the procedure and with that causing harmful repercussions for the citizens-clients in the procedure;
- Unequal application of regulations.

Finally, with the purpose of surpassing the abovementioned problems and to enable faster and more efficient realization of the rights of the citizens before the responsible bodies, The Ombudsman to the responsible bodies: the Government of the REPUBLIC OF MACEDONIA, the Ministry of finance, the Ministry of transport and communication and the State institute for geodetic matters recommends:

- Close application and respect to the respective legal regulative;
- Timely and efficient procedure because of the submitted requests by the citizens;
- Respecting the lawful court decisions, the documents assembled in the legally prescribed form and the decisions of the state bodies;
- Close respecting and following of the legally appointed deadlines;
- Taking measures and activities for raising the consciousness of the administrative employees, especially those which closely decide on the requests of the citizens;
- Respecting the requests, recommendations and other remarks of the Ombudsman, timely acting on the same and establishing a better cooperation with the Ombudsman;
- Taking actions for the realization of the reached agreements for giving suitable compensation for the expropriated property or the repossessed constructional land;
- Strengthening the existing and finding new mechanisms for greater control and responsibility of the administrative employees with the purpose of eliminating the possibility of corruption

- Strengthening the personal capacities in the commissions for denationalization in the function of accelerating the procedures, as with the first so with the second degree.

3.5. Protection of rights in the field of urbanism and construction building

The protection of rights of the citizens of THE REPUBLIC OF MACEDONIA in the field of urbanism and construction building represents one of the more significant areas which were the subject of the work of the Ombudsman in the report year.

Legal protection of the citizens is given in accordance with the authorizations from article 2 of the Law for Ombudsman and the rights and obligations which to them on one and the bodies of the state administration on the other hand come from the Law for spatial and urban planning, the Law for construction of investment objects and the rights and obligations predicted in the sub-legal acts which more precisely regulate certain issues of significance to urbanism and construction building.

In this sphere of social life the citizens realize the essential right, the right to their own home as a basic premise for human and family life, as other rights connected to urban living, that is, the right to accessible paths to their home, to business objects, the normal and unobstructed movement on the traffic infrastructure etc.

The current **inadequate legal** regulative abused by the investors while constructing objects, **irregularities** in its application by the inspection bodies and the **inability** of the makers of the urban plans to follow the need of the citizens for apartment and business space, **the corruption** of individuals actively involved in the procedures of making urban plans, the approvals for construction and inspection bodies are the basic reason for frequent violations of the rights of the citizens in the field of urbanism and construction building because of the violation of their ownership and other citizen rights.

The lack of interest by the inspection organs and courts to protect the rights of the concerned citizens is a basic reason for referring to the Ombudsman as a control mechanism in the workings of the public administration.

Although regarding the previous period, there is a trend of the decrease of lodged complain in this field, it is still a result of the total reduced number of complaints submitted to the office of the Ombudsman, and not to the improved conditions in this field. The numeric indicators in the review for received, solved and subjects in process for the report period give a more complete picture in which scope are the constitutional and legal rights of the citizens violated in the sphere of urbanism and construction building, which measures have been taken by the Ombudsman for removing the stated irregularities and what are the results from that. As a result of the actions taken only in a few cases the right of the submitters of the complaints has been realized, and in the rest the procedure is still going on or the Ombudsman has not received a return information because of which with special information has been notified the higher body, the Government and Parliament of the Republic of Macedonia and requested that measures be taken for surpassing these conditions.

The majority of the complaints have been on regard to problems connected with the **prolonging of procedures** for issuing approvals for construction and the procedures before the second degree government commission; then for the **exception of the investors while building** the



objects of the constructional documentation and **not taking action** by the constructional inspection or for the issuing of approvals for construction against the Law for property and other real rights; **the no execution of legal and final acts** for the tearing down of illegally built constructional objects; **the miscarrying out of the programs for constructing streets or accessible paths** by the units of the local self-government, and also the making of detailed urban plans with which is enabled the building of constructional objects against article 4 of the Law for spatial and urban planning, that is, objects which violate the right of humane living.

In the acting of the Ombudsman in the report year and also in previous years a selective approach of the bodies of the Ministry of transport and communications has been noticed, especially in the procedures for tearing down of no legal constructions, A characteristic example during the past year with which can be illustrated this claim as the case of the tearing down of no legal constructions which was carried out in Ohrid and other cities in Macedonia when a priority of tearing down was set on larger constructional objects in the center of Ohrid and on the bank of the lake and because of that an after the intervention of the Ombudsman the action was not used to carry out decisions for the tearing down of no legal constructions of a smaller size, but from an older date. Because of this the Ombudsman had the impression that with this action the state was behind only the public, not the individual interest of the citizens.

In his several years of functioning the Ombudsman stated that the State inspectorate for construction and urbanism neglects and ignores the requests for executing the final acts for tearing down no legal constructions of an older date because he replies to the same that the acts are in the program of realization in the following period. Experience shows that this is not true at all with which the role of this institution is devalued on one hand and the mistrust of the citizens in the institutions of the system on the other. This ignorant behavior towards the institution creates a ballast of objects with the Ombudsman because a large number of the procedures cannot be completed with which the work, that is, the realization of the function for which with the Constitution and the Law is established this institution is obstructed. And the irregularities in the acting contributed to the citizens' request for legal protection against the final decisions of the Ministry of transport and communication before the Supreme court of the Republic of Macedonia with which is burdened the working of this body. Because of the stated procedures, in the communication with the Ombudsman a negative contribution have the units of the local self-government and the regional units of the Ministry of transport and communication in the realization of their responsibilities. So, it is not often that an administrative problem is inputted because of the disrespect to a recommendation from the Ombudsman which ends with a verdict of the Supreme Court of the Republic of Macedonia with which are confirmed the previously stated opinions of the Ombudsman.

The Ombudsman expects that the Parliament of the Republic of Macedonia will as soon as possible pass the Law for construction and that with it will be created conditions for a better order in the construction of investment objects and better conditions for the humane living of the citizens.

For the improvement of the stated negative incidents in the field of urbanism and constructional building and the realization of the rights of the citizens the Ombudsman considers that it is needed:

- The bodies of the Ministry of transport and communication and the second degree commission in the Government of the Republic of Macedonia for the solving of objects from the field of transport and communication and the protection of the envi-

ronment, to closely follow and carry out the legal regulative as regarding deadlines, so regarding decision;

- The public inspectorate for construction and urbanism to create the program of work more transparent to the citizens and a priority in the execution of acts for tearing down no legal constructions to be given to the acts of an older date with the purpose of avoiding the selective approach to execution;
- To increase the preventive activity of the Department for inspection matters in order to reduce no legal constructional activities;
- The bodies leading the procedure and bringing the urban plans to pay more attention to the needs of the citizens and especially to the need, with their bringing to provide not only the rational use of space, but the creation of conditions for humane living and work of the citizens, and not to give priority to the commercial interest of the investors;
- To work on the raising of the consciousness of the administrative officials in the Ministry of transport and communication, especially those which closely decide on the requests of citizens and to form a Service of professional standards with the purpose of creating prerequisites for larger professionalism in the work of the administrative officials in this Ministry and
- To pay more attention and respect to the opinions of the Ombudsman.

3.6. Protection of rights in the field of the environment

The protection of the rights of the citizens in the field of the environment is of great significance because a basic premise for healthy life and survival of man is living in a healthy environment. We are witnesses that in a highly developed industrial society not only in the Republic of Macedonia, but by world standards, in the conditions of a constant increase of the population, the race for a larger economic profit leads to a constant and enormous pollution of the media of the environment, the soil, air and waters.

It can be said that the Republic of Macedonia in this field has passed an immense legal regulative with which the issues, problems and measures for protecting the environment are regulated starting from the Law for the protection and improvement of the environment, through special laws for the protection of the soil, air, waters protection from harmful noise, laws for the protection of certain significant natural landmarks, as well as many sub legal acts and documents such as: the Frame convention of the of the United Nations for climate changes, the Protocol of Kyoto, the Montreal protocol, the Stockholm convention, the Convention for access to information, as well as the participation of the public in the deciding and access to justice regarding environmental issues.

Despite that, practice shows that the legal regulative is not enough in its own if the responsible subjects completely and closely do not apply it and if the consciousness of the population regarding environmental issues is on a low level. It seems that the resource ministry i.e. the Ministry of environment and spatial planning, and in its frames the State inspectorate for the environment, do not undertake all legal measures with which would be dealt with above all the large polluters of the media of the environment. That it is so confirm the cases with the **spill of waste from the Zletovo mines** and the damage cause all the way down the river to the lake Ka-



limanci, **the technological waste** which is created by the working of the firm "Feni" in Kavadarci, **the air pollution** from the lead and zinc melting plant "Zletovo" which has already damaged the health of the citizens of Veles, **the air and soil pollution** from the working of the nonmetal mine "Ograzhden" near Strumica, the inarguable fact that most of the larger rivers can freely be proclaimed dead, and on the largest river Vardar there is a constant amount of **plastic waste**.

The Ombudsman follows these conditions and is obligated to point out these problems according to Law, but he states a passiveness and insufficient interest among the majority of ecological associations and the citizens themselves. Because of the **low ecologic consciousness** of the populace, the citizens usually react only when their individual interests are closely and personally endangered for which are witnesses the small number of lodged complaints to the Ombudsman's office. Regarding the fact that the environmental problems and conditions on one hand are on an unsatisfactory or passable level, and the consciousness of the citizens on the other hand is on a very low level a wider social action for all relevant factors is needed, above all by the Ministry for the protection of the environment and spatial planning, the educational institutions, the ecological associations, and the Ombudsman in the direction of raising the ecological consciousness of the citizens.

In the report year despite the at first sight correct cooperation between the Ombudsman and the Inspectorate for the environment, we still consider that this body also does not take sufficiently energetic measures against the subjects which with the disrespect of the legal regulations violate the rights of citizens of peace and quiet and the right to live in a healthy environment. As was pointed out in the previous report, this attitude encourages individuals- owners of restaurants, industrial and other objects to execute their actions on the account of and damage to the media of the environment and the rights of citizens.

For the improvement of the conditions in the field of the environment the Ombudsman considers that it is necessary to take the following measures and actions:

- The public inspectorate for the protection of the environment to constantly follow the conditions of the pollution of the media of the environment caused especially by the technological processes in the larger industrial capacities;
- Close following of the legal regulative in the procedure for consent to build and work on restaurants and industrial objects, that is, not to issue consent if the requestor did not write an ecological-technologic elaborate for the object and did not apply the recommendations therein;
- Acceleration of the procedures in administrative bodies of the Ministry for the protection of the environment and spatial planning;
- Introducing a constant system of education in the Ministry and raising the consciousness of the administrative officials and governing persons especially for communicating with the citizens;
- Raising the ecologic consciousness of the citizens through their education with the creation and distribution of pamphlets for issues of significance for the environment, through appearances in the media for public informing, organizing sections and workshops in the units of the local self-government, enriching the educational content with programs and subjects regarding the environment etc.

3.7. Protection of rights from the field of work conditions

Unemployment continues to be one of the main and most serious problems of all citizens of the Republic of Macedonia. This problem directly influences the everyday decline of the living standard of the citizens, and at the same time on the increase of social risk and poverty among the citizens. The Republic of Macedonia is among the few countries which have a larger number of unemployed persons as opposed to employed ones. Unemployment contributes to the persons able to work which are unemployed to feel worthless. In these difficult social conditions the institution of the Ombudsman cannot easily perform its function in the sphere of work relations. In this report year also the complaints regarding work conditions were among the most numerous.

The complaints were mostly in regard to the violations of rights through ceasing of work condition above all as a result of the carried out rationalization in the public administration and other public facilities, enterprises and services, violations in the procedures of employment with the abuse of the institute of advertising, employment of candidates which do not fulfill the conditions predicted in the notifications or the employment of candidates which did not answer to the notification at all, employment based on political party preferences etc. A part of the claims in the complaints were in regard to the protection of right of work condition in the procedure of payment of salary and other compensations; dissatisfaction from the manner of calculation of the salary; inability to evident the work experience due to the lack of payment of the salary; payment of monetary compensation due to unemployment considering that the body did not appreciate in whole the factual condition of confirming that right; complaints regarding violation of rights in a complaint procedure before the second degree body; violation in the procedure of distribution with claims that the decisions made for distribution are not in concordance with legal regulations or that the distribution has been executed against the act for systematization. Some complaints were in regard to the illegal employment of the work givers themselves, like the choice of chairmen and complaints due to the relief from chairman functions.

To some of the workers during the report year the working condition has ceased because of personnel redundancy, and as a result of the obligations which the Government of the Republic of Macedonia took on itself in the negotiations with the International monetary fund for rationalizing the public administration. Because of that protection was requested from the Ombudsman by employees in the Ministry of economy, the State institute for geodetic matters and the Public enterprise "Macedonian forest"-Makedonski Brod. It is characteristic that in these cases the workers complained especially to the lack of transparency in the carrying out of the entire process, the no issuing of the ranking lists so they can have an idea of the point status of each one of them, errors in grading, especially the grading on the criterion economic-social standing, for the parallel employment of new persons etc.

Regarding the stated the Ombudsman Asked the work givers while carrying out the process of rationalization to closely follows the legal decisions in which are decidedly stated the conditions for terminating the work condition based on this. In concrete cases the determining of the number of workers which have had their work condition terminated with firing because of economic, technological, and similar changes and the rights provided due to the decided termination of the work condition have been executed without taking into consideration the criteria in the Collective agreements and without grading i.e. ranking of the workers. In these cases the Ombudsman stated a violation of the rights of these workers for which was pointed out to the work givers to remove these violations.



The statements of the Ombudsman in the abovementioned sense only produced results towards the employees in the Public enterprise "Macedonian forest" from Makedonski Brod, where the Administrative board annulled the decisions with which were violated the rights of the workers.

In the Ministry of economy while conducting the procedure for rationalization decisions of termination of the work condition were issued to the employees because of the termination of the departments with this ministry after which the Ombudsman Pointed out that the conduction of this process in this ministry is premature regarding the fact that the real need for the taking over of the workers with those bodies to which were transferred the responsibilities has not still been confirmed and that the fact that the procedure for the new organization of the local self-government was still going on.

The case of the accountants and the employees in the school cafeterias in the education system due to rationalization was one of the most characteristic cases during 2004. For this case the Ombudsman requested that attention be paid especially to the manner of which the employees will be secured in the future, the same to be notified of the manner of their organizing and further work engagement, with the precising of the terms under which they should continue working. The Ombudsman pointed out that the most just solution for these workers would be for them to solitarily take over the execution of these functions, for which the accountants have the realest possible needs, with the possibility of lease of the facilities and necessary inventory. Only if the workers disagree with this solution it should be approached towards electing an offer with the obligation of overtaking the employees.

By the Ministry of education and science was acted in the direction of the statements of the Ombudsman, that is, the Ministry made an agreement with the relieved accountants for forming, founding of the Stock association "Bilans-Hit", and for the executed bookkeeping-accounting services in the schools the Ministry will transfer a certain amount of compensation to the accountants.

In the report period quite current and arguable were the actions of **employing and distributing the teaching staff in the education**. Although the Ombudsman researched these cases it was difficult for the statements of the submitters to be confirmed and proved. It was also evident the lack of renewal of the work contracts of the already engaged teachers from the previous school year, for which were submitted requests to the Ministry of finance for approving funds for new or emptied work positions, after which were distributed notifications for job positions from which were engaged new persons as executors. Another evident appearance in the sphere of education was the disrespect of the guiding of the minister for the displacement of the teaching staff proclaimed as redundant. The right of the workers proclaimed as redundant to be immediately distributed to the emptied job positions was not respected, which directs to a lack of coordination of the regional representatives of the resource ministry, and with this problem are faced workers which have worked in very difficult conditions for many years, and from which are not accepted the requests for distribution to emptied job positions or new executors are appointed or persons with less work experience in harder conditions are distributed. The subject of a number of complaints was the issue of the incorrect distribution of the class fund in the schools for which the teaching staff complaints that instead of distributing the class fund between them, mostly new executors are appointed, for which the Ombudsman informed himself that all employments are

realized with previously obtained consents from the resource ministry and the Ministry of finances.

Viewing these conditions and the given answers the Ombudsman continuously notified the direct higher body, the Ministry of education and the minister himself, whose replies were unfortunately either missing or supplied formally, without any essential reply to the directed requests. During the end of the report year the Ministry informed the Ombudsman that because of disrespecting the directions suitable measures and sanctions will be conducted, but without précising the same.

As in the previous this year also it is inevitable to state the low level of cooperation between the Ombudsman and the **Commission for second degree solutions from the field of work conditions with the Government of the Republic of Macedonia** which continues to work outside the legal authorizations and duties to decide in time on the second degree lodged complaints and objections and answers and pointing outs of the Ombudsman. The irresponsibility of the Commission inarguably brings to question the constitutionally guaranteed right of second degree in the deciding on the rights and obligations of the concerned citizens, which are forced to request the protection of their rights from the responsible courts.

From the field of working relations it is evident **the disrespect of the legal court verdicts with which is ordered the distribution of the worker in an adequate job position** according to expert preparation. In these cases the verdicts are not carried out in whole because the job positions on which the court has decided in the verdicts have been filled with other persons.

During the report year the high level of cooperation of the Ombudsman with the labor inspection with the Ministry of labor and social politics continued. These bodies have regularly cooperated and executed inspection supervision in previous years on almost all requests of the Ombudsman.

The end of the report year was certainly marked by the announcements of changes in the Law for work conditions, that is, **the reduction of the workers' rights**, and in this context also of maternal leave of absence. Regarding the fact that these announcements found reactions from the union organizations, from the workers themselves, and also from the general public, the Ombudsman points out that during these changes it should be respected in whole the international standards for workers' rights.

Because of these unfavorable conditions in the sphere of work right and protection of workers' rights the Ombudsman **recommends**:

- Taking continuous measures and activities for creating necessary complaints on a normative and any other type of field with which would be enabled higher employment;
- Maximum respect towards the international standards while changing the legal regulative for workers' rights
- Close paying attention to the legal regulative while distributing the workers by the work givers;
- Close respect to the institute of the public notification and
- The workers to respect the legal court verdicts regarding workers' rights.



3.8. Protection of rights of the citizens from the field of housing relations

With the cease of enforcement of the Law for housing relations and the entrance of force of the Law for home relations the solution of the housing issue of the citizens in the Republic of Macedonia and the home relations have been constructed on completely new foundations.

Namely, with the new legal regulative the housing needs of the citizens are solved in two ways. In that sense the citizens have the opportunity to receive an apartment through gaining right of ownership, with the construction and buying of real estate with their own funds. In the other case, and regarding the fact that the Republic of Macedonia has been proclaimed with the Constitution as a social state for those citizens which are led as socially endangered-housing unequipped in the sense of the Law for social protection, the possibility has been predicted for the state to award them an apartment under lease from its own funds. Exactly for these reasons a large number of complaints for the protection of rights from the field of housing relations have been directed to the Ombudsman by this category of citizens.

During 2004 the most characteristic subject in the working of the Ombudsman remained the case known among the public as **social apartments**. To the Ombudsman again were lodged complaints by citizens which requested intervention regarding the carrying out of the Procedure of distribution of state apartments built on the "Project for the construction of apartments distributed to persons with low incomes" for whose realization is obligated the Ministry of transport and communication. Namely, in December 2003 a new notification was issued by the Ministry for the distribution of subject apartments in the city of Gostivar, towards which the citizens directed individual requests, but the responsible commission during the entire 2004 did not realize the predicted distribution. From those reasons a larger group of citizens from Gostivar requested information from the Ombudsman regarding the final completion of the published notification.

Acting within the frame of the legal authorizations the Ombudsman submitted a correspondence to the minister of transport and communication in which he stated his opinion on the prolonging of the procedure of distribution of state apartments in Gostivar and at the same time requested a meeting with responsible persons from the Ministry with the purpose of obtaining concrete information for the solution of the problem. Despite the sent correspondence and numerous telephone calls to the responsible services of the Ministry, no notification was received from them nor was enabled any kind of conversation, so the Ombudsman was introduced to the reasons why the responsible commission with the Ministry of transport and communication did not act in the sense of the Decision of the terms and criteria for the distribution of apartments built with the "Project for the construction of apartments distributed to persons with low incomes".

In article 9 of the Decision it is predicted that the commission is obligated within 30 days from the end of the notification to make out a ranking list of the applied candidates based on which the minister of transport and communication will make a decision for the distribution of the apartments which will be sent to every participant of the notification within 15 days of the day of making. Although the Ombudsman found great irregularities an uncooperative behavior from the high functionaries of the Ministry of transport and communication, still the problem with the social apartments continued to follow him with great influence which resulted with improvement in cooperation near the end of 2004. According to the most recent information of

the Ministry, received during the preparation of the annual report, the problems with these apartments do not continue as a consequence of the improper working of the responsible Ministry, but because of the court procedures which are being led for this category of apartments, raised by the concerned citizens and of the Ombudsman of the Republic of Macedonia.

Regarding the requests of the citizens for realizing other rights from the field of housing relations like the transfer of housing rights to a family member or the requests which are directly in regard to the lease of an apartment owned by the state, although with delay, the responsible sector with the Ministry of transport and communication mainly acts and for the outcome of the procedure notifies the Ombudsman.

During the report year to the Ombudsman were continuously lodged complaints by citizens which were in regard to the request for awarding an apartment based on the Law for denationalization. Regarding the founded requests the Ombudsman directed numerous suggestion, opinions and recommendations to the Commission for housing matters with the purpose of positively solving the abovementioned. It is characteristic for these requests is that their solving is made difficult by the fact that the state doesn't have the required number of apartments which has the consequence of prolonging the realization of the rights of these citizens, that is, violations of their rights. In these cases the responsible commission almost without exception breaks the deadline predicted in the Law for denationalization.

Despite the problems arising from the unsatisfactory cooperation with the bodies which act on responsibility on the rights of the citizens in the field of housing relations, the Ombudsman most positively grades the cooperation with the Commission of housing relations, especially the cooperation with its chairman. As a result of this successful cooperation many citizens have realized their rights which come from the Law for denationalization and based on the Law for special rights of the representatives of the security forces and the members of their families.

From the Ombudsman a group of citizens requested help due to irregularities made in the procedure of the lease of so-called **commercial apartments**. In the complaints the citizens requested an intervention before the Public enterprise for regulating housing and business facilities of the Republic of Macedonia because of the non-execution of the decisions of the pre-agreements for sale of an apartment being built made during 2002 and 2003 between the submitters and the Public enterprise.

Namely, the submitters made pre-agreements with the Public enterprise for sale of an apartment being built, according to which 50% of the agreed upon price was paid at the time of the making of the pre-agreements, and the rest of the sale price was left to be determined with the sale contracts which were planned to be made with the Public enterprise after receiving an approval for use of the housing facilities. With the Pre-agreements the criteria were determined, that is, the terms of payment of the rest of the price of the apartments which were the subject of sale. But, after the completion of the housing objects, the Public enterprise with a written notice obligated the buyers to pay the rest of the price by making a contract with "Stopanska Banka" SA-Skopje for crediting under the conditions and criteria which the bank uses to approve housing credit. Basically, some of the terms of paying the rest of the debt remained identical with the predicted in the previously made pre-arrangements, but a new criterion was predicted under which the credit user could be a person which has a working condition with an annual income of 4 500 EUR.



The Ombudsman stated that with the conditioning to be made credit arrangements with the bank are violated the legal rights of the citizens, especially due to the fact that in the pre-arrangements was given the account of the Public enterprise on which the buyers after making the arrangements for buying and selling were indebted to pay the annuities without being predicted an obligation for making any kind of credit arrangement.

In regard to this the Ombudsman with a few correspondences pointed out that the majority of buyers despite having paid 50% of the total price will not be able to make housing credit arrangements due to them not having the necessary monthly income, and some of them are not in a working condition. Because of those reasons the Ombudsman requested from the Public enterprise to without delay apply the criteria predicted in the pre-arrangements and with that enable the buyers to finally complete the buying and selling arrangements after which the apartments the apartments will be handed over to them. For the created problem the Ombudsman informed the prime-minister and the Government of the Republic of Macedonia, after which he was assured that it will be acted in the direction of his statement. Regarding the same, almost at the same time, the Public enterprise notified the Ombudsman that to the buyers which do not fulfill the credit prerequisites will be given the opportunity under certain conditions to make direct agreements with the Public enterprise for apartment sale on extended payment, regardless of the salaries of the buyers themselves and their cosigners.

Having in mind the subject working the conclusion, that is, the realization of the rights of citizens from the field of housing relations, is implied that the aforementioned is very difficult to realize, which comes from the fact that despite the individual, there is often a presence of collective violations of the rights of a certain category of citizens, which cannot be removed even after extended time periods. Although the regulations of the housing field represent a solid normative-legal frame in this field also a great division is noticed between the declared rights and the rights which the citizens, in fact, realize.

With this estimation of the conditions in the housing fields, and with the purpose of the more efficient and closer realization of the rights of the citizens, the Ombudsman issues the following **recommendations**:

- Close following of the regulation which regulate the housing field and their equal application regarding lease and distribution of apartments;
- Timely acting and deciding on the requests of the citizens, that is, acting in a reasonable time frame;
- Strengthening the human resources of the bodies to which the requests are directed;
- Taking measures for the realization of the right of home stay of the citizens based on denationalization and
- Obligatory cooperation with the institution of the Ombudsman.

3.9. Protection of rights in the field of social protection and social security

With the Constitution the Republic of Macedonia proclaims itself as a social state and to every citizen is guaranteed the right of social security and social insurance which should be realized based on the principle of social justice. But, from the work of the Ombudsman and the complaints from this field, it can be stated that the social and economic condition of the citizens

is rising, and the social help from the state is not enough to cover even the basic existential needs, because of which it cannot be said there is a close realization of the constitutional guarantee for social security and social justice.

In the report period a large number of complaints were lodged which were in regard to the realization of rights from the field of social security, like: the realization of social monetary aid, constant monetary aid, one-time social aid, compensation for help and care from another person and other manner of social protection.

Acting on the protection of the rights of citizens from this field The Ombudsman in certain cases stated violations of the rights of citizens, that is, stated that with undertaking certain measures by the responsible bodies with which were reduced or limited the rights from the fields of social security with a restrictive and quite often irregular application of the legal regulative was disabled the providing of social protection and social security of a large number of citizens. Especially concerning was the ceasing of these rights of persons which for many years because of confirmed permanent disability of work or because of unemployment and having no income in the family were users of certain rights of social protection.

It is notable that in the report period the centers for social work before deciding on a certain right applied the legal obligation of **making a direct inspection** in the families of the requestors, but despite that it happened based on a misestimated factual condition to take away a certain right of social protection. While taking away certain rights of social protection, especially for the region of the Interregional center for social work of the city of Skopje, it was characteristic that in the majority of cases was previously taken away a certain right for then to supplemental, and quite often, after a few months to make a reinspection and confirmation of the factual condition with the purpose of confirming if there is still a basis for the use of a certain right, with which the citizens remained several months without the use of the rights of social protection. **The cease of use of the rights was mostly made without the passing of an administrative act**, with which the citizens not only were not informed of the reasons of the taking away of the rights, but didn't even have the possibility to use the right of complaint as a constitutionally guaranteed right. Stating a violation of the rights of the citizens due to the stopping of social aid without the passing of an administrative the Ombudsman pointed out to the centers for social work and to the Ministry of labor and social politics that this manner of acting is not in concordance with the Law for general administrative procedure and that this creates a legal insecurity with the citizens and a violation of the constitutional legislation of rule of law and a legal state. Due to the fact that after these statements no adequate measures were undertaken, referring to the minister of labor and social politics and to the chairman of the Interregional center for social work of the city of Skopje, where the problems were most expressed, the Ombudsman pointed out that the cease of social protection without previous confirmation of the factual condition and without the passing of an administrative act is illegal and precedes a reevaluation of every case where the rights has been denied. Also, the Ombudsman pointed out that due to the **unauthorized prolonging of the procedures** for deciding on the requests of citizens or for the reevaluation of the current factual condition is violated the right of social security and social justice, especially in cases when it regards socially endangered persons with damaged health.

The Ombudsman in certain cases states that not only was the social help withdrawn without the passing of an administrative act, especially from persons which have received it for



years as permanently work impaired or with a heavy disability or persons addicted to drugs, but these persons were **indebted to return all funds they have until then received.**

Not questioning the legal possibility of returning illegally paid funds, the Ombudsman pointed out that in this case also should be respected and enforced with a legal prediction a procedure for irregular reevaluation of previously passed and acted on decisions and to respect the legal deadlines for the taking over of certain actions for the returning to original state. The Ombudsman considers that a passing of a decision for the return of unfoundedly paid funds would be justified if the clients deliberately gave or didn't declare certain information regarding the realization of certain rights. But in that case also an account must be taken regarding the legally predicted procedure and the legal deadlines in which can be undertaken certain actions for the withdrawal or annulment of already executed administrative acts. The return of the alleged illegally paid funds was not requested based on special administrative acts, but while deciding on the newly submitted requests was confirmed the obligation of returning the previously paid funds without accurately and precisely stating the reasons and legal foundations for it.

Regarding this practice of the centers for social work, the Ombudsman suggested that the legal foundations be reevaluated for the return of unfoundedly paid funds in every concrete case and to be reevaluated every case of withdrawal of the right and indebting the citizen to return the funds, especially when discussing persons with a permanent work impairment, moodily disabled and other persons which have no other sources of funds for existence and to act according to the procedures and terms appointed by law. After the interventions of the Ombudsman and the large number of publicly expressed reactions from the citizens and NGOs, the Ministry of labor and social politics made a note of reevaluating all of these cases and according to the knowledge of the Ombudsman reevaluating has been commenced on every individual case.

Regarding the cooperation between the responsible bodies and the Ombudsman it can be stated that in the past period of the report year that cooperation has improved, but the requests weren't acted on in time, and especially to the recommendations of the Ombudsman, and also on the requests of citizens, which led to the disabling of quickly and efficiently realizing the rights of the citizens where a quick reaction is necessary from the responsible bodies regarding the fact that it is about the existential questions on which depends the realization of other human rights.

Stating that the social and economic status of the citizens has not been improved the Ombudsman issues the following **recommendations**:

- Close following of the legal and sub-legal regulative which is in regard to the rights of social protection and close following of the constitutional right of every citizen to social security and social justice;
- Quicker and more efficient procedures for deciding on the rights from the field of social protection and making decisions on the correct and real factual condition with the proper application of the legal terms and criteria;
- Improving the cooperation with the Ombudsman, respecting his suggestions and opinions and quicker reacting on the same;
- Introducing an education system for official persons in the centers for social work with the purpose of raising their consciousness especially regarding the communication with the citizens and the realization of rights from the social sphere and
- Improving the staff equipment of the centers for social work, especially the services in the Ministry of labor and social politics which decide in the administrative procedure.

3.9.1. Internally displaced persons

The Republic of Macedonia in 2004 also faced the problem of internally displaced persons. Although a significant period of time has passed since the conflict the Government, the adequate ministries and international institutions which are involved with this category, unfortunately, didn't manage to completely solve their return to their homes and properties. In the collective centers are mainly accommodated: Macedonians, Serbs and Romas, while the Albanians are accommodated mainly in households. Although the number of internally displaced persons during 2004 has decreased by about 500 persons regarding the previous year when about 1 900 were registered, the fact is still concerning that there are still 1 425 internally displaced persons left. The process of the returning of the internally displaced persons was quicker and more efficient in the Tetovo region.

Having in mind the conditions and problems which the internally displaced persons face and for the finding of suitable solutions to this problems, the Ombudsman near the end of 2004 visited the collective centers: "**Kristal**" and "**Kuba**" in Kumanovo, "**Ranka Milanovik**" and "**Stiv Naumov**" in Skopje and "**Cicino selo**" in the county of Saraj.

The dissatisfaction of all internally displaced persons as mainly due to: the inadequate living conditions, hygiene, the poor health conditions, public transportation, the datedness of the registration cartons which confirm their identity and status and other complaints. They expressed dissatisfaction also regarding the distribution of donations for internally displaced persons by the International committee of the Red Cross. This donation which mainly was of non-material nature, according to the internally displaced persons was awarded with no previous confirmed criteria.

Generally viewed, the Republic of Macedonia, bodies and organizations which are responsible for the protection of the rights of the internally displaced persons basically care for these citizens. However, the conditions in which they are accommodated are far from the normal family and home living-a right recognized with international law and the Constitution of the Republic of Macedonia. While repeating these estimations the Ombudsman is aware that in these situations it is very difficult to completely follow and provide the basic principles of social care and humanity to the internally displaced persons, but the collective accommodation of these persons in collective centers and the way of life under these conditions has been justifiably manifested in the past three years with their revolt and criticism, above all to the home state and its bodies and organizations.

The Ombudsman once again repeats that the internally displaced persons have had their rights violated, which are confirmed by the Constitution of the Republic of Macedonia and with the international conventions for the protection of human rights especially the safety of the home, the right to freely choose one's own domicile and the right of property which of course encompasses obstructing the realization of other rights.

Although more than three years have passed since the signing of the Frame agreement, the general estimation of the Ombudsman is that **its implementation regarding the return of the fugitives and regarding the building of trust with these persons is going slowly**. The safety reasons, the general mistrust towards the mixed multiethnic police forces and the multiethnic coexistence remain the main reasons because of which the process of returning the internally displaced persons is going slowly.



Having in mind these conditions regarding the internally displaced persons, and with the purpose of their improvement the Ombudsman **recommends:**

- To find efficient measures and activities for the realization of the strategic solutions of the Government of the Republic of Macedonia for the return of internally displaced persons to their homes and properties and in that direction it is appealed to all bodies and organizations to contribute to the softening and solving of this problem;
- To improve the general living conditions especially in the center "Cicino Selo";
- To include all of the children in the elementary schools;
- To strengthen the cooperation on a central and local level with the internally displaced persons;
- To update the evidence of the registration of these persons.

The recommendations are in regard also to the internally displaced persons accommodated in households for which, due to the manner of accommodation, the Ombudsman can not inspect easily the conditions in which they live.

3.10. Pension and disability insurance

The Constitution guarantees to every citizen of the Republic of Macedonia a right for social security and social insurance, realized according to the principle for social justice and observing the humanism, social justice and solidarity, which are the basic values of the Constitutional order of the Republic. Within the frame of the social rights of the citizens, fall the rights from the field of the pension and disability insurance realized on the basis of law.

Regarding the protection of the rights for pension and disability insurance, in this reporting period, as well as in the preceding ones, the citizens most often turned to the Ombudsman due to the unduly proceeding by the authorized bodies, irregularly determined pension amount, or irregularly determined length of service as a basis for realization of the right of pension or for determination of the pension basis, as well as due to the impossibility to realize the right for disability pension and other rights. In the majority of complaints the Ombudsman stated an unjustified extended length of the procedures on the requests of the citizens, although the matter regards the rights of persons which due to their age, disability or other reasons have no other means of supplying existential funds except their pension. Also the procedure for realizing the rights from this field is prolonged due to the untimely acting and disrespect to the legal deadlines for answering the requests, recommendations and suggestions of the Ombudsman.

Due to more efficient and timely deciding and resolving certain disputable issues upon the lodged complaints, the Ombudsman continued the already established practice of conducting direct inspections, thus improving not only the efficiency in deciding, but also the enabling correct determination of the actual situation and consistent application of the legal regulation.

In the majority of complaints in regard to the protection of rights from the field of pension and disability insurance the Ombudsman took no initiative for starting a procedure, or after inspecting put a stop to the procedure because of confirming that there is no violation of rights, especially regarding the application of material right, but not in regard to the deadlines for deciding which aren't respected at all, neither in the first degree nor in the complaint procedures. In cases where the citizens lodged complaints only because of the unjustified prolonging of the

procedure, mostly after the interventions of the Ombudsman it was accelerated and it was decided on the rights of the citizens, except when due to objective reasons a decision was unable to reach.

Regarding the attitude of the responsible bodies towards a stated violation of rights and directed recommendations and suggestions of the Ombudsman, we feel that there is a readiness for cooperation and respect of the suggestions of the Ombudsman because of which in a large part of the cases the procedure ends in the realization of the rights of the citizens after the undertaken measures of the Ombudsman.

In the realization of rights from the field of pension and disability insurance, besides the prolonging of the procedure the citizens clashed with many other problems, such as: due to miss inputted or not inputted data in the civil registers, the untimely delivery of evidence by the work givers, the untimely payment of contributions and other problems. There were several characteristic complaints which were lodged due to the Fund's inactions towards the requests of the citizens for the realization of a certain right, if they for the same or some other rights from the field of pension and disability insurance after several previous administrative acts led a procedure on an administrative dispute before the Supreme court of the Republic of Macedonia although in the meantime the actual ability has changed or for example the terms of pension were fulfilled the Ombudsman in these cases stated a violation of rights and recommended the Fund to take into consideration the changed circumstances or the other facts for deciding and regardless that a court procedure is going on to decide on the new request. Unfortunately, most often with the explanation that they doesn't have the necessary paperwork the requests of the citizens were not acted on even after the statements of the Ombudsman, and the Fund intervened to the court for a faster decision on the lodged complaint.

The majority of complaints which were the subject matter in the report period were in regard to the **realization of the right of disability pension**, in which the citizens expressed dissatisfaction with the decisions of the responsible commissions regarding the grading of their work of which depends the realization of disability pension.

Namely, the submitters mostly claimed that they are not of good health and working ability, but despite those conditions the responsible commissions estimated that they are of working ability, because of which these persons could not realize the right of disability pension. A part of the submitters, although having the confirmation and opinion that they have permanently lost their working ability due to the lack of fulfillment of the necessary pension experience didn't have the ability to realize the right of disability pension. In the realization of the right of disability pension, the Ombudsman often cannot help the citizens, because he is neither responsible or taught in the matters of estimating the findings and opinions of the responsible commissions regarding health and working ability. Still, in cases where it was obvious that it was referred to persons with grave illnesses, the Ombudsman intervened for the responsible bodies to realistically and correctly estimate the actual condition of the realization of the right of disability pension, but the number of cases in which the opinion of the Ombudsman was taken into consideration is small.

From the statements of the citizens which requested realization of the right of disability pension, it is deduced that certain members of the commissions for the estimation of work ability are **susceptible to corruption**. For the surpassing of these appearances and for other irregularities in the working of the commissions for the estimation of work ability changes were made in the members of the commissions, and some of the members were relieved of their post,



but still from the number of complaints and findings of the submitters it can be stated that the problems which burden the citizens still remain open not only in regard to the prolonging of the procedure, but also to the objective and unbiased issuing of findings, estimations and opinions for the work ability.

Regarding the other rights which are realized on the basis of disability, as a problem which the Ombudsman stresses was the realization of certain rights from the field of the pension and disability insurance of persons with **altered working condition**, especially after the ceasing of their working relation due to redundancy or liquidation of the legal person where they were employed, and which according to the legal regulative have no right to receive compensation from the Fund of pension and disability insurance as persons with reduced working ability. These persons considering that they have been put in an unequal position with the persons with reduced working ability requested change to the legal regulative. Acting on these complain the Ombudsman also estimated that these persons have been put in an unequal position with the persons with reduced working ability, because altered working ability means reduced working ability, because of which the problem was presented to the Ministry of labor and social politics and the Government of the Republic of Macedonia which estimated that there is no basis for expanding the rights from the field of the pension and disability insurance and persons with altered working ability. Because of that the Ombudsman submitted information to the Parliament of the Republic of Macedonia, the Commission of labor and social politics with the request to review the question and to grade the need of changes and supplements to the legal regulative. But, regarding that this parliamentary commission hasn't assembled meetings for quite some time the question hasn't still begun to be reviewed.

Also in this report period, the Ombudsman raised the question referring to the right for benefit in case of termination of the employment of a disabled worker due to cessation of the existence of the legal entity or due to redundancy. These persons mostly due to age, as to the worsening of their health condition cannot be reemployed as disabled nor can they realize the right of disability pension because the disability occurred prior to employment, so they don't fulfill the legal condition for the realization of this right, and they cannot realize also the right of compensation due to cessation of the work relation or the cessation of existence of the legal entity, or due to its redundancy. With the purpose of surpassing the problems of these persons the Ombudsman submitted special information to the Ministry of labor and social politics with a request to reevaluate the existing legal regulative and to predict adequate conditions for the realization of the rights of these persons because they, with their restricted work ability are employed and work full-time. Regarding that after this information no reply was sent to the Ombudsman from the Ministry and no measures were undertaken to surpass this problem the Ombudsman informed the Government of the Republic of Macedonia. But, according to the Government and the Fund, the suggested measures of the Ombudsman meant expanding the rights of citizens outside the principles on which pension and disability insurance was paid, which would enter the sphere of social protection, because of which was estimated that there is no need of changing the legal regulative from the field of pension and disability insurance, and as a supplemental argument was stated the fact that the last changes to the legal regulative from this area were all the more restrictive.

A part of the complaints were submitted due to the dissatisfaction with the **height of the pension**, on which the Ombudsman intervened only in cases when while determining the height of the pension the total work experience wasn't taken into consideration and the actual paid

salaries, and in one case because of the examination of the findings in the complain and confirming if mistakes were made while determining the height of the pension the Ombudsman asked for expert opinion. Because of these complain the Ombudsman most often didn't state a violation of the rights, but evaluated that the frequent changes to the legal regulative and the application of the existing legal guidelines for determining the basis for determining the height of the pension in different period leads do a determining of a different height of the pension.

Regarding the height of the pension a part of the citizens contacted the Ombudsman because their **minimal pension** has been reduced, but most often in these cases the Ombudsman stated that the minimal pension has been reduced due to the realization of foreign pension, and the sum of the pension realized in the Republic of Macedonia and the foreign pension was greater than the minimal pension. But, the citizens most often expected after the receiving of the foreign pension to still receive minimal pension, for which there is no basis in the law. Regarding the height of the pension a complain was lodged because of the restriction of the **highest amount of pension**, where the Ombudsman didn't state a violation of rights because according to the previous and the enforced regulations a limitation is predicted to the highest amount of pension, for which the Ombudsman confirmed that he has expressed himself twice and the Administrative court of the Republic of Macedonia which based on the submitted initiative didn't find a basis for starting a procedure for estimating the constitutionality of the legal regulations with which is predicted a limitation to the highest amount of pension. Regarding the fact that the submitter complained to the differences of the highest amount of pension depending on the year when a certain person realized their pension, the Ombudsman requested from the Ministry of labor and social politics and the Fund of pension and disability insurance a reevaluation of this question for providing an equal position to all persons which receive maximum pension. With that the above mentioned bodies stated that with the few changes to the legal regulative different terms and conditions were predicted for realizing the right of pension and for the confirmation and harmonization of the pension because of which there was a difference in the height of the permitted maximum pension.

A large part of the lodged complaints were referring to the problems in the realization of the **old age pension**, to which the Ombudsman stated that in most cases there is an unjustified prolonging of the procedure for realizing this right, despite the citizens fulfilling the terms of pension with which after the interventions the citizens realize the right of old age pension. But in a large part of the complaints referring to this right, the Ombudsman stated no violation of rights because the citizens didn't fulfill the legal terms for realizing this right especially due to lack of pension experience, unpaid contributions, lack of necessary documents or because the citizens had no adequate prove that they fulfill the terms for old age pension.

In this report period a small number of complaints were lodged which referred to realizing the right of **family pension**, to which the Ombudsman in the majority of complaints didn't state a violation of rights, that is, only in a small part of the complaints a violation of rights was stated and after the interventions of the Ombudsman the right was realized.

Regarding the realization of old age or family pension a part of the complaints were lodged because of the difficulties of the citizens to provide information regarding **realized pension experience abroad**, to which the Ombudsman intervened to the Fund for Pension and disability insurance to take action with the foreign bodies for the purpose of faster reception of the necessary information which often even after the interventions of the Fund were not delivered. The Ombudsman, having no authorizations to intervene to the foreign bodies stopped



the procedure, but in cases when the subject was realization of pension experience in a country which has an ombudsman, the Ombudsman in cooperation with the office of the ombudsman attempted to take action for supplying the necessary information or for realizing a certain right during which he realized a good collaboration with the ombudsmen of the Republic of Slovenia, Republic of Croatia and Republic of Albania.

To the Ombudsman were also submitted complaints for **keeping a part of the pension** due to excess of paid funds, but in the majority of them the Ombudsmen stated that the keeping the pension was made without passing a special decision which according to the estimation of the Ombudsman is against the law. Also, in a part of the complaints a larger part of the pension was kept from the legally appointed amount which could be the subject of administrative restriction. Because of that the Ombudsman stated violations of the rights of the citizens but after his interventions the errors were corrected. Several complaints were lodged regarding the keeping a part of the pension according to the Law for providing funds for helping the communities to remove the consequences made by the floods in June 2004 because on a request of the citizens no decision was passed for keeping a part of the pension, during which after the interventions of the Ombudsman for the persons which submitted requests the Fund passed decisions.

Regarding the **acknowledgement of pension experience** and inputting the same in the civil registers to the Fund for pension and disability insurance this year also were lodged complaints during which especially were characteristic the complaints from persons which part of the experience realized in the former JNA or in Serbia and Montenegro. Regarding the rights of these persons, with the receiving of evidence from the former JNA the problems in regard to the inputting of experience realized in the former JNA and the recognition of the received payments were surpassed. Also were surpassed the problems with the realization of the right of pension from Serbia and Montenegro with the carrying out of the Agreement between the Republic of Macedonia and the Republic of Yugoslavia for social security. A small part of the complaints were in regard to the payment of pension to persons citizens of the Republic of Macedonia which realized their pension in the former JNA, and weren't encompassed with Agreement for social insurance. But, after the entering of force of the Agreement for succession between the former republics of the former SFRY the Ombudsman intervened to solve the problems of these persons also, during which in a mutual agreement between the Republic of Macedonia and Serbia and Montenegro the Fund for pension and disability insurance of Macedonia took the responsibility to pay the pensions of these persons, with which this problem was surpassed.

Regarding the **payment of the difference of 48,53% to the former receivers of pension from the Ministry of internal affairs** whose harmonization was made based on the former Law of internal affairs and verdict of the Supreme court of the Republic of Macedonia the Ombudsman continued to take action on the lodged complain with which was requested support of the initiative for changing the legal regulative. Regarding the fact that the initiative was denied by the resource ministries and the Government of the Republic of Macedonia, the Ombudsman supplied an information to the Parliament of the Republic of Macedonia, the Commission of labor and social politics which should have reviewed this question and express an opinion to the same, but the information still hasn't been reviewed by the Commission.

During this period notifications were submitted regarding the collection of means by the pensioners in the Solidarity Fund, in which the remarks were mostly given by the pensioners associations who demanded transfers from the Solidarity Fund to their accounts, but the Fund for pensioners and invalidity insurance delivers those to the unions of association to avoid problem

in the distribution of means if the same would be done to each association separately, especially taking in to account that the number of those is increasing almost daily. In spite of the problems and the insisting of the Fund that the associations make an agreement between them and come to a solution to this problem, this year as well the problem was not solved and it keeps being actual.

In order to solve the problem concerning the citizens' rights in the field of pensioners and invalidity insurance, which is essential for the people, the Ombudsman suggests:

- Avoid frequent changes of the law regulations that implicate drastic changes in the conditions for the use of the rights in this specific field, which lead to an unequal treatment of the beneficiaries.
- Implement a more simple system for determination of the pension that would be clear for those who practice the law as well as for the citizens.
- The citizens should be acquainted to their rights in different ways by the institutions that decide on the subject.
- Concerning the on-time and legal actions of the responsible organs for pensioners and invalidity insurance, as well as the corporation and the attitude for the suggestions of the Ombudsman, there is a small progress, but we still can not say that the dates for deciding on citizens petitions are obeyed to the letter in accordance with the law, or on the actions to the demands of the Ombudsman for which, an extra effort by all the organs and individuals is necessary, in order to obey the legal dates for deciding on citizens appeals and petitions.
- Find out new or make more solid the existing mechanisms for control of the work of the commissions for estimation of the labor capability, in order to avoid possible corruption.

3.11. Protection in the field of health insurance and health protection

Ombudsman Acting in accordance with the provisions for protection of the constitutional right for health protection, exercised according to the Laws for health protection and health insurance, based on the principles of mutuality and solidarity, the Ombudsman confirms that the organs entitled for making decisions about the citizens rights, don't take into consideration the mentioned principles, nor the principles of humanity and social justice, proclaimed to be the basic value of the constitutional system in the Republic of Macedonia. According to the Ombudsman, the citizens often come to a big number of obstacles during realization of the right for health protection, and the responsible official clerks rarely decide efficiently and on-time to the petitions of the citizens, which leads to disabling the health protection in an adequate moment.

In this reported period, although with the new Law for the Ombudsman we have predicted obligatory dates for meeting the requests of the Ombudsman, we can confirm that **no action according to predicted date was undertaken** and in none of the cases the organs or organizations have informed the Ombudsman about the reasons that didn't aloud an on-time decision.

For faster and more detailed obtaining data and information on the complaints the Ombudsman continued with the already established practice of doing a direct review of the subjects, with what we can confirm a good corporation of the authorized person, and as a result of those reviews more accurate and in a legal form the petitions of the citizens were decided, although



there were cases when in spite of the written and oral requests and reviews undertaken, the information necessary for a corresponding act to the petitions were not given on time and the work of the Ombudsman was by that mean disturbed.

Acting for protection of the citizens rights in this field, we can confirm that the majority of the requests don't have solid base, but the number of those where the rights of the citizens were seriously jeopardized. Still, we have to point out that in these cases the citizens exercised their rights according to the law and sub-legal acts after actions undertaken by the Ombudsman. From this we can deduce that in the cases where the rights of the citizens were jeopardized the authorized organs acted as suggested and requested by the Ombudsman and the citizens exercised their rights.

One part of the requests were referring to jeopardized exercise of rights because of **no recognition of the insured subject** regarding some previous benefactor of insurance which is not existing anymore but didn't fulfill the obligation to the Fund. Also because of this debt for contribution to the health insurance by previous subject, the citizens couldn't get the "health insurance vouchers", although as beneficiaries of some other subject they started paying on regular bases the health insurance according to the Law. In these cases the Ombudsman pointed out that the legal regulations regarding inscription and signing out from the health insurance, as well as the regulations concerning the way of payment of debts are not implemented correctly and he had to intervene so that the citizens could exercise their rights, in other words to do the signing out, the inscription or to get the "health insurance vouchers", and for the debts there will be legal measures undertaken.

In this reported period some complaints were made also for **not completed wage remuneration** because of not attending work for reason of sickness or pregnancy or delivery, but in a notably smaller number then the previous years. Acting to some of these complaints the Ombudsman was not able to provide protection of rights as the employer did not pay regularly the insurance and according to the law, the rights can not be exercised if the contribution to the fund of health insurance was not regularly done. The employers who didn't make those payments were mostly subjects towards which the Ombudsman has not authorization to undertake whatever measures. For a part of those complaints the Ombudsman confirms that the rights were jeopardized and after a delivered recommendations to the organs in charge for payment of the contributions for the health insurance, the citizens were able to use their rights after several years of procedure.

Taking in consideration that in the use of health protection the citizens, according to the legal regulation, **take part with their own means predicted for medical services and medicine supply** or additional material, to the Ombudsman were submitted requests for refund of money by the Fund for health insurance in cases when the citizens were obliged to pay the service to the letter or supply a medicine from the so called "Positive list". In the realization of the right for refund of money, the citizens this year as well were facing problems concerning the price that they have paid for a certain medicine and the tender price established by the Fund for health insurance. The Ombudsman asked the authorized organs in the past years to undertake measures for overcoming this problem, wanting to protect the citizens that pay a lot more for one medicine then the price recognized by the Fund. Even though some activities and measures have been undertaken, the Ombudsman estimates that the problem is not yet overcome.

Regarding **participation for use** of medical services, in this period the Ombudsman noticed irregularities in cases where the citizens paid more than the predicted with the law and the procedures for refund of money is slow and with many administrative obstacles that make difficult and postpone the realization of the rights. After the Ombudsman's interventions most so the money in these cases were refunded.

Another problem and a complaint by the citizens were **medical services abroad** and recognition of the costs made by the Fund for health insurance. The difference is that the amount of complaints concerning this question, compared with the previous years is small and the Ombudsman didn't notice any injury of rights. Regarding the right of using medical care abroad the Ombudsman decided for several complaints from last year during which he noticed that citizens' rights were jeopardized and he made several recommendations regarding acceptance and remuneration of the money spent for medical assistance in a foreign country decided by a counsel opinion and with an adequate decision. After several interventions of the Ombudsman for the cases that had legal ground for refund, the citizens exercised their right.

During the reported period complaints were made also for **unconscious and low quality treatments**, for which the Ombudsman required a complete enquiry of the cases and undertaking the corresponding measures, but in the most of the cases after the analysis of the cases by the health institutions, the result was that there was no question of unconscious or wrong treatment. In these cases the Ombudsman had no possibility of undertaking other legal measures so the interested parties started juridical procedures for undertaking investigation of the supposed unconscious or wrong treatment. In several cases that were also regarding unconscious or wrong treatment by the medical workers (physical abuse of patients, unconscious or wrong treatment that was lethal for the patient, sexual harassment of a patient by a doctor) after the interventions of the Ombudsman the personnel involved in these cases were suspended, transferred to another job place or were deprived from their jobs.

A special problem that the citizens are facing concerning their right for health protection was also not recognizing the **right for refund of means** for clinical or other types of treatments in the private sector, just because of the fact that these organizations had not signed an agreement with the Fund for health insurance. During the practice until now the Fund was recognizing this cost to the beneficiaries, but in the last period the Ombudsman was informed that the Fund is reviewing this attitude, because of which several cases in procedure submitted by the Ombudsman haven't been decided yet.

Taking into consideration that until this reported period the sub legal acts for **making agreements between the Fund for health insurance and the private dentists** were not confirmed yet, a part of the complaints regarded this question. The private dentists demanded an intervention by the Ombudsman for solving the procedure as soon as possible in order to define the regulation for the criteria applied in making agreements between the private dentists and the Fund. The Ombudsman confirmed that in this situation the rights not only of the dentists but also of the citizens are jeopardized, because of the limitation of their free choice of a doctor, for which he reacted this year as well and the regulation was created, so that the formal obstacles for making agreements were overcome.

Acting to the complaints in this field, although there were not so many as for other spheres, we can not express satisfaction for respecting the citizens rights, especially in the aspect of on-time, quick and efficient decision regarding their rights, even more we can say that in this



field the procedure is postponed with no solid reason at the first instance and second instance organs, including the petitions and recommendations by the Ombudsman. In this context we should mention that the problem of not on-time acting is present in all complaints no matter the reasons which lead to the Ombudsman's office. Due to that, the Ombudsman keeps pointing in every reference he makes to the authorized organs the importance of obeying the legal period for deciding on citizens rights.

In order to overcome the problems and the obstacles that citizens have in realizing their rights in the field of health protection, the Ombudsman recommends:

- Respecting to the letter the existing legal regulation and its implementation for all the citizens.
- Change of the legal regulation with a predicted possibility of no participation for the children until the age of 18 and the persons older then 65, in order to have highest level of health protection for children predicted with the Convention for the children's rights and providing corresponding health care for the older people, as well as release of the participation for the regular health services for people with serious incurable diseases, which is for now regulated with the Governments annual plan, and the Ombudsman considers that these questions should be regulated by a law for a long term solution of the problem and providing legal security of the citizens.
- Overcoming the problems of medicine supply for the medicines from the so called "Positive list" in the pharmacies, and especially in the clinics during clinical treatments, as well as overcoming the problems deriving from the difference of prices between the tender and real prices of the medicines and auxiliaries.
- Acquainting the citizens with their rights and simplifying the legal procedure for realizing those rights, and also increase the conscious level of the authorized persons in the Fund for health insurance and the Ministry of health care that directly decide on citizens requests, in order to create conditions for a complete respect of the legal regulation, professional and on-time decisions for the rights of the citizens.

3.12. Protection of children's rights

In the field of protection of children's rights for this reported period, the Ombudsman considers that the economic situation in the state, the unemployment and the low standard level of the citizens impede full exercising of the children's rights guaranteed by the Convention for children's rights. The Ombudsman estimates that the situation has not been changed for this reported period regarding the public awareness for the children's rights and their status as subjects with special rights, beginning with the parents, teachers and clerks in the public institutions, and also when making decisions regarding children, during which their best interests is never taken in consideration, by which the realization of their rights is impeded and their rights are violated.

Most of the complaints made in this area for protection of children's rights refer to the **right of maintaining personal contact with the parent who doesn't live with them** and the subject of those complaints is mostly that the parents are not satisfied with the work of the centers for social work in overcoming the problem for an adequate realization of their rights.

The specific for these cases is that in most of them the parents were complaining for not being able to exercise their right and have a personal contact with the child who lives with the

other parent, not always taking in consideration the rights of the child, and mostly in the cases where the parents don't have a clear situation between themselves, they make decisions hurting the rights of the child. A special problem in the protection of the children's right to maintain personal contact with the parent that doesn't live with them was the realization of the resolutions by the social care centers that don't have the legal instruments efficient enough to exercise those measures. Having in mind that the normal development of the child depends on his normal communication with both of the parents, the Ombudsman considers that the realization of the decisions for personal contact by force, usually done by the assistance of the police, is not the adequate method because it can make traumatic consequences to the child's mental health, and suggests that the Ministry of labor and social politics should initiate changes and annexes to the legal regulation that would predict more adequate solutions in the practice of these rights, and would protect above all the rights and the interests of the child. In 2004 some changes were made in the Family Law, with several measures that limit the rights of the parents in case they don't obey children's rights and don't fulfill their parents responsibilities, in order to make them obey child's right to have contact with both of his parents and not make an abuse of that right hurting the child's best interest.

Acting in the area of protection of children's rights, the Ombudsman was leaded mainly by the child's best interest and in the cases when there was corporation and understanding with the parents and his suggestions were taken in consideration, the problems were overcome as well as the conflicts between the parents and regular and normal maintaining of personal contact between child and parent was provided. But in the cases where in spite of the Ombudsman's suggestions and the measures undertaken by the centers the parents didn't come up to an adequate solution, the Ombudsman demanded that these families apply for a professional help by specialized institutions. At the same time, the Ombudsman was pointing out that having a normal contact with the parent who doesn't live with him is of essential importance for the child and it's normal development and growing up to a normal adult person, and that in order to exercise that right not only the effort by the authorized institutions is necessary but also an adequate attitude by the parents who should take care of his needs and interests, not only their own rights. According to the Ombudsman in these procedures children were rarely involved, in other words their opinions and attitudes regarding their rights were rarely taken in consideration, because of which the parents were advised to listen and obey the opinions of the children, depending, of course on their age and maturity.

For overcoming this problem and implementation of the rights of the children in the legal regulation with the changes and the annexes from the Family Law done in 2004, it's predicted that in the definition of the personal relations and direct contacts of the child with its parent, the center for social care should inform the child and take in consideration his opinions and attitude, depending on his age, maturity and development level and inform the child for the possible consequences of his decisions.

In the previous years the Ombudsman who was in favor of the new Law for protection of children, expected that with this law the situation would improve regarding children's rights above all by **providing an adequate life standard**, but it didn't happen because in the predicted period no legal acts were approved, and after their approval there were changes in the law that reduced certain rights, especially regarding child's care support that was limited to a fixed amount. Also a problem that continues unsolved is the one of the right for **child's care support** for children whose parents have no income at all, in other words they are unemployed, are not



pensioners and do not take any other retributions as unemployed persons, but still don't have the right to a child care support. If one of the basic principles for realizing the right of child support is the material condition, it's not logical that the children living in the worst material conditions are deprived from that right, due to which the Ombudsman suggested changes in the legal regulation in order to avoid discrimination of children. Those changes were not done so the problem of the right to get child support stays open.

Complaints were made to the Ombudsman regarding **giving apartments to people with law incomes** because with the Governments Resolution for the conditions and the criteria for distribution of those apartments there was a **discrimination of children** in other words the right of these flats was given to those whose children would be under 12 years of age. The Ombudsman considers this not to be in concordance with the Convention for children's rights and the Law for protection of children, according to which all children under 18 should be treated equally and he notified the government that all children under 18 should have the same rights without any discrimination and that the state should undertake every possible measure to provide equal legal position for all children, especially concerning an adequate life standard, which also includes the solution of the question of home.

During this reported period an actual problem was also supplying a sufficient quantity of medicines for **children with malign diseases**. The Ombudsman considers that the lack of medicine is a form of jeopardizing children's rights, especially the right of highest level health protection guaranteed by the Convention for children's rights, and he started a procedure on his own initiative in the Ministry of health care and the Fund for health insurance for solving with every possible mean the existing problem. The problem was solved and a sufficient supply of medicines was provided for the children. Regarding the **highest level of health protection** the Ombudsman started a procedure on his own initiative again, because of the circulation of imported baby food with a declaration in Macedonian which didn't have the fact that the food contained gluten although it was indicated clearly in the original declaration because this substance can cause in some cases serious danger for the health of the children. After his interventions this product was to the letter withdrawn from sale and the declaration was corrected, and a complaint was filed against the importer of the product.

In this reported period a lot of complaints were made regarding the procedure for **inscription of children in the register of births**, a problem especially accented within the Albanian population. Acting to these complaints, the Ombudsman came to a conclusion that parents do not always make the inscription of the birth of the child on time if it was born in domestic conditions, due to which it's very hard to prove that the child was born on the territory of R. Macedonia. The reason that also led to this problem was also the inadequate attitude of the authorized personnel who didn't accept the documents of the citizens or were considering them invalid. As a special problem in the realization of this right was not accepting the documents issued by UNMIK in cases when one of the parents was from Kosovo. But after several interventions of the Ombudsman for overcoming this problem, the Government of R. Macedonia in 2004 approved Decisions for acceptance of these documents, after which the corresponding organs made inscriptions in the main register.

Guided by the increasing conflicts between the young people, **the presence of alcohol and smoking among minors** in the past period, in spite of the insisting of the corresponding organs for obeying the legal regulation to the letter, for not serving alcohol to minors or advertise alcohol and cigarettes in places and manners not corresponding to the legal principles, the Om-

budsman suggested a change of the legal regulation for the prohibition for the minors to buy cigarettes and alcohol in the shops and the restriction of their visits to the night clubs and bars in the night hours, which was accepted and legal solutions were undertaken. but, according to some acknowledgements of the Ombudsman these legal restrictions are not always obeyed, due to which the Ombudsman made interventions to the authorized inspector services for undertaking measures against the people who were not respecting the quoted restrictions, in order to protect the children from the bad influence of alcohol and cigarettes. In spite of the interventions of the Ombudsman the situation regarding the respect of those legal restrictions is not drastically changed.

Regarding the **bad influence of different information** and disinformation published, the Ombudsman reacted in the Government of R. Macedonia and the Council for broadcasting for protection of children from information harmful for their development and welfare. The Ombudsman reacted against publication of images of children suffering from serious diseases in the mass media. The Ombudsman pointed out that one of the obligations of the state predicted in the Convention for the rights of the children is to stimulate the development of the main directions of protection of children from all information harmful for his welfare and mental and physical health, as well as providing protection of his privacy and giving information that can influence his reputation and his private life. Unfortunately after the reactions of the Ombudsman no measure were undertaken nor was the Ombudsman informed of the attitude of the Council for broadcasting and the Government.

The Ombudsman intervened for undertaking adequate measures by the Council for broadcasting against certain television because of presentation of information that in certain school one of two children uses drugs, which was a no confirmed fact but was still presented to the public as a confirmed fact, by which the rights of the children were jeopardized, their parent's rights and the rights of the teachers from the school, taking in consideration that the information was not true. After this intervention of the Ombudsman there was no a corresponding reaction by the authorized institutions.

For **protection of children's rights from violence**, especially the family violence, the Ombudsman in the previous period took part with his suggestions for changes in the Family law pointing out that the family violence on children should be treated in a special way by a legal regulation. During 2004 were realized changes in the Family law by which the family violence has a special treatment and there are more measures predicted that can be undertaken by the centers for social care and the courts for protection of victims of family violence, during which the majority of the Ombudsman suggestions were accepted and implemented in the legal regulation. Of special importance is the acceptance of the Ombudsman proposal for defining an obligation for the social care centers, always when a permanent family violence on a child is confirmed to undertake the adequate measures, as well as in cases of permanent violence on a child instead of isolating the child from the family and placing it in another family or institution, the person who provokes violence should be temporarily separated from the home and should be ordered to assist consultations in an adequate institution, for improving his behavior and not proceed with the violent actions.

During the reported period several complaints were made concerning **physical and psychological abuse of students by the teaching staff**. On this question the Ombudsman expresses serious worry because in his contacts with the students he came to a conclusion that the physical and especially the psychological violence are a common case, for which the children still don't have courage to speak public. In the cases that were a subject of procedures in the Ombudsman's



office, his directions were accepted in most of the cases and adequate measures were undertaken against the teachers the used such methods but the Ombudsman considers that in the legislation it's not given with enough precision and objectivity what is a physical or psychological violence of school children and in case of a an often use of either one of this violence by certain teacher, according to the Ombudsman a measure of depriving the teacher from his professional practice should be predicted, in order these people not to be part of the education and the development of the children.

Regarding violence on children and inadequate conduct by public officials we would distinguish the case of **breach of children's rights in a police procedure** in which children younger than 14 years of age were detained and interrogated in absence of the parents or other adult person, as well as without respecting their right of defense during the police procedure. The Ombudsman confirmed drastic breach of children's rights and material law and asked for undertaking measures, against the public officers involved in this case, which was accepted and the public officers were punished with disciplinary measures.

The Ombudsman paid special attention to **children's rights concerning children with special needs** especially regarding their social and health care, asking that a social care and protection is provided for them by the state and to be privileged by certain releases while using medical services, medicines and other needs related to the health status, that in the previous year was accepted and changes were realized in the legislation, but in practice problems still occurred in the exercise of these rights. Still, even many measures have been undertaken concerning protection of the children with special needs the Ombudsman considers that there is a lot to be done so that these people would not be on the margins of the society.

The Ombudsman intervened several years in a row for undertaking measures regarding **protection of homeless children's rights**. They are mainly abused by their parents, abused in terms of labor, disabled in their right of education, their right of life is jeopardized, medical care and other rights are also breached. The Ombudsman proposed in the legislation this category of children to be defined as a special crisis group that needs social protection and day care centers to be established through which we should help children as well as parents. Defining these children as a special social group was done with the approval of the Law for local self-government, but as decentralization of the authority was not realized, these provisions were not implemented by the units of the local self-government. As the social protection was provided through the state institutions the Ombudsman continued with the interventions, especially in the Ministry of labor and social politics, after which in 2004, after the changes and additions of the Law for social care, it's predicted that the communities can provide realization of social care, beside others, also for the homeless children and establishing day care centers was also predicted for the homeless children providing educational services for this group through advising children and members of their families, cultural and leisure activities. According to the changes of the legislation in the end of 2004, in Skopje started working the first day care center for the homeless children, and it's expected that they start assisting classes and be away from the streets which would provide their integration in the social life.

Special attention regarding children's rights was given by the Ombudsman to **the rights of the children in conflict with the law**, so that in the previous years besides the proposals for undertaking preventing measures for preventing the creation of child delinquents, a proposal was also made that instead of punishing there should also be alternative measures. For the introduction of the alternative measures the Department for protection of children's rights within the Om-

budsman's office, was representing this in the European net of juvenile ombudsmen, which also agreed with the attitude that children in conflict with the law should be helped more by alternative than with the penalty measures. With the changes and additions of the Criminal Law of R. Macedonia made in 2004, as alternative measures were predicted: social benefit labor, conditional break of the criminal procedure and safety measures.

One of the basic principles of the Convention for the rights of the children is **participation of children** in all the questions concerning their rights and interests. In order to hear the children's opinion, or to give them the opportunity to take part with their proposals and opinions when undertaking measures, the Ombudsman during 2004, supported by the Office of UNICEF in Skopje, made a so called **Board of children** consisted of children from elementary and high school from different communities that live in R. Macedonia. During 2004 several meetings were organized with the board, during which they were given instructions and also the jurisdiction and the way of work of the Ombudsman was presented to them, their rights and obligations according to the Convention for the children's rights with a special review of their implementation in the Constitution of R. Macedonia and its legislation. Regarding the practical realization of respecting and protection of children in their everyday life in family, school, the environment, the children gave their opinions and proposals for overcoming the problems they face in exercising their rights. The Ombudsman acquainted the Ministry of education and science of R. Macedonia with the proposals and the opinions from the Board of the children and expects that these suggestions will be taken in consideration and measures will be undertaken for change and additions to the legislation and its implementation in order to create better conditions for exercising, respecting and protection of the rights of the children.

In order to provide quick and efficient protection of the children's rights a good corporation between the official organs and organizations is required, as well as with the non governmental sector. The corporation of the Ombudsman with the organs of the of the governments administration is on a satisfactory level, but still they don't act on time to his requirements, suggestions and recommendations, which leads to toleration of breach of the children's rights. The Ombudsman estimates that there is still need for undertaking continuing measures in creation of conditions for exercising the rights of the children, in which the government always should act to the best interest of the children and make children its priority regarding all the other issues. The Republic should create material and other conditions for the children so that they can have a normal development to grown up persons and, safe life, highest level of health protection and every other right guaranteed by the Convention for children's rights because R. Macedonia is obliged to that by ratification the Convention.

In order to create conditions for a complete exercise and respect of the rights of the children, the Ombudsman suggests:

- In the creation of politics and providing means for meeting the needs of the children, as well as when making decisions concerning children's rights and obligations, the state should be acting to the best interest of children and make children's interest its priority.
- In undertaking measures concerning children to take care for the three basic principles of the Convention for children's rights, non discrimination, best interest of the children and children's participation.
- Having in consideration that the process of introducing the human rights as a school subject at all levels of educations not completed yet, and the children are still not informed about their rights and obligations, the Ombudsman suggests in this occasion in-



introduction of human rights in all the level of education, education of teaching staff for a correct presentation and respect of human and children's rights and providing to the children knowledge and skills applicable in the real life for exercising and respect of their rights.

- Undertaking measures for increase of the public consciousness for the rights of the children and their status as special subjects, beginning with the parents, teachers and official clerks in the states institutions, for a complete realization, respect and protection of children's rights.

3.13. Protection of rights in the field of education

As in the last year, in 2004 as complaints regarding protection of rights in the field of education, the procedures were realized for those regarding the university education, and the complaints regarding persons until 18, that were treated as children are described in the protection of children's rights.

According to the constitution of R. Macedonia the education should be accessible for everyone under equal terms. But having in mind the fact that in today's conditions the enrollment in the educational institutions for university education is realized with a personal participation of the students in the costs of their studies, often an intervention by the Ombudsman is demanded regarding the application of the legal regulation for payment, in other words, elimination of the participation of the students. The Ombudsman intervened in cases when besides the predicted participation, the students were involved in other costs by the university institutions by which all students no matter if they pay the participation or not, meaning that if they don't pay such participation the costs are covered by the budget of R. Macedonia, are obliged to pay.

The Ombudsman acting to the complaints regarding the participation of the students as a study cost, firstly pointed to literal application of the legislation concerning legal debts, in other words elimination of the participation, and regarding other different costs that should be paid by the students he suggested to take more care for the legal base of introducing such costs and protection and improvement of the students standard, for which according to the law are responsible the universities and all the institutions for university level education.

Most of the complaints in this field as well as last year concern students rights referring to **co-financing their studies**. During this reported period there was increased number of complaints regarding release of participation for persons from the peace forces or members of their families according to the Law for special rights of the members of the peace forces and their families in Macedonia. The specific in these cases was that the institutions for university education showed a negative attitude in accepting their documents by which the person was proving that he was a part from the peace forces or that he / she was a child of a certain member of the peace forces killed or deceased, and that lead to a delay in the process of release of participation. After the interventions of the Ombudsman, when he came to a conclusion violence of the rights of the students, the educational institutions released the participation for students that fulfilled the legal conditions. Regarding the exercise of this right the Ombudsman came to a conclusion that the educational institutions were implementing the law in different ways, in other word some of them were obeying this right only in cases of students that are enrolled in the faculties for the first time, not for the members of the peace forces that are in their second or third year of studies and they are also member of the peace forces. For an equal treatment of all students the Ombudsman

addressed to the Ministry of education and science and to the University “Sv. Kiril i Metodij” in Skopje and he asked for an opinion on the quoted law and its implementation after which the Commission for normative acts at the University decided that the Law should be respected for all members of the peace forces no matter if they are in the first or second year, or a further year of studies, after which the practice of the educational institutions for release of participation for this category of students was equaled.

Regarding the participation of students **in the costs for studying out of the established participation**, the Ombudsman on his own initiative started a procedure for investigation of this question. In that sense the Ombudsman came to a conclusion that there was already a Council for development and financing in the university education, which according to the legal authorizations among other things should decide a regulation for the measures and criteria for financing in the activities of the University and the high education institutions. However, the acts that should have been established by the Council, and that are related to the financing in the university education and to establishing measures and criteria for all the high education institutions are still not established.

Regarding that in the previous period the Ombudsman noticed several omissions and illegalities in the **students facilities accommodation**, especially in determine the number of points according to certain criteria, in the reported period before the publication of the announcement of the Ombudsman made several remarks and he pointed to the omissions of the previous years, so that in this reported period the number of complaints regarding this question is smaller. Still there were some complaints by students for irregular valorization of some criteria, but after the enquiry and the interventions of the Ombudsman these irregularities were eliminated and the students were accommodated in the student’s facilities.

Regarding the rights of the students, some complaints were made concerning **not issuing certificates for completed studies**. These certificates were not issued due to a debt to the university or not recognizing certain exam because the Inscription form for the exam was missing, although that exam was passed and has a record for it in the Students personal register. The Ombudsman pointed out that according to the Law the certificates or diplomas should be issued when finishing studies, in other words when finishing the predicted exams and that there is no legal ground for not issuing a certificate or diploma because of debt or any other reason and he intervened for issuing the certificates, to which they were issued and the unresolved questions were solved between themselves.

Several complaints regarding **specialization of medical workers** were made, among which the specific case was the case of the Dentist clinics where after the contracts for specialization and its start, for some of the users of specialization before an year or two the fee for the same was changed, increased, and the decision for establishing the fee for the studies without being published in a corresponding way was applied to everyone doing the specialization. The Ombudsman pointed to the constitutional obligation of publishing the general acts and the prohibition for a reverse acting of acts, except in cases when they are suitable for the citizens, and he asked the same to be published and not to concern the specializations which were started with contracts with previously defined conditions. After the intervention the problem was overcome.

A group of **graduated sanitary inspectors** also came to the Ombudsman with an appeal. They finished their studies in Bulgaria using Macedonian scholarships but after their graduation they were not given work, although this profile is in deficit in Macedonia. But according to the



fact that the legislation gives the possibility that the terms for doing sanitary work is regulated with an act of the ministry of health, in that act of the Ministry there is no condition that the person doing this job should be graduated in the faculty for sanitary inspectors but certain medical profile, by which these people were not fulfilling the conditions to work as sanitary inspectors. Because of that, the Ombudsman that has to act according to the laws, had no opportunity to undertake measures for protecting the right of work to the mentioned group, but he appointed to the necessity of changes in legislation and the general acts of the Ministry.

Partially the complaints from this field were referring to **verification of foreign diplomas** and approval of teaching material, to which the ombudsman could only react for respecting the legal procedure for exercising these rights and noticed that concerning the exercise of these rights the procedure is inadequately long. One of the complaints was made because of the refusal of one verification for which the authorities in charge had given a negative mark, giving as a pretext that the PhD was not an individual work and its professional level, quality and contribution were not on a satisfactory level, by which they have involved in judgment of the PhD that was already done and the PhD level was acquired. Taking in consideration the provisions of the Law for university education and the former Law for professional directed education, the Ombudsman made the question if in case of verification of diploma for acquired PhD based on a presented PhD thesis in an eminent recognized university institution, in case when the formal legal criteria for verification is fulfilled, it can be refused because of possible negative mark of the professional level and its quality, elements that are to be valued before turning in of the thesis and if it isn't at the same time a negative mark for the professionalism and the status of the institution where the PhD was done and is issuing the diploma. But, in spite of the dilemma and the efforts made by the Ombudsman, the diploma was not verified.

Acting to the complaints in this field in this reported period, the Ombudsman did not meet always **cooperation** by the authorized organs especially they were not acting according to his pleas according to the legal deadlines, and in some cases even after several interventions the answer was not provided. For all these problems and the obstacles in the work of the Ombudsman to a part of the complaints, a special notification was made to the Government of R. Macedonia, but even after this information on a part of the cases, the procedures were not accelerated, which is a violation to the basic principles for the administrative procedure and the fast and efficient deciding. This behavior of the organs and the organizations leads to inefficiency of the Ombudsman procedures as well, in other words its delay which is not the intention of the Ombudsman's law, that predicts short terms for acting to his appeals.

For overcoming the problems for exercising rights in the field of education the Ombudsman suggests:

- Establishing a solid, regular and on time cooperation between the authorized organs and the Ombudsman, and respecting of all his remarks, recommendations and requirements.
- Creating bases for accessibility of education to everyone, with equal terms and respecting the legal obligation for protection and improvement of student's standard and equalizing the fees that students pay for same services in different university education institutions.

3.14. Protection of consumer rights

Analyzing the reported period from an angle of functioning and acting of the Ombudsman in the field of consumer's rights, we can not avoid the general impression that basic motif for asking for legal help by the citizens is the lack of principle of transparency in the work of the subjects that give public services and maximum taking advantage or **misuse of the monopoly position** when giving services.

The principal segment in the acting of the Ombudsman in the field of consumer's rights, this year as well is the regulation of the relations consumer-provider of service in the field of telecommunications, distribution of electric power and heating, water supply and other communal parts.

By the information available we notice again that most of the complaints are related to AD "Macedonian Telecommunication" as well as other communal services.

The reactions of the people – consumers are generally referred to the discretionary rights of the providers of services deriving from their monopoly position, in other words their will and estimation to use for their own needs and in ways that are extremely unreal and unacceptable for the users.

At the same time, we noticed certain actions by the providers that are out of their authorizations given by special legal acts, which are reflecting in the quality of the services and disconnection from giving services in cases when for a certain period the citizens have not paid the bills, without previous notice. In the efforts to realize their demands towards the citizens with debts, some providers of public services do not deprive from undertaking **measures of collective disconnection** of their services which includes also citizens that regularly and to the letter pay their bills. In this context are also the cases when the consumer is obliged to pay his debts although its clear and out of question that this debts are expired, according to the provisions of the Law for obligation relations, which in a decided form expresses the legal period of one year for paying the bills for home services.

Acting to the complaints of the citizens, we can't the question of the social-economic situation at the moment that the citizens are facing. Precisely, the complaints are referring to unpaid bills that the subjects are not able to pay, due to which they ask for some relieves, paying on installments or release from debts. In this category of citizens are also included the users of social help for whom there is no predicted privilege in the legislation, so that some providers of services according to their own estimations give certain advantages to these users, in which we notice changes during the period of time, according to the material or financial situation, in order words they are not permanent.

In some areas of exercising consumer's rights the influence of the institution Ombudsman is noticed in direction of protection of citizens-consumers rights. Namely, as a result of the permanent use of all the available legal instruments the conclusion is that the subjects in front of whom the Ombudsman acts are taking in consideration his attitudes.

On the other hand, besides this estimation for the cases we acted to, the general impression of insufficient democracy principle of transparency in the work of the providers of services and their treatment of users is inevitable, which is one of the basic principles for functioning of a democratic society in which the citizen is in the central position. Also the legal subjects that have activities of public character **do not aloud that complaints are filed by the citizens** except the public telecommunication operator AD "Macedonian Telecommunication". This is a disobedi-



ence of the principle guaranteed by the constitution for double instance procedures. At the same time the acting of the other institutions that have certain legal jurisdictions over the providers of services, including the Monopoly management and the authorized inspector organs, we came to a conclusion that they are using insufficiently the legal means for protection of citizen's rights.

Taking in consideration the problems of the citizens that asked help by the Ombudsman, referring mostly to: quality of services, way of payment and the sum of the fixed price by the providers of services, in the rest of this elaboration we'll give special attention to three most important spheres of public interest.

In the reported year most of the citizen's complaints were related to AD "Macedonian Telecommunication". From the analysis of data obtained by the Ombudsman we come to a conclusion that "Macedonian Telecommunication" with its monopoly position put the citizens in a position of no choice but to accept the offered quality, and above all the price of their services. The principle of distancing of the citizens is confirmed also in the limited possibility of real access to the authorized services, which practically means absences of control in the actual use and tariffs of the services, that leaves open the possibility of possible made manipulations.

For these reasons in most of the complaints the citizens complaint to high telephone bills. In these cases actions were undertaken to prove that it's almost impossible to confirm the supposed misuse of the telephone line or an error in deciding the realized telephone impulses to which the citizens refer. In the part for using additional services, the Ombudsman was directing to "Macedonian Telecommunication" in several occasions, recommending that in establishing the price they should take care the economic moment of the users, which didn't have a positive effect for a long time. At the same time, the Ombudsman informed the Government of R. Macedonia of his attitude, and taking in consideration that in this period were prepared some changes and additions to the Law for telecommunications, accepted these notifications, so that the recently approved changes and additions to the Law for telecommunications provides additional services for free.

The possibility for using the monopoly position according to its needs is seen also through the mass disconnection of users because of unpaid bills. When undertaking such measures we noticed that besides the users that haven't paid their bills for a longer period of time, there are also with no ground included users that delayed the payment of their bills for a significantly smaller period of time, and that the checks were not made if at the moment of disconnection they have paid the bill or not. The Ombudsman considers that in these cases "Makedosnki Telekomunikacii" is obliged to reimburse to those users for a certain period when they had the phone line disconnected, which is right deriving from the internal acts of "Macedonian Telecommunication" and the contracts for starting user-providers agreement. From the cases until now, we cannot make a conclusion if the attitude of the Ombudsman was accepted or not.

While using the services by the telecommunication operator, violence of rights was confirmed concerning the users that signed contracts and paid the required sum for the mentioned service, and in spite of that a longer period this service has not been provided to them, in other words telephone connection or in some cases reimbursement was made, but for a sum of money significantly smaller then the one they paid some time ago. For exercising rights of the users taking in consideration the provisions of the Law for obligation relations, the Ombudsman directed the authorized services at AD "Macedonian Telecommunication" recommending that they should be refunded the sum that they had paid. After that we still haven't received a feed back answer.

One part of the complaints to the Ombudsman is regarding the acts of disconnection of AD “Electro distribution of Macedonia” for unpaid bills for used electric energy. Acting to several cases the Ombudsman was reviewing the fact if the requirements for the subjects are expired according to the Law for obligation relations, for which from the authorized administration he asked the users to be released of the same. It’s confirmed that the attitude of the Ombudsman regarding the mentioned topic is more and more accepted, in other words AD “Electro distribution of Macedonia” is acting according to the legislation.

Regarding the requirements for which the procedure was started on time in the corresponding court’s organs, as well as for the requirements lately made and are not under the expiring period, the Ombudsman has no ground to act, because of which the citizens were acquainted with the provisions from the Law for energetic and the General terms for delivery of electric energy, according to which the provider has the right of disconnecting the supply of energy if the user does not pay the bill.

In this reported year the Ombudsman faced cases when the new users or owners of apartments or business facilities are in a situation to pay the old owner’s debts because in the contrary the consequence would be disconnection of energy supply as well as denial to their apply to be registered as new users in the corresponding evidence of the authorized services.

Acting to the requests of the complaints made, the Ombudsman pointed out in several occasions to the responsible at AD “Electro distribution of Macedonia” that they should take in consideration the provisions of the Law for obligation relations, saying that the users on bases of rent or sales agreements can not take reasonability for the electric energy spent if they hadn’t agreed to that before. This attitude of the Ombudsman was accepted and by the responsible in AD “Electro distribution” that distributed to their branches general instruction informing of the attitude of the Ombudsman and obliged them to register in future the new users based on the presented contracts for sales or rent, without taking in consideration the previous unpaid bills.

Still, in these cases and from the practical experience with these cases we came to a conclusion that if the citizens address to the branches by their own initiative, those do not accept their request and do not register them as users, and the problem is solved if they ask for help of the Ombudsman. In that sense, we consider that it’s necessary AD “Electro distribution” to coordinate its services and to provide complete realization of the regulations appointed by the Ombudsman.

In the mark of his jurisdictions and also on his own initiative, the Ombudsman undertook actions in the cases of **mass disconnection from the electric supply net** of whole regions where the payment was under certain percentage, but these also included users that regularly and on time paid their bills. In his remarks the Ombudsman estimates that the by disconnecting users that fulfilled their obligation towards the provider of service and their disabling of normal use of electric energy a violence of right was committed. The remarks were accepted by AD “Electro distribution of Macedonia” that informed us that in future will take in consideration the Ombudsman’s remarks and the legislation.

The Ombudsman on his own initiative started a procedure regarding delivery of bills for electric energy in which there is not specified the **broadcasting tax** neither the amount, to which he made recommendation to Ad “Electro distribution” and the Government of R. Macedonia as the only stockholder, to distribute bills in which there will be presented the tax of summarizing the amount. To support his attitude the Ombudsman considers that according to the constitutional



and legal provisions, the broadcasting tax is an obligation, a public tax that all the citizens are obliged to pay.

For this reason it's necessary to present the same in the corresponding bills of electric energy. In that way the citizens will be given to knowledge and will be informed for all the relevant elements regarding the amount and the period for which it's paid, and they will have the right to access in the bills for electric energy in which there should be registered the rate-broadcasting tax. The recommendation by the Ombudsman is in a phase of review by the Government of R. Macedonia to which we are waiting for an adequate respond.

The Ombudsman according to his legal authorizations intervened in cases when the clerks in the post offices of JP "Macedonian post" did not accept certain payments for the part of the amount specified in the bill for electric energy, that was actually an agreement between them and AD "Electro distribution" made since some time ago but which is against the provisions of the Law for obligation relations, for reason that the citizens are imposed certain obligations and are not part of the agreement.

In this context the Ombudsman considers that the citizens are obliged to regularly and on time fulfill their obligations – payments and to do it in the period predicted for the paying. If the payment is not done according to the predicted period, the provider of the services has a right to ask for a forced payment of the debt at the corresponding court organs. The recommendation of the Ombudsman is accepted, so that from the data obtained until now, the citizens are not limited in payment of their bills.

One of the news in the supply with electric energy is the reform of the energetic system and certain changes in the legislation, a process that was started in the beginning of the reported year and supposes a privatization of the present AD "Electro distribution of Macedonia", better competitiveness on the market and its liberalization.

During this reported period the number of citizens that required protection of rights regarding AD "Toplifikacija" was small. The requests of the users were regarding the payment of old bills, for which we came to a conclusion that have proposal for realization, and also the temperature of the delivered heating energy.

In all these cases we can notice that AD "Toplifikacija" is acting according to the requests of the Ombudsman, so for the part regarding unpaid bills, the citizens are given the opportunity to do it in several installments. In cases of remarks for the heating supplied we are informed that the responsible services are undertaking measures in shortest term possible, many times doing even several checks in order to do it efficiently.

In general, for the reported year we can estimate that more efficient and intensive corporation was established with AD "Electro distribution of Macedonia" considering the fact that the remarks in certain unclear cases, as well as the requests for getting information and proves for estimating the objective factual situation were to the letter accepted and fulfilled. At the same time we can say that the responsible departments of AD "Electro distribution of Macedonia" react in shortest possible term, after the Ombudsman established communication with the part of the Managing Committee of AD "Electro distribution" dedicated to communication with the Ombudsman and responsible for all the necessary coordination of the activities undertaken.

This corporation and way of communication with a contact-service within AD “Toplifkacija” and the office of the Ombudsman is already established and is functioning since some time ago, so they act on citizen’s requests in the shortest possible period of time.

In the part regarding the **communal companies** whose principal function is providing regular water supply to the citizens, which is an extremely important service, necessary for normal functioning of the users, including the common interest of preserving the public health, we consider that disconnection from the supply net should be done only in cases decided by the court in charge. Actually, as an example to this we can give the experiences of other countries where the citizens are protected by the providers of services that are obliged to prove the disconnection from their services by court decision. On the other hand the existing regulation, or the Decision that is regarding the city of Skopje and the decisions for communal matters from the other communities give the provider of service the right to stop the supply in case of 2 or 3 unpaid bills. Finally, this situation is predicted also in the Law for drinking water supply and taking away urban wastewaters, which should be implemented since the day of constitution of the organs of self-government after the local elections according to the Law for local elections.

Still, in this year the requests of the citizens concerned disconnections from the water supply net, for which in additional procedures we found out that for a part of the debt there were no proposals for realization, in other words the requests of the communal companies were expired, according to the provisions of the Law for obligation relations, to what remark was made for release of the users from those amounts. The requests made in this way are mainly respected and the citizens are not leaded to a situation of having expired debts.

What we can come to a conclusion for this reported period are the rare cases of mass disconnections from the public net for water supply, for what we think that the institution Ombudsman had a contribution having in consideration the permanent comments that with this way of acting the rights of the citizens are violated because with this measures also concerned people that regularly and on time paid their bills.

In the mark of the authorizations to follow the exercise of the citizens rights in certain important segments, we still receive some acknowledgements that several legal-industrial subjects – users do not pay their obligations for spent water, that are of a much bigger amount then the amount of the users-house holdings.

Acting to the requests of the citizens, partially we came to a conclusion that they are not satisfied by the way of charging and the fee of the charged amount for garbage, in cases when the apartment or the house is empty, or no people are living there. The Ombudsman came to a conclusion that by an adequate decision of the Board of managers of JP “Komunalna higijena” a partial release of debt is predicted for the mentioned cases which is an advantage for the citizens as the Law for maintaining the public hygiene, collection and transport of communal hard and technological waste, obliges all citizens users to pay those services never minding the fact if their apartments are empty or not.

Still, besides certain problems we face in acting to citizens complaints we can say that the trend of good corporation continued this year as well with JP “Vodovod I Kanalizacija” – Skopje and JP “Komunalna higijena”, and lots of efforts are made to achieve an adequate corporation with the other public communal companies in the other communities.



Otherwise, as a common characteristic in the actions of all providers of services is the problem is the problem of delivery of proposal for realization to the users by the responsible court departments, so that the citizens are not informed in time or they are not informed at all that for their debts the legal procedure has been undertaken in the court in charge, and they often consider an old debt expired. After the obtained information and proves by the Ombudsman the people were given the information for the submitted proposals for realization and are directed to the court in charge to make corresponding appeals within the predicted period, in case they consider to have relevant proves for opposing the request made by the provider of the service.

From the above said, and for overcoming the problems that citizens have in exercising their rights guaranteed by the constitution and the law in this field, the Ombudsman recommends the Government of R. Macedonia and the other relevant factors to undertake in the next period the following measures and activities:

- Undertaking measures for upgrading and improving the legal system of Macedonia concerning citizens rights as consumers in the public companies and other subject for economic activities of public interest;
- Consider solving the monopoly position and behavior of these legal subjects and activate mechanisms for protection of the rights and interests of the citizens;
- Undertake measures for establishing professional and ethic norms in the acting of the subjects whose behavior is deciding for the exercise of rights of the citizens as consumers;
- The state market inspectorate to implement to the letter the legal instruments given in the Law for protection of consumers and to do permanent supervising in the work;
- To establish corporation with the Ombudsman and to respect his requests to the letter, as well as recommendations, remarks etc.
- The Commission for protection of consumer's rights formed by the Council of the city of Skopje to corporate with the ombudsman;
- All who practice activities of public interest and the other subjects' providers of services to be careful in forming the price of the services depending on the principle of equivalence.
- Introduce additional social measures in order to help the citizens that are objectively not able to fulfill their obligations towards the providers of the services.
- The process of harmonization of the legislation of R. Macedonia to the legislation of the European Union to be accelerated, and to do a complete implementation of the European regulations for standardization and implementation of rules defining the technical requirements of the products and their adjustment to the predicted conditions.
- Provide an adequate appeal procedure, in other words to respect the principle of double instance procedure.

3.15. Protection of rights in the field of finance and customs procedures

The citizens of the R. Macedonia in the reported period turned to the Ombudsman's office with complaints expressing dissatisfaction by the work of the Ministry of finance, more specifically by the Public revenue office and the procedures for deciding the taxes according to the provisions of the Law for taxes and properties and the Law for circulation of goods and services.

The complaints made referred mostly to the procedures for deciding the sum or the rate for deciding the taxes. The citizens considered that in these procedures the provisions for release of tax were not applied or they were applied in a wrong way.

In certain cases the citizens were turning to the office of the Ombudsman and pointing to the circumstances that the Public revenue office in charge did not issue **certificates for paid, or unpaid** tax obligations due to which they can not exercise certain rights in the centers for social work.

Namely, from the procedures started we deduce that the authorized office issues certificates only if the clients have fulfilled their obligations, to which the Ombudsman reacted giving his opinion that the Public revenue office is obliged to issue certificates in every case that the citizens ask for it, and according to the facts in its official records with no previous conditioning so that the citizens will be able to practice their rights in the others institutions of the public administration.

One part of the complaints were made regarding to the tax paying obligation for sales of real estates and the rights regarding contracts made for sales of the social apartments, in which organs of the governments administration are in a position of seller and the individuals as buyers. In these cases, according to the regulations of the Law for property taxes, formally in the legal acts the sellers, in other words the organs of the governments administration, were obliged to a tax of sales, but the same was not delivered to them due to which the tax was unpaid. In these circumstances and having in mind that the citizens could not exercise their rights in the States geodetic institute, in other words the Department for measures and cadastre in Skopje, regarding the rights of inscription in the public register, the citizens were obliged to pay the mentioned tax.

Acting on these subjects, and having in mind the legal regulative, the Ombudsman considered that the buyers aren't obligated to pay the tax. After the submitted recommendations, with this opinion agreed the representatives of the Ministry of finances in the Department for public income.

As a special field of interest of the Ombudsman, for realizing the rights of the citizens despite the same in the current working is almost not represented is the **customs**. The customs procedures, the rights and obligations of the participants in the same, the area and manner of working and the organization of the administrative body responsible for the customs matter are regulated with the Law for customs.

As a subject of the customs procedure is the release in free circulation of goods, storing, temporary export and import, the transit, confirming the customs debt, charging, release from customs compensation are segments in which the participants of the procedure gain certain rights and are subject to certain obligations regarding the goods. They can be either physical or legal persons.

Having in mind the responsibility of the Ombudsman confirmed by law, he can act only in cases where as a participant in the procedure before the administrative body responsible for customs matters is a person, that is, a physical person. During the report year, in the office of the



Ombudsman were registered two complaints from this field, but, because no violation of the legal rights of the citizens was stated, the procedure was stopped.

Having in mind this condition, the Ombudsman objectively isn't able to have an opinion of the manner of carrying out the procedures before the customs bodies and the speed of deciding.

Because of the sensitivity of this field and the problems which the citizens face, and which are more and more evident in conditions of the dropping of the living standards and economic might, with the goal of more efficiently realizing their rights, the Ombudsman to the Ministry of finance and to the Department of public income **recommends:**

- Close respect and application of the legal regulative, especially to the decisions which concern the relief of tax and customs compensation;
- Accelerating the procedures for realizing the rights of the citizens, as before the first degree, so before the second degree bodies;
- Taking measures and actions for raising the consciousness of the administrative officers, especially those which directly decide on the requests of the citizens.

3.16. Protection of the rights of military personnel and military bonds

In the report period, besides the procession of the Law for defense in regard to the decisions for serving military obligation in civil service with several legal regulations regarding the procedure and the organizations in which this obligation would be served, the Law was passed for protection and salvation where in a modern manner are regulated the rights and duties of the citizens in the protection and salvation from natural disasters, epidemics, epizootic and epiphytotic diseases and other accidents in peace and war states in the Republic of Macedonia. With the completion of the legal regulative and improvement was enabled of the status of military persons and military bonds. In that manner, the violation of guaranteed rights of these categories of citizens as potential subjects which would require help from the Ombudsman is reduced.

It is notable that in the past period the Ombudsman created a good cooperation with the Sector for personal and legal matters of the Ministry of defense, and on the other hand the Minister of defense still doesn't reply to the sent reports.

Regarding that in the report period a small number of complaints from this field were lodged, only one refers to the prolonging of the serving of the military obligation for a person which goes to university full-time, the Ombudsman considers that he is not able to create an opinion regarding the respect of the rights of these persons, but in the coming period among other activities of course will be the visits to some of the units of the ARM for learning about the possibilities for use of the legal rights of military personnel and military bonds, and also in the organizations in which functions the civil service of the military obligation for confirming the existence of conditions for this kind of service in concordance with the general acts of the Ministry.

3.17 Protection of the rights of citizens from other fields

In its content and stated requests the complaints distributed in this field were mostly outside of the area of work of this institution confirmed with the Law for the ombudsman. The submitters of the complaints mostly expressed dissatisfaction with the working of the managers, that is, the chairmen of the trade associations, and especially in regard to the decisions made for proclaiming personnel redundancy or the ceasing of the work relation on which was the basis predicted in the Law for working relations. Aside from this the citizens as members of certain associations, referred to and expressed dissatisfaction from the workings of individuals from the chosen governing structures in those associations. In the complaints there was often pointing out of the workers-stock holders committing irregularities in confirming, inputting and property of the stocks during which always as culprits were pointed out the managers of the associations.

Regarding the legal obstacle for acting based on complaints with this content, the Ombudsman attempted to help the submitters in a mediatory manner, with advising on the manner in which they can request a protection of rights and the body before which they can do that, during which not always was a procedure started on these complaints. In a part of the complaints in this area, the citizens expressed dissatisfaction from the carried out procedure for transforming the enterprises, that is, from the privatization, during which they requested intervention from the Ombudsman. Based on these complaints, the Ombudsman advised the citizens, if they consider that in the procedure of privatization there were important violations of the legal regulations which result in damaging the social capital to refer to the Ombudsman, the District Attorney and the Agency because they can request financial, accounting and legal control of the legality and correctness of the carrying out of the procedure, which is in concordance with the regulations of the Law for privatization.



4 GENERAL STATEMENTS AND RECCOMENDATIONS

4.1 General statement

The general statement is that in this year also, although a positive trend and development has been noticed, the degree of securing, respecting and protecting the rights and liberties of the citizens is still not on a satisfactory level.

Namely, the constitutional rights of the citizens before the responsible bodies of the public administration and other bodies and organizations with public authorizations are still realized slowly and with difficulty, through long administrative and court procedures in which there are still abuse and disrespect of the legal regulative.

4.2. Relation and cooperation of the Ombudsman with the citizens

The increased number of complaints from year to year, the stated opinions of the citizens and the opinions of competent institutions, and also the responsible approach of the employees to the requests of the citizens justly point to a statement that the citizens of the Republic of Macedonia are aware of the existence of this institution where they can freely and free of charge to ask for help and in which case to do that, because of which the conclusion is inarguable that the relation of the Ombudsman with the citizens it at the necessary level.

4.3. Relation and cooperation of the Ombudsman with the bodies and organizations over which he responsibly acts

The Parliament of the Republic of Macedonia each year while reviewing the reports recommends to the bodies of the public administration and other bodies and organizations with public authorization a more serious approach to the acting on the requests and cooperation with the Ombudsman.

But, there are still bodies of the public administration for which can be said that they inadequately act towards the requests and recommendations of the Ombudsman, expressing a declarative readiness for cooperation.

4.4. The relation and communication of the public administration with the citizens

Despite numerous activities being taken for the education and professionalization of the administrators in the acting on the requests and the communication with the citizens, still there are still cases of bureaucratic, unprofessional, irresponsible, and at times unbecoming behavior of the administrators with the citizens, contrary to the positive norms, especially contrary to the Code of behavior of the employees in the administrative bodies.

This statement shows that in the following period it is necessary to accelerate the already begun process of reforming the public administration in order to secure a small, competent expert and efficient administration which will represent a service to the citizens.

4.5. Relation and communication of the Ombudsman with the media

In the past period the Ombudsman had the necessary support from the media, which represents a significant segment for the successful realization of the constitutionally and legally appointed responsibilities.

But the evaluation is inarguable that in the future the Ombudsman will need to realize greater cooperation and strive for maximum openness towards the means of public informing.

4.6. Realizing the responsibility of the Ombudsman

From the analysis of the conditions in the **judiciary**, having in mind the responsibility of the Ombudsman to protect the rights of the citizens in the segment of prolonging the court procedures and administrative working of the court administration, the conclusion is that the court procedures are slow and inefficient, which as a condition is present many years back. These conditions are a result of the objective and subjective weaknesses and it is inarguable that lawgiving, operative and institutional reforms for their improvement are necessary.

In that direction the Ombudsman expects a close realization of the Strategy for reforming the judicial system brought in 2004 as a prerequisite for creating a system of an efficient and effective justice.

From the complaints for the working of the **District attorney**, in the report period it can be stated a condition of insufficient expertise and conscience in the acting on the subjects. It is inarguable that the negative conditions in the judiciary adequately reflect on the realization of the public-prosecution function and creating an inefficient penal justice.

Having in mind the legal responsibilities the Ombudsman considers that a greater initiative and readiness is required from the district attorneys and adequate cooperation with the submitters of the criminal reports, and also permanent education of the carriers of the public-prosecution function.



From the received complaints and visits made to the **houses of correction and borstal institutions**, especially in PCH "Idrizovo" and the Prison in Skopje, where more than half of the convicted persons in the Republic are placed, it has been stated that in this year as well as in the previous no significant changes were made.

Namely, aside from the bad stay and accommodation conditions of the convicted persons, there is no conceptual system and program which would work towards a successful resocialization and social adaptation of the convicted persons.

Especially concerning is the condition with the facilities in which is carried out the measure of detainment to which has been pointed out years back.

These conditions caused by the insufficient care of the responsible bodies direct to a necessary urgency for providing financial funds for the improvement of the conditions of stay of the convicted persons and detainees, equipping with technical means and staff equipment of these facilities. At the same time, the Ombudsman points out the need for promoting the legal frame in the field of carrying out sanctions.

This year, although reforms were started in the **police**, the statement is that the problems connected to the disrespect of human rights while arresting and detaining persons by the MIA persist, as does the unprofessional, unbecoming and rough treatment of the official persons to the citizens.

In order to improve the conditions in this field the Ombudsman recommends intensifying the process of implementing the police reform strategy.

The constitutional and legal rights from the **socio-economic field** like the: **the right of work, social protection, pension and health insurance and other social rights** are realized with difficulty. The lack of funds for promoting these rights, especially the right of social protection has reflected negatively on the living standard because a large part of the citizens of the Republic of Macedonia don't have the necessary material funds for a normal existence.

The responsible bodies in the coming period should create new conditions and sources of employment or social protection of the citizens, which is in concordance with the constitutional character of this state.

The problems arising from realizing the right of **work relation** in this year were also present. The disrespect to the legal regulations for the means of starting and ceasing of the work relation, the suspension of the workers, the realization of the right to annual vacation and work leave, the procedure for determining employment status, the dissatisfaction from the work conditions and from the excessive execution of the work and work tasks were problems for which the citizens requested an intervention from the Ombudsman.

In these conditions the sent recommendations, suggestions and opinions of the Ombudsman were most often disrespected, which directs to the need for a responsible, professional and adequate relation from not only the administrators, but from the work givers.

The economic condition and lack of financial power of the state in this year also showed that it has a great influence on securing the best interest for the children for which shows the fact that in the majority of complaints also is pointed out the existential problem which more and more families face with which conditions aren't being created for realizing all of the children's rights guaranteed with the Convention for children's rights and with the home regulations.

For the realization and protection of the **rights of children** and the disabling of various abuses and misuses, not only is the improvement of the living standard and the respect of the children's interest by all and in all procedures necessary, but also the cooperation and communication between all subjects which care for and decide on the rights of children necessary, which requires a cooperation between the government organizations and NGOs, and also the cooperation with international organizations.

The most frequently present problems in the realization of the citizens' rights in the field of **education** evidenced through the complaints are the rights of students regarding studies financing, the changes to the enrollment policy of the high education facilities regarding co-financing terms, enrollment, student standards and accommodation in student houses and receiving student credit and scholarships.

This year also as in the previous it can be stated that little has been done to improve the student standards, which has been supplementally endangered with the introduction of various fees from the high education facilities with no legal and actual basis.

The rights from the field of **property-legal relations** like: denationalization, inputting the right to real estate in the real estate cadastre, expropriation, and securing the right of receiving constructional land, as the most represented requests of the citizens this year also were realized slowly and with difficulty, during which a high level of subjectivity and non-expertise while carrying out the procedures has been noticed.

Separating the process of denationalization, the Ombudsman considers that not only does this process take long and has still not been completed, but oftentimes the passed decisions with which the return of previously taken properties have no practical realization.

In the past year the subject working shows that the citizens collide with many problems in the field of **urbanism and construction** which above all are in relation to the incompleteness in the execution of the administrative acts passed in regard to the no lawfully built constructional objects or parts of objects which are in breach of the issued construction permissions, and also to problems which arise due to the non transparency of the procedures while passing the detailed urban plans. The citizens also clash with inefficient inspection services, which mostly in practice do not execute complete control and supervision in the carrying out of the legal regulative. With that, it is necessary to point out that there is selectiveness in the execution of the administrative acts by the inspection bodies, which leaves space for doubt that corruption may be present.

A general statement is that many problems of the citizens in regard to protecting the rights in the **housing field** years back not only are not solved, but they have a tendency to increase and worsen. These rights, although guaranteed with various international conventions and home regulations still remain only declaratively recognized rights from which the citizens have almost no use at all.

Because of that it is necessary for the responsible bodies to establish an adequate approach for solving these essential questions, which are of life interest for the citizens of the Republic of Macedonia.

It can be stated with certainty that the problems with polluting the **environment** are very serious issues, but the conclusion is present that among the citizens there is a low level of ecological consciousness, and also an insufficient and indifferent treatment of the environment to which points the small number of received complaints.



On the other hand, having in mind that in the previous year numerous regulations from this field were brought and the phase of their implementation is coming, the Ombudsman recommends that a more organized, active and planned approach is needed from the responsible bodies.

In the field of **consumer rights** the Ombudsman is responsible to protect the rights of the citizens when the suppliers of the public communal services violate them. (Telecommunications, distribution of electric and heating energy, water supply and other communal activities.)

From the complaints of the citizens and the communication with the responsible persons in the public enterprises from the field of telecommunications, distribution of electric and heating energy, water supply and other communal activities, it can be stated that the citizens as consumers of water, electric energy and telephone services are in a submissive position because they have no choice, that is, the suppliers have a monopoly over the services. In this condition the Ombudsman and the citizens could not make an adequate influence over the price of the services with which the citizens were put in a position of unconditional acceptance of the offered services.

Having in mind the fact that a short while ago the Law for Protection of Competition the Ombudsman considers that the same represents a good legal frame for terminating the monopoly position and the protection of the consumers' rights. In that direction there is a need for the new organ - Commission for Protection of Competition to may sanction according to Directives of European Union.

The realization of the rights of the citizens in the bodies of the communities as units of the local **self-government** and the city of Skopje and in the public enterprises above all: the care, construction, joining or replacement of the objects of the communal infrastructure due to poor material conditions and the small legal authorizations of the units of the local self-government in practice were not actually realizable.

Having in mind that the activities connected to the internal displacement will be conducted this year, the Ombudsman considers that there will be a need for greater informing of the citizens for this process, that is, for the realization of their rights before the bodies of the units of the local self-government. In that function for the Ombudsman undoubtedly will be significant the intensifying of the activities of the responsible body of the Government of the Republic of Macedonia for the process of internal displacement and cooperation with the same including the possibility for the participation of the Ombudsman in the process of transferring the responsibilities from a central to a local level.

4.7. Recommendations to the Government of the Republic of Macedonia, the bodies of the public administration and other bodies and organizations with public authorizations

The statements which arise from the subject working of the Ombudsman direct to the necessity for the Government of the Republic of Macedonia and other bodies and organizations with public authorizations to take intensive measures and activities with which would be removed all illegalities and irregularities, and also other negative conditions stated in the Report, and in the future to secure:

- continuous harmonization of the laws with the Constitution of the Republic of Macedonia and harmonization with international standards;
- conscientious, responsible, focused and timely acting on the requests of the citizens while realizing their constitutional and legal rights;
- close application of the constitutionally confirmed regulations for nondiscrimination and adequate and legal representation of the representatives of the communities in the bodies of the public rule, the bodies of the units of the public administration, the bodies of the units of the local self-government and the public facilities and services;
- responsible relation and timely and close respect of the requests, recommendations, and other suggestions of the Ombudsman and
- Greater transparency, information, training and education of the citizens about their constitutional and legal rights.

4.8. What the Ombudsman expects from the Parliament of the Republic of Macedonia

The Ombudsman expects of the Parliament after the review of the Report in the frames of its authorizations to deduct conclusions with which to indebted the Government of the Republic of Macedonia and other responsible bodies and organizations, to completely, closely and timely act on the requests and recommendations of the Ombudsman stated in this report.

At the same time, with the purpose of securing total application, respect and protection of the human rights and liberties the Parliament of the Republic of Macedonia to indebted the responsible bodies for the undertaken activities to regularly inform the Ombudsman.



5 FORTHCOMING ACTIVITIES

The Ombudsman will direct his activities in the forthcoming period also towards the realization of the basic functions which arise from the constitutional and legal responsibilities, as also from the international standards in the field of realizing and protecting the rights and liberties.

Attention will be paid especially to the implementation and programming of the newly established responsibilities and authorization in concordance with the Law for the Ombudsman, that is, **the protection and respect of the principles of nondiscrimination and the adequate and legal representation of the representatives of the communities** in the bodies of the public administration, the bodies of the units of the local self-government and the public facilities and services. For this activity will be made an adequate strategic document, in the function of the complete implementation of these principles.

In the forthcoming period adequate activities and measures will be undertaken for programming the **direct inspections in the working** of the bodies of the public administration, especially in the police stations, the departments for detainment and the correctional institutions, the psychiatric hospitals and other facilities where the movement of persons is limited.

The Ombudsman in the forthcoming period will pay greater attention to **self-initiative as a principle of working** through the direct inspection of the conditions in certain areas.

On an organizational plan, for the total **implementation of the Law** activities will be undertaken for realizing the already passed program for the implementation of the new law and for **promoting the spatial and technical work conditions** of the six new regional organizational units and the office in Skopje, and also for the necessary staff equipment of the Ombudsman. In that function on an operative plan will be strived to apply the new Work Rulebook.

Also, the **activities for popularizing and affirming** of the institution and the education of the citizens for its role and meaning will continue. During this it will especially be required to program the activities for affirming and popularizing the newly established offices.

In this direction will be continued with the realization of the activities programmed with the media campaign, which weren't realized during 2004.

The Ombudsman will continue to cooperate with and find methods and forms of establishing a **closer communication with the responsible bodies**, institutes and institutions and the other government organizations and NGOs, organizations, associations, and assemblies and

together with them will act on the plan for securing and respecting the constitutional and legal rights of the citizens.

For the same purpose the Ombudsman will strive with his participation to contribute to the **completion of the legal regulative in the Republic** in the part in which from the practical working will be shown that there is space for the normative upgrading of the legal system and for the harmonization of the home legislation with the international standards, an activity closely tied to the process of Euro integration of the Republic of Macedonia.

Special attention will be paid in the following period also to the **use of the means of public informing**, which in the past period have shown themselves as a very significant and efficient instrument which is at the service of the Ombudsman.

On an **international plan** the established practice of cooperating on a bilateral, regional and international level with the ombudsmen from other countries and similar institutions will continue, whose primary purpose is the protection and promotion of the human rights and liberties. Depending on the financial possibilities participations are planned in educational seminars, conferences, workshops and other gatherings of interest for promoting the work and functions of the institution of the Ombudsman. In that context, with due attention will be reviewed and accepted all offered projects and programs which are in regard and significant to the promotion of human rights, during which projects of that kind are planned also by the office of the Ombudsman of the Republic of Macedonia.



6 EXAMPLES FROM THE PRACTICE

1. NP N.1775/04

I.M. from the village of Ljubanci made a complain due to breach of his right to social protection. According to the complain his right for remuneration for aid and care from other person that he received since 1992 till August 2004, when the payment stopped, was ceased without an administrative decision adopted in reference to the payments. In addition a decision was adopted for ceasing the payment of financial remuneration for aid or care from other person. By the means of this decision the beneficiary was obliged to reimburse the received amount of money due to assumed illegal recognition of this right. From the contents of the adopted decision the Ombudsman has established that no procedure for renewing of the previously adopted decision, which was final and irrevocable, has been legally conducted. Furthermore, the Ombudsman has established that this kind of procedure for annulment of the previous decision, while obliging the beneficiary to reimburse the previously received sums has been conducted on several cases. The procedures are contrary to the provisions of the Law on General Administrative Procedure according to the provision of which the extraordinary legal remedies for annulment and making void of decisions which are final and executive could be implied but only on certain cases, under strict conditions and within determined terms. It was established at the

same time that, when deciding over this cases separate decisions by the means of which the previous decisions were made void were not adopted. The decisions were adopted when deciding over new requests from the citizen for the exercising of new rights from the area of social protection. Within this procedure the existing and recognized right were made void and the citizen were obliged to reimburse the received amount of money assuming their illegality. This was especially the case with the beneficiaries of permanent financial aid and of the payment for aid and care from other person. Acting upon this and other complaints referring to this issue the Ombudsman established that the ceasing of the payment of the social protection was performed several months before the establishment of the factual and the legal background in reference to the fulfilling of the conditions for further practice of the rights from social protection. It was also established that the action was performed without the adoption of an administrative act by the means of which the beneficiaries will be introduced to the reasons, due to which their right was annulled, while also are informed to their right to an appeal. Due to this praxis of the Centre for Social Works, the Ombudsman on several occasions stressed out the illegality of the actions and that measures for the surpassing of this problems should be undertaken, in order to avoid the state of legal uncertainty. But the

statements of the Ombudsman were not taken into consideration, and no action was taken. Therefore separate information was submitted to the Minister of Labor and Social Policy. In reference to this there were also reactions from other citizen, NGOs as well as other political factors. Due to the reaction the Ministry of Labor and Social Policy has undertaken measures for the reviewing of each case for which the Ombudsman was not informed still.

2. NP N.325/02

For two years already the Ombudsman is acting on the complain of V.L. from Kumanovo, for unreasonable extension of the procedure for recognition of the Diploma for Higher Education from the Military and Technical Academy of the Army of Yugoslavia in Belgrade. In the recent years the Ombudsman intervened at the Ministry of Education and Science to implement an adequate procedure for the recognition of the stated diploma. The efforts were unsuccessful due to presumable lack of certain data from the Military and Technical Academy from Belgrade. Even after the acquiring of the necessary data and documents and the statement that the procedure will be implemented in the shortest-term possible the appointment of Commission for the recognition of the diploma by the Minister, and so the recognition it self, was delayed. After the appointment of the Commission the Ombudsman expected that the recognition of the diploma would take place in a short period of time it didn't happen. Due to this reason the Ombudsman submitted to the Minister information that had no effect at all.

According to the authorization of the Ombudsman as provided by the Law on Ombudsman the Government of the Republic of Macedonia was informed, but still no action was taken and the submitter had not exercised the right. The Ombudsman addressed another information to the Minister

but there is no response and the procedure was not implemented.

3. NP N.1106/02

M.O. made a complain for breach of the right to maintain personal contact with her child. The child was awarded to the mother by means of a Court Decision, but lives with the father who prevents the contacting of the child with the mother. Having in mind the fact that this case represents a breach of court decision and breach of the rights of the child and of the mother, the Ombudsman started a procedure and asked the Centre for Social Works to undertake the necessary actions and measures for the purpose of exercising the rights of the mother to take care for her child, but also the right of the child to have personal contact with the mother that it does not live with. At the same time the Ombudsman intervened at the Court to execute its decision. Because of the fact that there were problems in the normal communication of the mother with the child the Ombudsman intended measures to be undertaken for the re-education and improvement of the quality of the personal contact of the mother and child. This would lead to the creation of the necessary conditions for the execution of the court decision without any trauma and unwanted consequences for the child.

In the meantime besides the interventions of the Ombudsman the problems were not surpassed, and the maintenance of contacts of the mother and child was not on the satisfactory level. Due to this the Ombudsman suggested to the Centre for Social Works to undertake the measures that are at their disposal, especially in reference to the father who prevented the maintenance of contacts between the mother and child. In that sense the Ombudsman recommended that the Centre supervises the exercising of the right of the parent. Acting upon the recommendation of the Ombudsman, the Centre provided that the maintenance of contacts



between the mother and child is regular and the court decision is executed.

4. NP N.95/02

V.M from Bitola made a complain stating that was prevented from exercising the right to remuneration to the salary due to absence from work for maternity leave by the Fund for Health Insurance. The request for the recognition of the right to remuneration to the salary during the duration of the absence from work for maternity leave was rejected due to the fact that the social insurance lasted less then six months. Due to the rejection of the appeal, the party started an administrative dispute and the decision of the Ministry of Health was annulled and the case was returned to be re-decided stressing out that it is a case of breach of the right of the party due to wrongful application of the Law having here in mind the Decision of the Constitutional Court of the Republic of Macedonia annulling the provisions from the Law stipulating the above mentioned condition. The second-degree body did not proceed according to the legal opinion stated in the judicial decision and rejected the request. The Ombudsman acting upon this rejection recommended to the Ministry of Health that does not agree with the explanation of the Decision that there was no opportunity for a different decision due to the fact that the leave was before the annulment of the provisions, and according to the position of the Ministry the administrative procedure ended with the second-degree body deciding.

The Ombudsman being at the opinion that the administrative procedure is over when the act is final and irrevocable, i.e. when against the act the party can make neither an appeal, nor start an administrative dispute stressed out that the administrative body in the second procedure is obliged to recognize the right to the party.

However, the competent body in the renewed procedure did not comply with the recommendation of the Ombudsman and the

ruling of the Supreme Court due to which the party has commenced the second administrative dispute. Considering the factual state the Ombudsman continuing the actions in this procedure intervened that the Ministry obeys the provisions of the Law, the recommendations of the Ombudsman and the rulings of the Supreme Court of the Republic of Macedonia and recognizes the right to financial aid to the party due to her maternity leave. The Ombudsman has also established that the improper behavior of the Ministry is not just breaching the provisions of the Law, the obligations arising from the court decisions and the right of the citizen, but also the rights of the new bourn child. This especially due to the fact that the rejection of the right to financial aid is contrary to the constitutional obligation for providing of special care and protection of the family, motherhood and the children, but also the interest of the child and the right to survival and development as guaranteed by the Convention for the right of the child. In the further parts of the procedure the Supreme Court adopted another positive ruling due to which the Ombudsman made another recommendation after which the request was accepted and the party exercised her rights.

5. NP N.1264/04

Z.L. from Skopje made a complain due to breach of the right to for remuneration for aid and care from other person. In the complain it was stated that the remuneration was canceled due to the fact that when the competent commission made a check at his/ her house and did not find him/ her, the commission concluded that the beneficiary could take care for his/ her self. The Ombudsman after reviewing the submitted documentation established that the beneficiary has been categorized as person with medium difficulties in the psychological development ever since 1982, and among else has EPILEPSIJA???. However in 2003 by a finding of the Commission it was established

that the beneficiary has no need of aid and care from other person due to the supposedly changed situation, but at the same time there was no explanation how did the situation change and to what. From the check of the findings of the commission the Ombudsman has established that the beneficiary when visited by the First degree Commission was not found at home and the finding was based on the documentation. It was also established that the finding had the signature of only one of the Commission members due to what the Ombudsman considered the finding as invalid and as such cannot be considered as basis for the rejection of the request. The Ombudsman found that the Commission was not deciding in the right composition and that there was no explanation for the reasons upon which the decision is based or upon which was established that the condition of the beneficiary is improving. Therefore the Ombudsman found that this is a case of breach of rights and recommended re-examination of the case. Acting upon the recommendation of the Ombudsman a re-examination of the beneficiary was performed and the right to remuneration for aid and care from other person was recognized to him/ her.

6. NP N.503/04

R.Z. from Skopje made a complain due to the breach of the rights from retirement and disability insurance. Although she was permanently incapable for work, the Commissions for the assessment of the working capability did not recognize her right to retirement due to this incapability. This was because the Commission found that she has not lost her capability. The Ombudsman entering into the procedure on the appeal against the first-degree ruling established that it is an undisputed fact that the party has severe health problems and was treated on several occasions and even hospitalized. Starting from this factual background the Ombudsman presented to the

second-degree body that at the renewed deciding all the stated diseases should be taken into consideration. After establishing the factual background the second-degree body should issue the finding and the opinion for the working capability of the party. When the written request was submitted supervision was performed at the Fund for Retirement and Disability Insurance and the Second-degree Commission. At this stage permanent disability was established due to which a Decision for Retirement based on this disability was to be adopted. In the further proceedings the Ombudsman intervened again so that a Decision for the amount of the Retirement Payment is adopted after which the party exercised her right from retirement and disability insurance.

7. NP N.1209/04

I.M. from Skopje made a complain for breach of the rights from health insurance by the Fund for Health Insurance, i.e. the Fund was not issuing to him the receipts for health insurance or "blue cards". According to the statement of the submitter, he was matriculated at the Agency for Employment as unemployed and by virtue of the matriculation the health insurance contribution was installed regularly. However the Fund for Health Insurance did not issue to him the "blue cards" because of unpaid health insurance contribution from the previous employment when the enterprise was not working and had no profits to make the installment. Due to this the enterprise had a waiver on the personal income tax by the Public Revenue Office.

Having in mind that the submitter had his rights in breach by the Fund for Health Insurance due to the rejection of the matriculation for health insurance based on the unemployment. Furthermore to the breach could be added that the Fund was not issuing the receipts for health insurance even though the installments of the contribution are regular. The Ombudsman demanded that



the Fund for Health Insurance accepts the matriculation and starts issuing the insurance receipts. Submitting this demand the Ombudsman also stated the provisions from the Law on Health Insurance in which the procedure and the conditions for application for and acquiring of the status of insured person, as well as the provisions on the manner for the making of the installments according to which there was no legal obstacle for the matriculation of as insured person since he has the status of unemployed and the contribution is installed regularly. For the overdue for certain installments of the contribution from his previous employments the Fund was instructed to commence a legal procedure. The made demand by the Ombudsman was accepted by the Fund and the submitter started exercising his right.

8. NP N.621/04

M.R. from Ohrid made a complain for the breach of the right of minors from the age of 17, 13 and 10 by the officials of the Ministry of Interior. The Ombudsman established that to these minors the right to an attorney in the police investigation procedure was denied, and that they were summoned to informative interviews at the Ministry without the presence of a parent or guardian. By the opinion of the Ombudsman this is a case of severe breach of children's rights and of the Law and the regulations for the conduct of officials.

For this reason the Ombudsman submitted a proposal for the commencement of disciplinary procedure against the involved officials stating that according to the Constitution of the Republic of Macedonia all persons, and especially minors have the right to an attorney during the police investigation procedure, and that according to the regulations for the work of the Ministry of Interior, the officials from the Ministry cannot common minors without the presence of the parents and the attorney. Furthermore the Ministry officials cannot summon and detain

minors below 14 years of age since they are not criminally responsible. The Ombudsman especially stressed out the stipulations from the Convention for the right of the child according to which imprisoning of a minor could be performed as final measure during which the official is obliged to inform the parents and secure their presence and also enable the presence of an attorney. Acting upon the proposal of the Ombudsman the Ministry of Interior commenced disciplinary procedure against these officials for the determination of their responsibility and the breach of the rules for the working discipline and the rules for the behaving and acting and certain measures were taken against them.

9. NP N.1090/03

R.S. from Kumanovo made a complain in which he stated that when he served in the army he was engaged in the defense of the country, i.e. he participated in the army actions for the defense of the sovereignty of the Republic of Macedonia, but due to health reasons, as a consequence of stress during the military actions he was hospitalized at the Institute for Lung and Heart Diseases.

However, besides his condition at the request submitted to the competent body for the assessment of the military disability according to the Law on Special Rights of the Representatives of the Defense forces of the Republic of Macedonia no action was taken. The Ombudsman acting upon the complain established that this is a case of breach of rights. Further to this is that the Ministry of Interior has not issued the certificate that the applicant participated in the military actions in 2001. Due to this the Ombudsman while acting at the competent body to decide over the disability of the applicant acted at the Ministry of Interior for the purpose of issuing the certificate for participation in the military actions. After the recommendation of the Ombudsman both the institutions reacted so that the applicant is proclaimed as

military invalid and pension from the day of the fulfillment of the conditions.

10. NP N.1918/03

A.T. from Skopje made a complain due to breach of the rights from the area of education since he was not exempted from the payment of the studying fee when matriculating the second year of studies at the Faculty in accordance with the Law on Special Rights of the Representatives of the Defense forces of the Republic of Macedonia. Having in mind the provisions of the stated Law, as well as the fact that it's applicable to all persons that will matriculate at an institution of higher education the Ombudsman established that the rights of the applicant were broken. After this the Ombudsman intervened at the Faculty that the applicant should be exempted from studying fee as representative of the armed forces. The Faculty did not accept the recommendation of the Ombudsman with the explanation that the stated Law is referring to the persons who will matriculate the first year of studies in the academic year 2002/2003 and in future, but not to the students already studying. For the purpose of clarification of the issue, the Ombudsman asked the Ministry of Education and Science and the University of Ss. Cyril and Methodius in Skopje for information on the application of the stated provisions, i.e. whether they are applied only to newly matriculated students or are applicable also to students that are matriculated in second, third or other year of studies. The University in reference to this issue held a meeting of the Committee for Normative Works, which established that the provisions of the stated Law are clear and their applicability should not be disputed, i.e. the provisions should be applied to all representatives of the armed forces, independent from the year of studies in which they matriculate in. Having in mind this opinion the Ombudsman again presented to the Faculty his recommendation for true application of the pro-

visions of the Law in reference to the exemption from studying fee of the applicant. The Faculty accepted the recommendation and he was exempted from further paying.

11. NP N.1593/02

D.C. from Skopje made a complain in which she stated that her husband who is hospitalized in the Psychiatry Hospital was physically molested and beaten by the personnel from the hospital. Due to this she asked for an intervention for the protection of his rights by the responsible people from the Hospital, the Ministry of Interior and the Ombudsman. For the purpose of obtaining full information on the case the Ombudsman right after receiving the complain made a consultative meeting with the personnel from the Hospital, when he saw that there are clear marks on the body of the patient. For the purpose of examining the case a committee of five members was established within the institution where doctors' specialists through interviews with the personnel x-ray and other examinations established the factual background and made a report. The Ombudsman asked for a copy of the report and information of the undertaken measures, after which he was informed that a nurse from the hospital molested the patient and due to this actions disciplinary procedure was started the nurse was suspended and also the head of the department in which the patient was hospitalized.

The Ombudsman continued the procedure by intervening for the commencement of a criminal procedure by the Ministry of Interior. The Ombudsman also monitored the situation at the Hospital in reference to the treatment of the patients. Further the Ombudsman demanded that the hospital undertakes measures for the providing that no such cases shall come forward again. For that objective in the hospital besides the personnel changes seminars were organized with foreign and local experts. With this the Ombudsman ended the procedure and in the



future period there were no information for such cases from the hospital.

12. NP N.496/04

H.H. from Skopje made a complain to the Ombudsman stating that his legal and constitutional rights in the denationalization procedure have been breached, because after a longer period of time no actions have been taken for the adoption of an administrative act by the means of which a decision will be made for the request for denationalization returning of real estate. Acting upon this complain and having in mind all the statements and evidence the Ombudsman found that the complain has legal grounds. In reference to this legal issue it is a case of action in contrary to the principles of urgency, efficiency, economy and effectiveness from the Law on the General Administrative Procedure, i.e. the Law on Denationalization and a breach of the rights of the party in the procedure and to this complain. It is not a dispute at all that in this case the request was submitted in 2001, but besides this situation still no administrative act-decision was not adopted nor has the party been informed for the procedure.

Considering this and the fact that no legal term was obeyed as stipulated in the Law on Denationalization, as well as for the prevention of future damages to the person that inherited the right to denationalization of the real estate. In reference to the authorizations deriving from the Law on the Ombudsman, the Ombudsman demanded that priority should be given to the case with the objective of ensuring the exercising of the right to denationalization. At the same time the Ombudsman requested that he is to be informed about the undertaken action in the passed period in relation to the same case. In the further procedure the Commission on request for denationalization from the municipality of Gazi Baba of the Ministry of Finance in reference to this case informed the Ombudsman that the case was solved

and that the actions deriving from the recommendation of the Ombudsman were undertaken.

13. NP N.1652/04

S.P. from Skopje made a complain to the Ombudsman in which she stated that the Ministry of Transport and Communications, territorial unit for the municipality of Karpos is extending the procedure for the deciding over the request for the transformation of the right to use construction land into property right, due to which she considers that her rights have been breached. The Ombudsman right after he received the complain asked to be informed about the actions taken, as well as for the reasons due to which the said procedure has not been ended yet. At the same time the Ombudsman stressed out the necessity for urgent action in the sense of positive decision for the request. In the further proceedings the Ombudsman was informed by the Ministry of Transport and Communications, territorial unit for the municipality of Karpos-Skopje, that to the applicant a decision was sent in which she was informed that her request is accepted.

14. NP N.670/04

A.V. from Skopje made a complain to the Ombudsman stating that his legal and constitutional rights in the denationalization procedure have been breached, because after a longer period of time no actions have been taken for the transfer into possession of denationalized property, i.e. the decision, which is final and irrevocable, is not executed yet. Acting upon this complain and having in mind all the statements and evidence the Ombudsman found that the complain has legal grounds. In reference to this legal issue it is a case of action in contrary to the principles of urgency, efficiency, economy and effectiveness from the Law on the General Administrative Procedure, i.e. the Law on Denationalization and a breach of

the rights of the party in the procedure and to this complain.

Having in mind the provisions from the Law on Denationalization, according to which the real estate that was returned to the rightful owner is to be transferred into possession after the fulfillment of the conditions as stated in the final decision for denationalization. Since the applicant requested that the commission acts in accordance with the decision on several occasions the Ombudsman demanded that the competent body acts within the shortest possible period of time and that the decision is executed. In the further proceedings the coordination committee at the Ministry of Finance asked the complete file from this case and established some contradictions and forwarded the case to the second-degree committee at the Government of the Republic of Macedonia so that the decision and the right is annulled or proclaimed void. This response to the Ombudsman was irrelevant and a clear proof for acting against the provisions of the laws regulating this area, i.e. the complete administrative procedure. Due to this the Ombudsman once more demanded that all actions are stopped, and the recommendation is taken into consideration and fulfilled. But, the Ministry of Finance, the Commission on denationalization from the municipality of Centar-Skopje has not given any response yet.

15. NP N.1313/04

A.S. from the village of Bachista made a complain to the Ombudsman stating that the Ministry of Transport and Communications, territorial unit Kichevo, has no grounds to postpone the procedure for the issuing of certificate-clause for the irrevocability of the decision for the transformation of the right to use the construction land into right of property. After studying the stated facts the Ombudsman found that the complain has legal grounds. This especially if its taken into consideration that all the parties in

the case the citizen and the Public Attorney of the Republic of Macedonia for the area of Kichevo, after the delivery of the decision, by the means of special written complaints have declined their right to an appeal, so according to the Law on General Administrative Procedure the decision is final and irrevocable and there are no obstacles for the non-acting in the context of the request.

The fact that one natural entity made an appeal made no difference since it had no right to be a party in the procedure. Having in mind the legal and factual background, and for the purpose of prevention of any damages the Ombudsman acting in accordance with his authorities from the Law on the Ombudsman recommended that in the shortest possible term the request should be considered, and the appeal should be rejected as forbidden. This recommendation was not accepted by the territorial division in Kichevo and by the second-degree commission. The Ombudsman has no response yet.

16. NP N.735/04

To the Ombudsman a complain was made by L.K. who among else stated that the Sector for cadastre-Skopje from the State Institute of Geodesy and the procedure that has been conducted in the first degree her rights from the Law on Cadastre and matriculation of rights to immovable property, as well as the Law on General Administrative Procedure have been breached. It is a case that acting on the request for the change at the Cadastre area Centre I, the administrative body of first degree has rejected it with the explanation that the submitted documentation is not the legal ground for the matriculation of the right to use the land in accordance with the Law on Cadastre notwithstanding that the cadastre unit is matriculated but with no property right for it. During the procedure the Ombudsman established that the applicant as holder of the right to living in the apartment, according to the Law for the sale of the apartments in common



property and the Ordinance for the criteria and the manner of determination of the price has concluded a contract describing the apartment with the Republic of Macedonia. From the contents of the contract could be established that the buyer has not transferred the property of the land on which the building was constructed. But the Ombudsman having in mind the previous Law on basic property rights and the provisions of was on the opinion that the construction of building on land in common property means that the constructor/ owner of the building has the land in permanent use. This right could be only transferred by the property on the building.

With this legal and factual background for the Ombudsman was undisputable that the contract by the means of which the right of property to the building is transferred is legal ground for the transfer of the property not only of the building but also of the land in accordance to the Law on Cadastre and the Ordinance for the manner and the procedure for the presentation of the data and the matriculation and transfer of the right. From this reasons the Ombudsman that it is necessary that in procedure at the second-degree body a decision is adopted accepting the appeal and the disputed act annulled and the case returned to the first-degree body. Considering the fact that the Ombudsman did not receive any answer information was submitted to the Government of the Republic of Macedonia that has not been proceeded.

17 NP N.822/04

Acting on the complain from the applicants S.P. and M.G. from Skopje the Ombudsman established that in accordance with the ruling of the competent court the applicants during the period 1978-1980 paid the fee for the urbanizing of the construction land for the construction of family house. Considering that during this period the applicants have not finished the construction

and the whole procedure in January 2004 they requested from the Committee on urbanism, communal affairs, transport and environment of the City of Skopje that a license is issued. The Committee did not accept the payments that made but advised them to make the installments first.

At the same time the applicants addressed the Public Enterprise for the management of housing and business space of the Republic of Macedonia, territorial unit Skopje, as competent body for the installment of the fee to inform the Committee. After reviewing the case the Ombudsman recommended to the Committee that there is no ground for the obligation of the applicants to make another installment, i.e. the committee is obliged to enable the applicants to collect the necessary documentation. Having in mind that the recommendation was not accepted the Ombudsman addressed also the Mayor of the City of Skopje with the request that the necessary measures are undertaken in accordance with the Law on Local Self-government. From the Office of the Mayor no response was given to the first intervention and the repeated demands. The Ombudsman organized a meeting with the Committee representatives but they still rejected the recommendations.

The Ombudsman then submitted to the Committee copy of a letter by the Committee in which the installment of a fee in 1980 is accepted and that was also part of another case. From the Committee the Ombudsman was informed that the case will be reconsidered and is still in procedure.

18. NP N.1144/04

The Ombudsman at own initiative acted for the delivery of the invoices for electricity that have the broadcasting fee not clearly stated, as well as the amount. Addresses were made to the Electricity Company of the Republic of Macedonia and to the Government of the Republic of Macedonia as single shareholder, with the rec-

ommendation that invoices are delivered that have clearly stated the broadcasting fee. In support to this the Ombudsman established that in accordance with the constitutional and legal provisions the broadcasting fee is a fee that the citizens are obliged to settle. Therefore the Ombudsman stressed out the necessity that the broadcasting fee is presented and transparent in the invoices for electricity. That would be the proper manner to keep the citizen informed about the relevant elements of the amount and the period for which it is paid. The recommendation of the Ombudsman is still in procedure at the Government of the Republic of Macedonia.

19. NP N.1071/04

The citizen G.B. from Skopje addressed the Ombudsman with request for the protection of his rights, breached by the Electricity Company from Skopje. From the complain and the evidence attached the applicant acquired the right to property over a house, and addressed the Company with a request that he is matriculated and the invoices are sent to him. The Company rejected the request with the explanation that the previous owner has debts and the invoices will still be sent to the old owner and that the applicant should cover his debts.

The Ombudsman acted and recommended to the Company that the applicant is matriculated and the he is enabled to exercise his rights, while the debt is from the previous owner. At the same time the provisions of the Law on Obligations were cited according to which the debtor is the person who used the apartment and the electricity. The Electricity Company accepted the recommendation.

20. NP N.1275/04

For this case it is interesting that the employer while implementing the procedure for rationalization of the process fired a worker whose position was not rationalized, but a different worker got his position. The

Ombudsman submitted an opinion to the second-degree committee, and the committee accepted the recommendation and adopted a decision for the annulment of the decision for firing. The employer accepted the decision and hired back the worker to work on his previous position.

21. NP N.1326/04

The breach of the right in this case was at the Centre for Employment-Skopje that canceled the matriculation of the worker 6 months later then the decision for the ceasing of the employment. The Ombudsman stressed out to the manager of the body that the matriculation of the worker should be canceled not later then 8 days from the decision, but was rejected by the manager. Considering the fact that the lower level body rejected the recommendation the Ombudsman addressed the Agency for Employment of the Republic of Macedonia. The Ombudsman was informed that the Centre complied with the recommendation after being instructed by the Agency.

22. NP N.1618/04

To the Ombudsman a complain was made by a representative of the Turkish ethnic community asking an intervention at the Islamic Religious Community of the Republic of Macedonia for the implementation of the principle of equal representation within the organs of the Community. After studying the facts and the evidence the Ombudsman found that there are no grounds for the action since the Constitution and the Law on the Ombudsman are clear and providing for the action of the Ombudsman for the protection of the principle of non-discrimination and equal representation within the bodies of the state administration, the local self-government and the public institutions and services, but no at the religious communities.

Having in mind the constitutional provisions that the religious communities are



separate from the state, the Ombudsman found that the equal representation within the organs of the Islamic Religious Community are issues of internal importance and the applicant should address it to the Community.

23. NP N.1792/04

The citizen R.S. from the Roma ethnic community from Skopje near the end of 2004 requested help from the Ombudsman for confirming responsibility of the authorized administrative person P.T. employed in the body of internal affairs for the city of Skopje, because the same, in front of many citizens brutally applied physical force to him, causing him medium to heavy bodily injuries stated by several health organizations in Skopje because of which he had to be hospitalized. Because of the seriousness of the violations of the human rights and liberties and the support of the findings of the citizens with suitable material evidence, the Ombudsman decided to immediately submit a criminal report against the reported person to the District Attorney in Skopje on a based suspicion that the same committed a criminal act against the human rights and liberties from the Penal code of the Republic of Macedonia. The responsible prosecution body informed the Ombudsman that it has started a procedure for gathering necessary reports against the reported administrative person for the criminal act-Torture and other cruel, inhuman or humiliating treatment and punishment from article 142 of the Penal code of the Republic of Macedonia. The procedure on the complain is still going on and a verdict on the case is awaited.

24. NP N.652/04

A complain for violated rights in the police acting of two official persons-inspectors in the body of internal affairs of Skopje submitted A.N. who was taken in for the purpose of being a witness in the police

station "Centar". With the intention of extorting information from him and to obtain useful information regarding a perpetrated criminal act, the officers used force on the submitter, striking him with baseball bats on the head and back, making him suffer grave bodily injuries from which as a consequence appeared epilepsy. As proof of his findings the citizen submitted to the Ombudsman material evidence, that is, a photo album, a Medical document dating from 27.07.2001 and other medical documents for the consequences from the police intervention. Based on the findings and evidence for the brutal treatment of the police officers towards the submitter, The Ombudsman to the Basic public prosecution-Skopje submitted a request for confirming penal responsibility of the pointed out police officers on based doubt that they perpetrated a criminal act-Torture on article 142, Paragraphs 2 from the Penal code of the Republic of Macedonia. With that the procedure was ended for the Ombudsman because the responsible Prosecution informed him that it has submitted a request for conducting an investigation for the criminal act. The submitter additionally informed the Ombudsman that the Prosecution has given up on persecuting the reported police officers and the judge has stopped the procedure with the explanation that the citizen can prosecute them himself within 8 days.

25.NP N.1518/03

The persons N. and S.A. which live in the Republic of Turkey since 1998, and were born in Macedonia where the husband graduated from the College of Law-Skopje, on 04.08.1995 requested from the Ministry of internal affairs a reception in the citizenship of the Republic of Macedonia, for them and their children according to the legal regulations which are in force for the immigrants from the Republic of Macedonia. In the long administrative

procedure the body responsible for citizenship several times passed negative decisions, after which the submitters lodged administrative arguments before the Supreme Court of the Republic of Macedonia and the same subject was returned for another procedure during which he stated a violation of the law. With that, the court pointed out that the body of internal affairs should have in mind the Constitution of the Republic of Macedonia and the care of the Republic for the position and rights of the representatives of the Macedonian people abroad as for the Macedonian immigrants which in a wider sense of the word also encompasses those citizens which aren't originally Macedonians, and to which Macedonia is their homeland regardless of nationality and religious orientation.

The ombudsman to the body of internal affairs responsible for gaining citizenship of the Republic of Macedonia submitted suitable evidence for the total confirmation of the actual condition with the fulfillment of the terms of acceptance in the citizenship and the correct application of the Constitution, law and international agreements on which is based the constitutional order of the Republic of Macedonia. With that, the Ombudsman pointed out that the correct and legal solution of the request of the submitters shows to the application of the regulations from articles 8 and 11 of the Law for citizenship of the Republic of Macedonia and the European citizenship convention in which is predicted that the submitter chooses which state he will name as his homeland with which he has effective connections. In the concrete subject the Ombudsman stated a breach of the Law by the body of internal affairs, because the same involved himself in the basis for emigration of the requesters from the Republic of Macedonia. While solving the request the responsible body should always have in mind the universality

of the freedom of the person's movement and population, not for himself to determine the place of his residence and stay. This is in context to the regulation from the Constitution of the Republic of Macedonia that the foreigners in the Republic of Macedonia have rights and liberties guaranteed with the Constitution, under terms confirmed by law and international agreements. Regarding the fact that the procedure is still in motion before the body of internal affairs, the Ombudsman hopes that his statements and suggestions in this specific case will bear results and positive practice of the body responsible for regulating the citizenship status in the Republic of Macedonia.

26. NP N.447/04

Acting on public duty and after an article published in the "MIA" news for the air pollution caused by the mine "Ograzden", the Ombudsman stated that despite the suggestions directed to the persons responsible for mounting filters for physical and chemical purging of the air, the management team of the mine "Ograzden" ignored the reactions of the inhabitants of Strumica, and the persons responsible for protecting the environment are taking no measures.

Having in mind the stated, the Ombudsman referred to the Public inspectorate for the environment with a request for an urgent inspection on the mine in order to determine the actual condition and based on the stated condition to take suitable measures for protecting the air from pollution. After the submitted request the State inspectorate inspected the mine "Ograzden" in Strumica, during which it was ordered that the legal subject immediately confirm the concentration of harmful materials in the excess gasses and the amount of emitted dust and measuring the residual materials from all sedimentations which are in and around the space of the



mine with the warning that if within the set deadline the subject doesn't act on the given responsibilities, the inspectorate will move towards a forcible accounting and burdening of the mine. The Ombudsman asked to be informed for the following situations.

27. NP N.434/04

N.Kj.-a person serving a sentence of prison confinement in the penitentiary "Idrizovo" lodged a complain to the Ombudsman in which was stated that against a verdict of the Appellation court Skopje he has submitted a complaint to the Supreme court of the Republic of Macedonia, but the same hasn't been decided on for some time. For clarifying the findings from the complain, the Ombudsman referred to the Basic court-Kumanovo, from where he was informed that the complain labeled as a "complaint", according to its content, was considered by the court as a Request for a non-regular reduction of the penalty and as such was submitted to the Supreme court of the Republic of Macedonia for further procedures. In the further process of the procedure the Ombudsman confirmed that after the complain a decision was passed with which the request of the submitter was rejected as unfounded. Regarding the fact that in the report of the court was stated that several attempts have been made by them for supplying the stated decision to the submitter, but there is no proof that it has been received, that is, according to their findings the submitter is not accommodated in the penitentiary "Idrizovo". The Ombudsman contacted the penitentiary after which was confirmed that the person is indeed serving a sentence there. The Ombudsman reported this to the Basic court Kumanovo and requested a resending. After the re-executed inspections it was confirmed that the court acted on the request of the Ombudsman.

28. NP N.792/03

A group of senior citizens from the senior citizen home in the neighborhood of Avtokomanda lodged a complain to the Ombudsman in which they pointed out a disturbance of the peace caused by the excess noise created by live and acoustic music by the restaurant "VIVA" located in the basement of the home. During the procedure, the Ombudsman undertook several measures which, according to him, didn't bear results due to obstructions from several responsible persons from the Ministry of the environment and spatial planning which were in the interest of the owner of the restaurant.

Namely, despite the regularity and finality of the passed decision of forbiddance for playing live music and the insisting of the Ombudsman, the same was not realized in practice which was also stated during the inspection of the locale. For these reasons, the Ombudsman to the basic public prosecution-Skopje submitted a request for starting a procedure for confirming penal responsibility against the persons Arsovski Milcho from Skopje, owner of the restaurant "VIVA" for the based suspicion that he committed a criminal act "Removing or damaging official press or sign" and against the person Vlatko Stefanovski, chairman of the Institute of the environment for the criminal act "Abuse of official position and authorization". From the Basic public prosecution-Skopje the Ombudsman has been notified that the criminal report has been put into effect and that an investigation is in progress.

29. NP N.299/04

M.G. from Debar lodged a complain to the Ombudsman in which he requested that measures be undertaken for protecting her rights violated with the unjustified prolonging of the court procedure before the Basic court Debar. During the procedure, the Ombudsman stated that due to subjective

reasons the subject was not taken into consideration for some time, that is, the judge which acted on the subject was relieved from his function, and the court was not familiar with the judge's address and for those reasons they were not able to call him to hand over the subjects. For the reasons of the prolonging of the procedure the Ombudsman notified the Republic court council and asked from the court to take necessary actions. After the taken actions the subject was taken into consideration with which was fulfilled the request of the citizen.

30. NP N.1639/04

A.E. from Tetovo lodged a complain which referred to the prolonging of a procedure of court argument before the Supreme court of the Republic of Macedonia. After examining the submitted findings and material evidence, the Ombudsman stated that the same are founded after which he referred to the Supreme court with a request for taking action for speeding up the procedure and giving priority to the decision on the lawsuit of the submitter. This request was accepted in whole, that is, the president of the court decided to give this subject priority and to take the same into consideration.

31. NP N.1493/04

A.P. from Skopje in the complain to the Ombudsman requested a prolonging of the administrative procedures to tear down his yard fence. Acting on the complain, the Ombudsman referred to the Ministry of transport and communications, the State inspectorate for construction and urbanism-Skopje with the request to temporarily stop the procedure due to the finding that the same is an illegal construction and should share the same fate with all other illegal constructions and because of the finding that an implementation is possible in the current changes of the plan. From the received report the Ombudsman stated that the

responsible inspectorate accepted his request and the mentioned decision is temporarily put on hold until the procedure for legalizing the illegal objects is solved.

32. NP N.1646/04

Dzh.Dzh. from Tetovo lodged a complain to the Ombudsman with which he requested his intervention before the responsible inspectorate in the procedure of supplemental constructing his house by his brother. Acting on the complain the Ombudsman referred to the Ministry of transport and communications, Sector for inspection-Tetovo and asked that a special inspection be made on the spot and based on the findings suitable legal actions be taken. From the respective report and documentation, The Ombudsman stated that the request has been acted on and a decision has been made for tearing down the attic which is in breach of the constructional agreement.

33. NP N.842/04

J.B. from Skopje in the complain to the Ombudsman requested his intervention before the State inspectorate for construction and urbanism Skopje for the non-execution of a decision for tearing down regarding that a previous request was made by him for constructing of the same object. Regarding the fact that the procedure was in motion, and the decision on the same was prolonged due to deciding on other matters and the fact that the object is predicted according to the Detailed urban plan, the Ombudsman asked from the inspectorate for a temporary stop to the decision for tearing down until the finalization of the procedure. From the submitted request was confirmed that the request of the Ombudsman has been accepted with the decision for the urban police Kisela Voda-Skopje to stop the tearing down until the procedure was finalized.



34. NP. N.1869/04

Z.M. from Strumica in the complain to the Ombudsman requested help before the responsible inspectorate in the procedure of unlawful construction of a wall in the neighborhood. Acting on the complain the Ombudsman referred to the Ministry of transport and communication, Department for inspection for the region "Istok"-Strumica and requested that a special inspection be made and based on the findings suitable legal actions be taken. From the respective report and documentation, The Ombudsman stated that the request has been acted on and a decision has been made for tearing down a part of the wall.

35. NP. N.774/04

R.M. from Skopje lodged a complain to the Ombudsman which referred to the procedure for the construction of a support wall. Acting on the complain, the Ombudsman despite the knowledge that in this case there is no obligation of the unit of local self-government for complying with this request of the submitter, applying the principle of righteousness, referred to the mayor of the county of Centar and to the mayor of the city of Skopje with requests and recommendations for starting a procedure depending on their actual possibilities for constructing a support wall in a manner to which wont be brought to question the stability of the house of the submitter. After the inspection made on the spot, and also from the obtained reports and findings from the numerous telephone contacts with responsible administrative persons further activities were arranged, and at the moment the procedure is nearing completion.