



# SEIMAS OMBUDSMEN OF THE REPUBLIC OF LITHUANIA ANNUAL REPORT OF 2005

*Summary*





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# INTRODUCTION

In 2005, the Seimas Ombudsmen's Office received 2,158 complaints, i.e. almost 200 complaints more than last year. 547 complaints were returned to the applicants as falling outside the competence of Seimas Ombudsmen, indicating which competent institution or body should be contacted instead. These are complaints about the validity or legitimacy of procedural actions by pre-trial investigation officers; appeals already tried or under trial; complaints related to legal employment relations; complaints concerning the same issue previously investigated by Seimas Ombudsmen, etc.

An interesting thing is that the number of grounded complaints, i.e. the investigation whereof led to established cases of abuse of office, bureaucracy or poor public administration by officials, was lower compared with the previous year. Grounded complaints comprise 32% of all complaints. Ungrounded complaints where allegations of poor administration were found to be untrue account for 49%, while for 19% of all complaints the investigation was terminated if the alleged circumstances disappeared during investigation or the problems raised in the complaint were solved in good faith following mediation by the Seimas Ombudsman.

Total number of complaints in 2005	<b>2,158</b>
Dismissed complaints	<b>547</b>
Decisions in 2005	<b>1,616</b>
Recognised the complaint as grounded	<b>519</b>
Dismissed the complaint	<b>788</b>
Terminated the investigation	<b>309</b>
Investigations on own initiative	<b>13</b>
Recognised as grounded	<b>8</b>
Dismissed	<b>5</b>

The above mentioned statistical data show that the public is becoming more active and people no longer tend to keep silent about improper, in their opinion, actions or decisions of public or municipal officials and more often seek protection of their rights by applying to the Seimas Ombudsmen. It is encouraging that the number of cases of human rights abuses in the field

of public administration continues the downward trend of last year. Therefore, it can be concluded that the performance of public officials is improving. The situation is not as good in counties and local self-government bodies, but there are some positive developments as well.

## ACTIONS OF OFFICIALS OF PUBLIC BODIES



## ACTIONS OF OFFICIALS OF MUNICIPALITIES AND COUNTY ADMINISTRATIONS



In 2005, the Seimas Ombudsmen replied to 136 applications whereby applicants did not allege any abuse by officials but asked for explanations, additional information or documents.

The Seimas Ombudsmen completed 13 investigations started on their own initiative following publications in the press and other sources of information. Allegations were found to be grounded in eight cases.

### In 2005, the Seimas Ombudsmen put forward 895 recommendations:

Recommendation	Number of recommendations
To put to the attention of officials	375
Proposal to take concrete actions	377
Proposal to assess actions of officials	61
Proposal to reimburse damages	5
Proposal to adopt, draft, amend or supplement a regulatory enactment	22
Proposal to adopt, amend or revoke a decision	16
Proposal to impose a disciplinary or institutional penalty	8
To forward the complaint material for pre-trial investigation	6
Proposal to bring an action to court	2
To notify the Seimas and/or Government about shortcomings and/or contradictions in laws	8

The Law on the Seimas Ombudsmen stipulates that the recommendation of the Seimas Ombudsman must be investigated by the body and institution or the official to whom it is addressed. Of all the recommendations given by the Seimas Ombudsmen in 2005, 62% were implemented, 9% were not implemented and implementation of one-third of the recommendations is currently being followed-up.

It is worth noting that recommendations of the Seimas Ombudsmen cannot be implemented very quickly; sometimes legislation drafting or amendment processes take time and the Seimas Ombudsmen learn about implementation of their recommendations after a year or later.

# COMPLAINTS CONCERNING PUBLIC BODIES

In 2005, the Seimas Ombudsmen investigated 1,254 cases related to the actions of officials of public bodies.

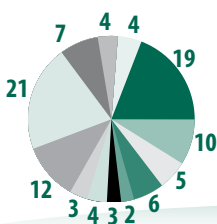
The majority of complaints relate to the officials of police and correctional establishments subordinate to the Department of Prisons. However, the number of ungrounded complaints from prisoners is rising. There was a decrease in the number of grounded complaints about the actions of police officials.

The third major group of complaints (by number) comprises applications related to the actions of officials of the Prosecutor General's Office and its subordinate bodies. It should be noted that people were quick to use the new amendment to the Law on the Seimas Ombudsmen entitling Seimas Ombudsmen

to investigate complaints related to the actions of prosecutors and other pre-trial investigation officials that violate human rights and freedoms. However, the share of grounded complaints is rather small.

As regards complaints related to ministries, there was an increase in the number of complaints against the actions of officials of the Ministry of Health and Ministry of Environment. As every year, there were many complaints related to the officials of the State Social Insurance Fund Board and the Ministry of Economy. However, the number of grounded complaints whereby allegations of abuse of office, bureaucracy or poor public administration by officials are found to be true is very small.

## BREAKDOWN OF INVESTIGATED COMPLAINTS CONCERNING ACTIONS OF OFFICIALS OF PUBLIC BODIES BY TOPICS



- Violations of public administration requirements and work ethics **4%**
- Issues related to state social insurance **4%**
- Issues related to other activities **19%**
- Activities of prosecutors and Prosecutor's Office officials **10%**
- Healthcare **5%**
- Courts **6%**
- Issues of Property Register **2%**
- Activities of bailiffs **3%**
- Conditions in detention establishments **4%**
- Activities of companies and partnerships **3%**
- Actions of police officers **12%**
- Penitentiary matters **21%**
- Actions of pre-trial investigation officials **7%**

## COMPLAINTS CONCERNING COUNTIES AND MUNICIPALITIES

In 2005, the Seimas Ombudsmen investigated 587 complaints related to the actions of municipal officials and 919 complaints related to the actions of officials of the administration of the county governor.

### BREAKDOWN OF INVESTIGATED COMPLAINTS CONCERNING ACTIONS OF MUNICIPAL OFFICIALS BY TOPICS



### BREAKDOWN OF INVESTIGATED COMPLAINTS CONCERNING ACTIONS OF OFFICIALS OF ADMINISTRATIONS OF THE COUNTY GOVERNOR BY TOPICS



### Reception of Citizens in the Office

In 2005, the Seimas Ombudsmen's Office received over 700 visitors. In the reception, individuals receive information about the work of the Seimas Ombudsmen's Office, procedure of investigation of complaints and applications. They also receive advice and explanations where to apply if their problems fall outside the scope of competence of the Seimas Ombudsmen as well as other relevant information. If necessary, applicants are assisted in filling out the complaint form.

Once per month (on specified days) each Seimas Ombudsman receives applicants in the reception of the Office. Advisors of Seimas Ombudsmen provide consultations every week. The majority of people come from Vilnius County and Kaunas County.

The applicants were most interested in various land use issues and the activities of municipal officials, police officers, and bailiffs. People inquired about the calculation of pensions and complained about the activities of judges.



## INTERNATIONAL CO-OPERATION

### International 10th Anniversary Conference

On 14-15 April 2005, the Seimas Ombudsmen's Office celebrated its 10th anniversary and hosted **an international conference Ombudsman as a Remedy for the Protection of the Right to Good Administration** in Vilnius. The conference was attended by representatives from a number of Lithuanian institutions and organisations, scholars and representatives of non-governmental organisations, **ombudsmen from Poland, Latvia, Estonia, Finland, Norway, Sweden, Denmark, Iceland, Northern Ireland, Kaliningrad Region of the Russian Federation, and representatives of the European Ombudsman Institute (EOI) and International Ombudsman Institute (IOI).**

During the conference, Romas Valentukevičius, Head of the Seimas Ombudsmen's Office, overviewed the development of the institution during the decade of its existence and outlined its future activities. Prof. Toma Birmontienė, Justice of the Constitutional Court of Lithuania, outlined the importance of constitutional regulation of the Seimas Ombudsmen's activities. Birutė Pranevičienė, Associate Professor of Mykolas Romeris University, and Algirdas Taminskas, Justice of the Supreme Administrative Court of Lithuania, focused on the role of ombudsmen and administrative courts in ensuring the right to good public administration as well as interrelation between these two institutions. Prof. Ian Harden, Head of the Legal Department of the European Ombudsman, gave a presentation entitled *The Role of the European Ombudsman in Protecting and Promoting the Rights of European Citizens*, while Tom Frawley, Ombudsman of Northern Ireland, and Allar Jõks, Chancellor of Justice of the Republic of Estonia, spoke about the powers of ombudsmen in their respective countries as well as their role in protecting the rights of citizens.

The conference participants and members of the Seimas Committee on Human Rights discussed co-

operation between the parliament and its subordinate ombudsmen in improving the legislative function to safeguard the constitutional right of people to good public administration and ensuring that public authorities serve the people.

### Co-operation with the Institution of the Chancellor of Justice of the Republic of Estonia

In 2005, the Seimas Ombudsmen's Office engaged in active co-operation with the office of the Chancellor of Justice of the Republic of Estonia.

On 9-10 June, Tallinn hosted a seminar on co-operation between the Lithuanian, Latvian and Estonian Ombudsmen and employees of their respective offices. Participants of the seminar investigated the competence and activities of the three ombudsmen's offices in 2004-2005 and shared their day-to-day work problems and experience. Speakers gave presentations on the publicity of the ombudsman's activities and the role of the ombudsman in protecting the rights to fair and public judicial procedure within a reasonable time, which were followed by discussions. The Latvian and Lithuanian delegations met with V. Linde, Chairman of the Committee on Legal Affairs of the Estonian Parliament.

On 24-26 October, a group of employees of the Seimas Ombudsmen's Office visited the Office of the Chancellor of Justice in Tallinn. During the visit they were shown the document processing information system installed in the Chancellor's Office. Experience gained during the visit was used in designing the new document processing information system of the Seimas Ombudsmen's Office.

On 2-4 November, Seimas Ombudsman Albina Radzevičiūtė and her advisor visited prisons in Murru and Pernu in Estonia. Together with Estonian Chancellor of Justice Allar Jõks the representatives of the Seimas Ombudsmen's Office attended the

inspection of the Penu prison. At the end of the prison visit, the Chancellor of Justice and the prison administration discussed the problems raised by prisoners in complaints sent from imprisonment institutions and revealed in confidential interviews.

This exchange of work experience was useful for both co-operating bodies and, therefore, similar visits will be organised in the future.

## Assistance to the Armenian Human Rights Watch

On 18 March 2005, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE), the Seimas Ombudsmen's Office of the Republic of Lithuania, and the Human Rights Watch of the Republic of Armenia signed an agreement undertaking to exchange employees with a view to strengthening the capacity of the Armenian Human Rights Watch to protect human rights in the country. Under this agreement, two study visits were organised in 2005: the Armenian colleagues visited the Seimas Ombudsmen's Office while representatives of the latter visited Armenia.

Two representatives of the Human Rights Watch of the Republic of Armenia – Head of the squad group Gayane Harutyunyan and her advisor Silva Markosyan – made a study visit to Lithuania from 27 June to 8 July. During their visit, the representatives of the Human Rights Watch of the Republic of Armenia were introduced to the activities of the Seimas Ombudsmen's Office, the practice of complaint investigation and legal framework of activities. They met with representatives of the Vilnius City Municipality and Ombudsmen for Child Rights Protection and Equal Opportunities, and visited the Lithuanian Centre for Human Rights, the 3rd Special Boarding School of Vilnius and the Police Youth Club. Two visits were organised to the police commissariats of the city and region of Alytus and to Šiauliai Remand Establishment.

Advisors of the Seimas Ombudsmen Daiva Valeikienė and Dalia Žukauskienė visited Armenia on 10-20 October. During the visit they met with Armenian human rights activist Larisa Alaverdyan and office staff, senior officials of the Administration of Yerevan Municipality, visited temporary detention and punishment enforcement establishments as well as non-governmental organisations advocating human rights. During their visits to the detention establishments, the advisors of the Seimas Ombudsmen brought to the attention of their colleagues that the

actions of detention officers unreasonably restrict the rights of detainees, discussed the main issues highlighted in the complaints of prisoners, and listed which issues, in their opinion, should be given priority in the complaint investigation.

The Seimas Ombudsmen's Office is ready to continue to provide similar expert assistance to the developing democracies in the CIS region.

## Other Meetings

On 30 March, the Seimas Ombudsmen's Office was visited by **experts of the European Commission against Racism and Intolerance (ECRI)** who were interested in Lithuania's progress of human rights protection in the fields of racial discrimination, xenophobia and anti-Semitism. The guests were interested in the problems raised in complaints sent to the Seimas Ombudsmen's Office, especially the number of complaints concerning violations of ethnic minority rights in Lithuania. The material collected during meetings with the representatives of the Seimas Ombudsmen's Office and other Lithuanian authorities will be summed up by the experts in the third report on Lithuania.

On 7 April, the Seimas Ombudsmen's Office was visited by **representatives of the Association for the Prevention of Torture (APT) Matthew Pringle and Phillipe Trembley**. They met with Romas Valentukevičius, Head of the Seimas Ombudsmen's Office, and Seimas Ombudsman Albina Radzevičiūtė. The purpose of the APT representatives' visit was to urge our country, which ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment back in 1990, to sign and ratify the Optional Protocol proposed by them. During the meeting with the Seimas Ombudsmen, the APT representatives showed interest in the violations of rights of prisoners and convicted persons and possibilities of the Seimas Ombudsmen to visit imprisonment institutions at any time of the day and to meet freely with imprisoned individuals. They also introduced the Optional Protocol of the UN Convention against Torture and its amendments laid down in the Protocol.

On 30 May, Albina Radzevičiūtė and Romas Valentukevičius met with **M. King, Professor of the University of Central England (UK)**, conducting a study in Lithuania. The purpose of his study was to examine the police practice when problematic drug and alcohol addicts are detained. The study covered the EU-15 countries and

two new member states: Lithuania and Hungary. The Seimas Ombudsmen shared the information available to them about police conduct in penitentiary and remand establishments and informed about the complaints received concerning violations of human rights.

On 14 June, the Seimas Ombudsmen's Office was visited by **representatives of the global mission of HURIST (Human Rights Strengthening) Sakuntala Akmeemana (Australia) and Claes Sandgren (Sweden)** and accompanying persons – Project Leader of the UNDP Human Rights Action Plan R. Gecevičienė and Programme Assistant A. Dudoitis. The visiting consultants carried out an external investigation of the UNDP's assistance in implementing the National Human Rights Action Plan, analysed the developments in the field of human rights related to implementation of the National Action Plan for the Promotion and Protection of Human Rights in Lithuania, and met with representatives of the Government, non-governmental organisations and other bodies

involved in the development and implementation of the Action Plan. During the meeting with the Seimas Ombudsmen, consultants discussed the plans and directions of the Office's activities in the future, the advantages of new amendments made last year to the Law on the Seimas Ombudsmen ensuring more effective protection of human rights and freedoms, problems related to imprisonment institutions and the necessity to improve the human rights qualification of the officials working in these institutions.

On 17 October, Head of the Seimas Ombudsmen's Office Romas Valentukevičius and Seimas Ombudsman Albina Radzevičiūtė met at the Ministry of Foreign Affairs with **Christian Strohal, Director of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe**. They discussed the issues related to the protection of human rights and co-operation with the OSCE, especially in the field of assistance to countries in developing regions.

# FROM THE ACTIVITIES OF THE SEIMAS OMBUDSMEN'S OFFICE OF THE REPUBLIC OF LITHUANIA

## New Seimas Ombudsmen

2005 was the year of the start of changes in the Seimas Ombudsmen's Office. Elvyra Baltutytė left the Seimas Ombudsmen's Office after she won a competition and started working as the Government representative at the European Court of Human Rights. Rimantė Šalaševičiūtė was appointed as the Ombudsman for Child Rights Protection and Kęstutis Virbickas retired from the position of Seimas Ombudsman.

Newly appointed Seimas Ombudsmen Virginija Pilipavičienė, Albina Radzevičiūtė and Augustinas Normantas took the oath of office in the Seimas of the Republic of Lithuania.

**On 20 January 2005, Virginija Pilipavičienė** was appointed as the Seimas Ombudsman for scrutiny of the activities of officials of the administration of the county governors and municipal bodies and institutions.

Pilipavičienė completed her legal studies at Vilnius University and was awarded a law degree in 1990. Starting in 1996, she worked at the Seimas Ombudsmen's Office as advisor to the Seimas Ombudsman. Her work was related to investigation of complaints concerning bureaucracy and abuse of office by municipal officials and ensuring that decisions comply with the legal acts.

**On 15 February 2005, Albina Radzevičiūtė** was appointed by the Seimas as the Seimas Ombudsman for scrutiny of the activities of officials of public bodies and institutions.

Albina Radzevičiūtė graduated from the Law Department of Vilnius University in 1988 and started working as legal advisor in the private company Gubernija (Šiauliai). From 1992-1997, she worked as legal advisor of the Šiauliai City Municipality. In 1999, she was elected as Deputy Director of the International Chamber of Commerce Association, Lithuania and Secretary General of the Court of Arbitration subordinate to the association. From 2000-2004, she worked as legal advisor to the Speaker of the Seimas of the Republic of Lithuania

and Advisor to the Committee on Legal Affairs of the Seimas Office.

**On 23 June 2005, Augustinas Normantas** was appointed as the Seimas Ombudsman for scrutiny of the activities of officials of the administration of the county governors and municipal bodies and institutions.

In 1975, Normantas graduated from the Law Department of Vilnius University. From 1976-1980, he was a graduate student at the Law Department of Moscow University of M. Lomonosov. In 1982, he defended his doctoral thesis on legal issues in social sciences and was awarded a degree of Ph.D. of Social Sciences. From 1993-1996, Normantas worked as advisor to the Committee on the State and Legal Affairs of the Seimas. Since 1987 he has been an Associate Professor at the Constitutional and Administrative Law Office of the Law Department of Vilnius University. From 1996-2005, Normantas was a Justice of the Constitutional Court.

## Conferences and Seminars in Lithuania

Romas Valentukevičius, Head of the Seimas Ombudsmen's Office, attended the conference *Human Rights in Lithuania in 2004: Issues and Potential Solutions* held in the Office of the President of the Republic of Lithuania.

All Seimas Ombudsmen attended the Seimas conference *Parliamentary Control: Understanding and Implementation Problems in Lithuania*, where the Head of the Office Romas Valentukevičius gave a presentation *The Ombudsman and Parliamentary Scrutiny*.

At the Seimas conference *Human Rights in Lithuania: Situation Assessment* the Head of the Seimas Ombudsmen's Office gave a summary of complaints received by the institution concerning violations of human rights and spoke about important problems related to legal education and violations of the right to good public administration as well as prevention thereof.

Valdas Adamkus, President of the Republic of Lithuania, organised a meeting with the Seimas Ombudsmen on the International Day of Human Rights. The Seimas Ombudsmen and the President discussed major problems related to violations of human rights and prevention thereof, discussed complaints received by the Office and dynamics thereof.

## Education and Prevention Activities

Only legal education of the public, joint effort of all human rights institutions and non-governmental organisations, compliance with the laws, and accountability of public servants can help our state create an environment where human rights are honoured and public authorities serve the people. Therefore, the Seimas Ombudsmen's Office focused on improving the efficiency of education and prevention activities in 2005.

**The new website of the Office** was launched on 1 April 2005. It has already had nearly 250,000 visitors. One of the major novelties of the website is the publication of reports of the Seimas Ombudsmen: using a user-friendly search system, visitors can find the report of the Seimas Ombudsman that is of interest to them. By the way, the most popular documents on the website are reports and statements of the Seimas Ombudsmen.

A complaint form is available on the website for filling out and sending to the Seimas Ombudsmen's Office. Website visitors can also ask questions or inquire which public authority to contact in order to solve their problems. This enables the employees of the Office's reception to give advice more quickly and saves the time and money of the applicants. Although the number of people using this service is still quite low (10 persons were advised on the website), we believe that the number will increase in the future.

**A toll-free line** 8 800 22100 was set up by the Office's reception at the end of October. Just in the first 10 days, the Office received over 100 calls. It shows that this service is necessary for people and facilitates receipt of the necessary information on how to proceed when their rights have been violated. The Seimas Ombudsmen's Office has become more accessible to people living in other regions since not everyone can afford the cost of a long-distance call. Practice shows that the majority of the reception's visitors were from Vilnius. The benefit is mutual as the Seimas Ombudsmen are able to receive information about possible violations of human rights in Lithuania faster.

In 2005, **site visits** were conducted more frequently. The Seimas Ombudsmen organised meetings with people in counties and municipalities of various towns and regions, conducted on-site inspections of imprisonment institutions, showed interest in the situation in police detention establishments, and met with young men serving in the army. At the meetings with local residents, the Seimas Ombudsmen not only accepted people's complaints but also tried to solve their problems acting as intermediaries and provided legal advice.

**Education.** Seimas Ombudsmen Virginija Pilipavičienė and Augustinas Normantas conducted analysis of the existing situation in the field of restoration of ownership right to land and gave a series of lectures on human rights violations in the field of restricted restoration to officials from land use divisions and administrations of the county governors.

**On-site inspections of imprisonment institutions** were conducted by Seimas Ombudsman Albina Radzevičiūtė. Since prisoners cannot go to the Seimas Ombudsmen's Office, on-site meetings and inspections of imprisonment institutions is an extremely important area of the Ombudsman's activities. In 2005, Radzevičiūtė visited the Pravieniškės Strengthened Regime Colony No. 2, Lukiškės Remand Establishment-Prison, and the new Remand Establishment in Kaunas.

The Seimas Ombudsman inspected the living conditions of the prisoners and how their rights and freedoms are secured according to the principles laid down in the Law on Pre-trial Detention, European Prison Rules, and principles of good public administration. During these visits, Radzevičiūtė met with the administration of the institutions and prisoners and discussed the most common and important problems.

**Human Rights and Military Service.** Seimas Ombudsman Romas Valentukevičius discussed human rights and potential violations thereof in the army during his November visit to the Great Hetman Jonušas Radvila Training Regiment deployed in Rukla, where he met with the command, officers and conscripts. The army is not a closed community in a democratic country, where much focus is also given to potential violations of human rights. Some countries even have two separate military ombudsmen, while others delegate these functions to their parliamentary ombudsmen. In Lithuania, Seimas Ombudsmen not only investigate the complaints concerning abuse of office and bureaucracy by officials of the Ministry of National Defence and its subordinate bodies, but also can be contacted by anyone who believes that he or

she has been humiliated or tortured, his or her privacy has been violated, etc.

New conscripts received questionnaires which were used to determine whether they knew their rights and official procedures to file complaints against violations of their rights during military service as well as to learn whether they tend to exercise such rights. The survey was anonymous and, therefore, conscripts were able to express their opinion openly. The results of the survey were published in the media.

## Public Awareness

Any communication with the media enables Ombudsmen to answer questions about their role, explain their approach to major issues, emphasise the priorities, and define objectives. The press, television and increasingly popular electronic media help inform the citizens about the services provided by the Seimas Ombudsmen. Media attention is also important in cases where some sort of public pressure is necessary, for instance, when an ombudsman decides to make a critical comment. Therefore, good public relations is an important field of activity of our institution.

In 2005, media attention for the activities of the Seimas Ombudsmen was proportional to their work. During the year, the Seimas Ombudsmen's Office published 56 press releases, i.e. one press release per week on average. It is worth mentioning that almost all the press releases in one way or another sent ripples through the media and were used as a basis for radio and television programmes or publications in the press.

In 2005, most media inquiries to the Seimas Ombudsmen were related to acts of violence by police officers

and the problem of restoration of ownership right to land.

The Seimas Ombudsmen's Office provides information and writes articles about the activities of the Office to the European Ombudsmen Newsletter published in English by the International Ombudsmen Institute for the European Region and the European Ombudsman.

The Seimas Ombudsmen's Office also provides information to the daily newsletter of the European Ombudsmen which is electronically distributed to the members of the EUOMB communication network co-ordinated by the Office of the European Ombudsman. Information is also provided to the International Ombudsmen Institute's quarterly news bulletin distributed to each and every ombudsmen office worldwide.

Information bulletins is an important area of activity of the Seimas Ombudsmen's Office. The bulletins are forwarded to public and municipal bodies and libraries and published on the website of the Office.

In 2005, Seimas Ombudsmen Romas Valentukevičius and Albina Radzevičiūtė prepared an information bulletin analysing the activities of pre-trial investigation officers, the situation in the detention establishments and imprisonment institutions in terms of compliance with the requirements of human rights protection. Seimas Ombudsmen Virginija Pilipavičienė, Augustinas Normantas and Zita Zamžickienė prepared an information bulletin Human Rights Protection: Problems Related to Restoration of Ownership Right to Land in Lithuania where they analysed the existing situation and outlined major problems related to restoration of ownership right to land and gave proposals how to speed up land reform in Lithuania.

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN ROMAS VALENTUKEVIČIUS

*In 2005, Seimas Ombudsman Romas Valentukevičius investigated citizens' complaints concerning the abuse of office or bureaucracy of officers of state institutions, including military institutions and institutions ranking as such.*

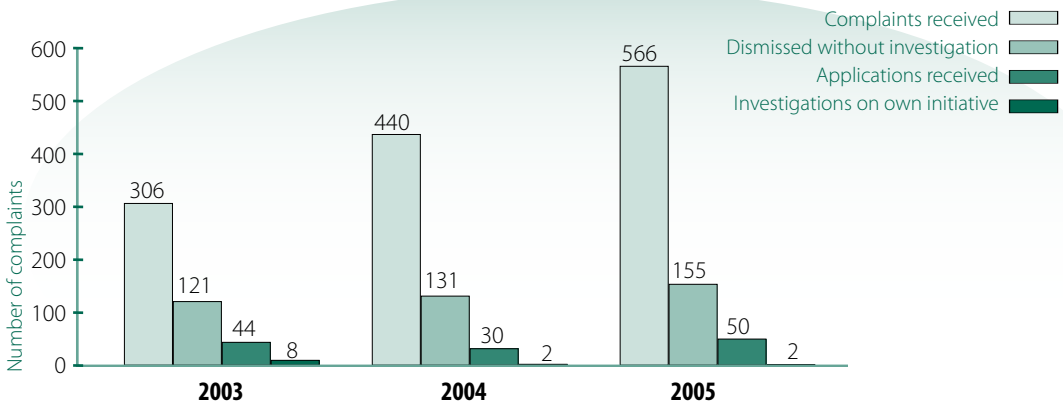
The Institute of the Seimas Ombudsmen is one of the major non-judicial instruments for the protection of human rights and freedoms as well as control of activities of the executive branch in Lithuania. During the decade of its existence, the Seimas Ombudsmen's Office has made a considerable contribution to dramatic improvements in the quality of performance of public servants in the field of public administration securing the right of citizens to good public administration by national public bodies.

On 4 November 2004, the Seimas of the Republic of Lithuania adopted the Law Amending the Law on the Seimas Ombudsmen and expanded the powers of Seimas Ombudsmen from investigation

of potential abuse of office or bureaucracy by officials to defence of individual's right to good public administration securing the protection of human rights and freedoms as well as supervision whether public authorities duly serve the people. These amendments most likely led to the increase in the number of complaints and applications alleging abuse of office, bureaucracy or other violations of human rights and freedoms by officials in the field of public administration.

During the reporting period (1 January 2005 to 31 December 2005), Seimas Ombudsman Romas Valentukevičius received 556 complaints raising problems within the scope of his competence and 53 applications which did not allege any wrongdoing by officials. The Seimas Ombudsman started three investigations on his own initiative following media reports. The diagram below shows the trend of the increasing number of complaints and applications received in the last three reporting periods.

## COMPLAINTS AND APPLICATIONS RECEIVED

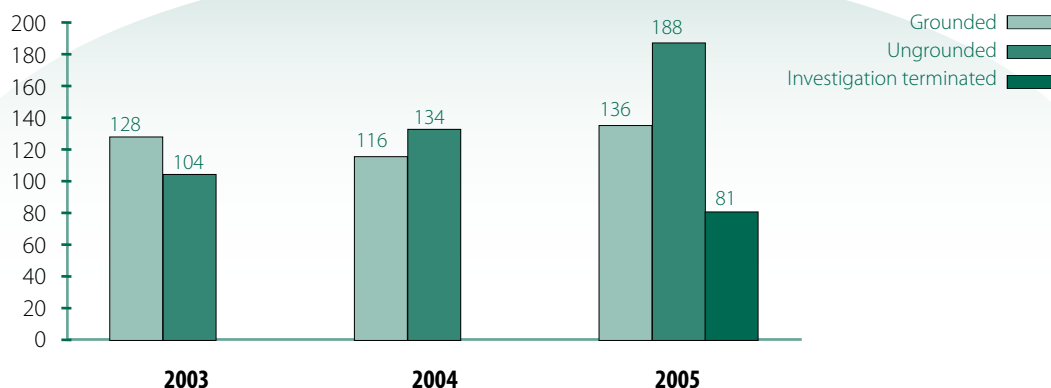


In 2005, 155 complaints were dismissed as falling outside of competence of the Seimas Ombudsmen. However, in all cases applicants were given thorough explanations of possible avenues to take action against violations of their rights.

During the reporting period, 405 complaints and 50 applications were examined on their merits.

136 complaints were recognised as grounded, allegations of 188 complaints were found not to be true, and the investigation of 81 complaints was terminated based on the new wording of the Law on the Seimas Ombudsmen, as the relevant circumstances were discovered during the investigation.

## RESULTS OF COMPLAINT INVESTIGATION ON THEIR MERITS



### The following recommendations were made following the investigation of complaints during the reporting period:

- to put to officials' attention – **66**;
- proposal to take concrete actions – **46**;
- proposal to assess actions of officials – **7**;
- proposal to amend a regulatory enactment – **7**;
- proposal to impose institutional or disciplinary penalties – **5**;
- notify the relevant authorities of shortcomings and contradictions of legal acts – **2**;
- materials forwarded to law enforcement authorities – **2**;
- proposal to revoke a regulatory enactment – **1**;
- proposal to draft a regulatory enactment – **1**;
- proposal to reimburse material or moral damage – **1**.

All recommendations given by the Seimas Ombudsman were discussed by institutions, bodies or officials concerned and were implemented in almost all cases. A minor share of recommendations was partially implemented. This is usually related to the time period

required for problem solution, for instance, when it is necessary to amend a legal act which takes a long time to draft or additional funding is required and the availability of financial resources is beyond the control of the body concerned.



## ANALYSIS OF COMPLAINTS RECEIVED

During the reporting period, most of the complaints (46%) were related to actions of the officials working in the Ministry of the Interior of the Republic of Lithuania and its subordinate bodies, especially police authorities and officers.

The majority of all complaints are filed against the Police Department under the Ministry of Interior of the Republic of Lithuania and its subordinate territorial police authorities. They account for 83.7% of all complaints submitted against the Ministry of the Interior and its subordinate bodies.

Most complaints were filed against actions of police officers from police commissariats of major cities. However, comparison with the number of complaints received in previous years shows a declining number of complaints against the Chief Police Commissariat (CPC) of Panevėžys. This dramatic reduction in the number of complaints against the Panevėžys CPC may be related to reconstruction of the detention establishment of Panevėžys CPC in 2004. This fact proves once again that it is necessary to find a solution to the problem regularly pointed out by the Seimas Ombudsman, i.e. additional funding for national police commissariats for renovation of detention establishments. It is likely that the improvement of detention establishments in the police commissariats to the standards of detention which no longer violate human dignity and honour would result in a significant decrease in the number of complaints related to violations of human rights and freedoms.

Analysis of the increasing number of complaints against regional police commissariats shows that most of the complaints received during the reporting period were against the police commissariats which were visited by the Seimas Ombudsman. In 2005, visits were conducted to the following police commissariats (PC): PC of the city and region of Alytus, Kėdainiai Regional PC, Šalčininkai Regional PC, Ukmergė Regional PC, Anykščiai Regional PC, Švenčionys Regional PC, Trakai Regional PC and Širvintos Regional PC. The increase in the number of complaints following the Seimas Ombudsman's visits shows the importance of such inspections in terms of publicity and education. Therefore, visits to regional police commissariats will remain a priority area in 2006 as well.

Analysis of the problems outlined in the complaints shows that the number of complaints against

living conditions in detention establishments of police commissariats decreased slightly. However, a concerning factor is a significant increase in the number of complaints against the actions of police officers.

## COMPLAINTS CONCERNING MILITARY AND EQUIVALENT BODIES

Compared with the previous year, the number of complaints concerning military and equivalent bodies, i.e. the Ministry of National Defence of the Republic of Lithuania and the State Security Department, remained almost the same. With the view to finding out the reasons for such a low number of complaints the Seimas Ombudsman started inspecting military units. In 2005, he visited the Great Hetman Jonušas Radvila Training Regiment deployed in Rukla. During the visit, conscripts were asked to fill out an anonymous questionnaire. The Seimas Ombudsman was concerned about the results of the questionnaire showing that soldiers have no trust in the Inspector General of the Ministry of National Defence and would not contact him if they had any problems.

## COMPLAINTS CONCERNING OTHER PUBLIC BODIES

Analysis of complaints concerning other public bodies and their subordinate institutions shows that there are a high number of complaints against the actions of Prosecutor's Office officials. It is because the new wording of the Law on the Seimas Ombudsmen entitles Seimas Ombudsmen to investigate the actions of prosecutors and pre-trial investigation officials which violate human rights. It is worth noting that the investigation of such complaints is quite difficult since it is often intertwined with procedural decisions the validity and legitimacy whereof cannot be questioned by the Seimas Ombudsman.

Analysis of complaints concerning other ministries and their subordinate bodies filed in 2005 shows that the "leading" Ministry of the Interior was followed by the Ministry of Environment with 51 complaints, the Ministry of Health with 38 complaints and the Ministry of Finance with 23 complaints. Comparison with the previous year shows that there was a significant increase in the number of complaints concerning the Ministry of Environment and the Ministry of Health

and their subordinate bodies. It is worth noting that there were more ungrounded complaints against the Ministry of Environment and more grounded ones against the Ministry of Health.

## COMPLAINTS CONCERNING CONDITIONS AT DETENTION ESTABLISHMENTS OF POLICE COMMISSARIATS

Assessment of the general trend of the increasing number of complaints in 2005 shows a significant decrease in the number of complaints against conditions at detention establishments of police commissariats. It is likely that this decrease was caused by implementation of the programme on Renovation of Detention Establishments and Improvement of Detention Conditions in 2003-2007 approved by Resolution No. 141 of 29 January 2003 of the Government of the Republic of Lithuania. Even though not all financial resources as provided for in the above-mentioned programme were appropriated, partial renovation or reconstruction of just a few detention establishments has already paid off. Given that, it is necessary to ensure that all the necessary financial resources are appropriated under the programme on Renovation of Detention Establishments and Improvement of Detention Conditions in 2003-2007.

Quite often violations of human rights and freedoms and humiliation of individuals because of detention conditions in detention establishments of police commissariats can be prevented using internal resources. More attention should be paid to education of police officers working in detention establishments of police commissariats, especially in terms of human rights and freedoms. There are many cases when police officers blindly follow legal standards and fail to see a person behind a detainee, even though this person is just suspected of a crime.

Analysis of complaints also revealed other less significant violations of human rights which often are caused by imperfect legal standards or the shortage thereof. The Seimas Ombudsman put forward a number of proposals to the Police Department under the Ministry of the Interior of the Republic of Lithuania. The staff of the Department are drafting amendments to the Regulations for Activities of Detention Establishments of Police Commissariats.

## COMPLAINTS CONCERNING ACTIONS OF PRE-TRIAL INVESTIGATION OFFICIALS AND PROSECUTORS

Analysis of complaints against the actions of police officers, pre-trial investigation officials, and prosecutors shows that the number of such complaints has increased. It also reveals some trends which the Seimas Ombudsman finds very concerning.

One of the trends is that pre-trial investigation officials invite witnesses, suspects and other persons for interrogation in violation of the procedure laid down in the Code of Criminal Procedure of the Republic of Lithuania and take individuals concerned directly from their workplaces or home claiming that persons may be invited not only by summons but also by telephone or other means. However, the Seimas Ombudsman believes that the provisions of the Code of Criminal Procedure do not entitle a pre-trial official to take persons from their workplace or home since other invitation methods should be understood as provision of information to the invited person whereby the fact of invitation is not recorded. There is also another problem: an individual invited to a pre-trial investigation establishment often is unaware of his or her procedural status, i.e. whether he or she is a suspect, a victim or a witness. This situation does not allow him or her to have a defence representative. It is a common practice for an individual in a pre-trial investigation establishment to be interrogated for several hours, but no official records are kept and officials claim that they conduct a simple interview. Moreover, the individual is often unaware of his or her status and rights and is later notified of suspicions.

Another clear trend is detention of suspects in detention establishments of police commissariats that are not related to the crime scene. Usually these are the worst detention establishments where detention conditions are simply appalling. The Seimas Ombudsman finds such situations as grave violation of human rights and even psychological pressure on the individual in order to extract evidence. The Seimas Ombudsman believes that the existing legal acts do not specify why detainees may be transferred from remand establishments to detention establishments of city or regional police commissariats. However, a logical conclusion is that such measures can only be used when necessary to take specific steps of pre-trial investigation and only in a specific location, which usually must be related to the crime scene. Should this trend prevail in the future, it is very likely that some

legal acts will have to be amended, as a situation such as this cannot be tolerated in terms of human rights.

Another source of concern covers complaints about police violence against the applicants and the fact that internal inquiries and pre-trial investigations are conducted by officials from the same police commissariat or prosecutor's office of the same jurisdiction which, in a number of cases, is situated in the same building as the police commissariat. Moreover, in many cases police officers and prosecution officials are related as they communicate at work. This situation raises doubts about the fairness and unbiased nature of pre-trial investigations and it is necessary to consider whether investigations in such cases should be referred to police authorities of prosecution offices in other jurisdictions.

## COMPLAINTS CONCERNING ACTIONS OF OFFICIALS OF OTHER PUBLIC BODIES

Analysis of complaints against the actions of officials of public and administration bodies shows that sometimes officials react irresponsibly to problems raised by people. Unfortunately, human rights continue to be violated because of negligence, poor knowledge of legal acts, and improper application thereof by public servants and other officials as well as simply a poor approach towards their duties.

## HEALTH CARE

The Seimas Ombudsman investigated two cases of death of young mothers during labour because they received unqualified medical assistance and advised the Minister of Health of the Republic of Lithuania to take urgent actions in order to eliminate violations of legal acts, their causes and circumstances. The material collected during the investigation of these complaints was also forwarded to the Prosecutor General's Office of the Republic of Lithuania.

## ESTABLISHMENT OF SANITARY ZONES

Local residents in Pakruojis Region were concerned about the plans of Danish investors to build a swinery complex and asked the Seimas Ombudsman to determine why the Šiauliai Public Health Centre

reduced the sanitary zone for construction of the establishment. The Seimas Ombudsman ensured that the report on environmental impact assessment was returned for amendment and was made available for another public discussion.

## SALARIES OF PUBLIC SERVANTS

The Seimas Ombudsman investigated a complaint in which the applicants emphasised a long-lasting violation of human rights when salaries are calculated according to the new Law on Public Service and resolutions of the Government of Lithuania discriminating against public servants, state politicians, public officials, judges and soldiers. When the Law on Public Service was adopted, the legislator deliberately linked the calculation of public servants' salaries to the minimum monthly wages so that the salaries of public servants could grow simultaneously with economic development and increasing MMW. However, while the minimum monthly wage, which is used as a basis for calculation of salaries, was increased several times by Government resolutions, there were public servants whose minimum salary has not been raised since 2002. This constitutes a deviation from the objectives of the legislator and a possible breach of the equality principle stipulated in Article 29 of the Constitution of the Republic of Lithuania. The report of the Seimas Ombudsman was sent to the Seimas and Government of the Republic of Lithuania. The draft Law Amending Article 24 of the Law on Public Service and the Annex Thereto and the draft Law Amending Articles 2 and 4 of the Law on Remuneration of State Politicians, Judges and Public Officials and the Annex Thereto have been registered in the Seimas.

## PROPOSALS OF THE SEIMAS OMBUDSMAN TO AMEND LEGAL ACTS

After the new Penal Code and Code of Criminal Procedure entered into force, the Regulations for Activities of Detention establishments of Police Commissariats became inconsistent with and contradicted the provisions laid down in these two Codes. The Seimas Ombudsman put this problem to the attention of the Minister of the Interior and the Chief Police Commissioner and made relevant comments and proposals. Currently, the Regulations

for Activities of Detention establishments of Police Commissariats are being amended.

The Seimas Ombudsman investigated a complaint filed by an applicant who was awarded the status of Donor of Honour of the USSR more than 20 years ago and who is an active member of the Board of Donors, and submitted a report to the Seimas Committee on Social Affairs and Labour asking to discuss relevant amendments to the Law on State Pensions. However, the Committee dismissed the proposed amendments.

The Seimas Ombudsman found out that the legal acts of the Republic of Lithuania do not regulate the transcription of foreign names and surnames in permanent residence permits and other documents. A proposal was sent to the Seimas Committee on Education, Science and Culture to renew hearings of the draft Law on Transcription of Names and Surnames in Identity Documents. The Prime Minister issued a decree to set up a task force for drafting the Law on the Use of Non-Lithuanian Symbols in Identity Documents.

## FUTURE PRIORITIES OF ACTIVITIES

**Considering the problems raised in complaints filed in 2005 and previous years, the Seimas Ombudsman has set the following priorities for 2006:**

- Advice to citizens, prompt investigation of their complaints, education activities seeking to increase the accessibility of the Seimas Ombudsman;
- Closer co-operation with the officials of supervised bodies with a view to finding solutions to problems as quickly and as efficiently as possible, prevention activities;
- On-site visits to supervised bodies or institutions with particular emphasis on detention establishments and on-site solution to the existing problems;
- Ensuring at least minimum detention standards laid down in the legal acts in detention establishments of police commissariats, appropriation of the necessary financial resources for renovation or capital repairs of detention establishments;
- More focus on analysis of legal acts, identification and elimination of shortcomings or gaps thereof.

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN ALBINA RADZEVIČIŪTĖ

*During the reporting period, the Seimas Ombudsman investigated 322 complaints alleging potential abuse of office, bureaucracy or other violations of human rights and freedoms in the field of public administration by officials, of which 44 complaints were recognised as grounded, 233 as ungrounded, and 45 investigations were terminated. Following Article 17 of the Law on the Seimas Ombudsmen, 140 complaints were dismissed.*

## PROTECTION OF RIGHTS OF CONVICTS AND PRISONERS

Out of 322 complaints investigated by the Seimas Ombudsman during the reporting period, 193 complaints were related to the activities of the Department of Prisons under the Ministry of Justice of the Republic of Lithuania ("the Department of Prisons") and its subordinate bodies. 22 complaints were recognised as grounded, 151 were dismissed, and 20 investigations were terminated. Following Article 17 of the Law on the Seimas Ombudsmen, 83 complaints were dismissed.

The following problems related to the rights of convicts and prisoners were mentioned in the complaints investigated by the Seimas Ombudsmen and information collected during visits:

## OVERCROWDING OF REMAND ESTABLISHMENTS

Hygiene norm HN 76:1999 *Imprisonment and Pre-trial Remand Establishments. Establishment, Exploitation and Healthcare* approved by Order No. 461 of the Minister of Health of the Republic of Lithuania of 22 October 1999 stipulates that the floor space per person in a remand establishment cell should be at least 5 sq.m. Based on this hygiene norm, the Director of the Department of Prisons issued Order No. 4/07-151 on 13 August 2003 regulating the number of beds in

imprisonment and pre-trial detention establishments. The Order stipulated that there should be 864 seats in Lukiškės Remand Establishment-Prison ("Lukiškės RE-P") and 425 beds in Šiauliai Remand Establishment ("Šiauliai RE"). Kaunas Remand Establishment ("Kaunas RE"), with 262 beds, was opened on 10 June 2004.

Article 18(1) of the Law on Pre-trial Detention stipulates that prisoners should be kept in common cells housing no more than four inmates or in individual cells in which adequate living and everyday-life conditions complying with the Lithuanian hygiene norms should be guaranteed. Article 5(2) of the same Law stipulates that not more than 1,000 prisoners at a time are permitted to be kept in remand establishments.

Paragraph 15 of the European Prison Rules stipulates that the accommodation provided for prisoners, and in particular all sleeping accommodation, must meet the requirements of health and hygiene, due regards being paid to climatic conditions, and especially to cubic content of air, floor space, lighting, heating and ventilation. The same provision is stipulated in the UN Standard Minimum Rules for the Treatment of Prisoners.

Overcrowding is a complex problem of remand establishment administrations and the entire penitentiary law system. Negative effects of overcrowding are primarily felt by prisoners and remand establishment administrations:

- the lack of personal space means less privacy;
- more difficult to ensure hygiene standards and required sanitary conditions;
- more difficult to ensure accessibility and proper nature of health services;
- growing tension among prisoners, more cases of violence, self-inflicted wounds and suicide;
- poorer relationships between prisoners and staff lead to less efficient care, in some cases part of the responsibility for maintaining order is transferred to the prisoners themselves. This is a cause of regular stress of officers and may lead to the growing number of conflicts between officers and prisoners.

Data show that on 12 December 2005, Lukiškės RE-P had 1,113 inmates instead of 862, Šiauliai RE 642 instead of 425, and Kaunas RE 300 instead of 262. In violation of the requirements of the Law on Pre-trial Detention and hygiene norms, inmates often have less than two sq.m of personal floor space, more than five prisoners live in one cell, and in the absence of beds they have to sleep on the floor. Such detention conditions breach Article 3 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention") prohibiting torture, inhuman or degrading treatment.

The Seimas Ombudsman compared the existing situation against the requirements of national and international legal acts and applied to the Department of Prisons asking how the Department intends to solve the problem of overcrowding of each remand establishment in the future, whether the necessity to set up a new remand establishment has been discussed and whether such a proposal has been submitted to the Ministry of Justice.

The Department of Prisons notified the Seimas Ombudsman of the following plans aimed at solving the problem of overcrowding in remand establishments and ensuring adequate floor space in sleeping accommodation as required by the European Prison Rules:

1. To complete reconstruction of Pravieniškės Medical Treatment and Correctional Institution in 2007 and relocate the Imprisonment Hospital thereto. The premises of the hospital will be used for extension of Lukiškės RE-P, setting up 200 beds for detainees.
2. To complete renovation of unused buildings of Pravieniškės Strengthened Regime Colony No. 1 and reorganise them into the prison for 350 prisoners. This would allow having 123 beds in Lukiškės RE-P reserved exclusively for detainees.
3. In 2006, to start construction of the annex to Šiauliai RE for accommodation of 320 detainees. Construction should be completed in 2008.
4. To build a remand-detention establishment in Panevėžys according to the approved technical project before 2009. The new establishment should accommodate 400 detainees.
5. Given the layout of the territory of Panevėžys Correctional Labour Colony and the layout and size of the buildings, it would be reasonable to repair the second living unit before 2007, which could accommodate about 100 detained women. This would allow having 92 beds in Lukiškės RE-P reserved for detained men.

The European Court of Human Rights has ruled on numerous occasions that imprisonment conditions, and especially overcrowding, may lead to inhuman or degrading treatment or punishment and thus violate Article 3 of the Convention. On 7 April 2005, the European Court of Human Rights ruled that Articles 3, 5 and 8 of the Convention were breached in the case *Karalevičius vs Lithuania*. In the judgement on the merits, the Court agreed with the applicant that detention conditions in Šiauliai RE, where the applicant was held from 2 January 1997 to 22 September 1999, were degrading. The Court noted that the applicant might have felt fear, anguish and inferiority because he had to live in, sleep in and share a 16.65 sq.m cell with 10 other prisoners for a year and a half.

Taking account of the case law of the European Court of Human Rights, the Committee of Ministers of the Council of Europe adopted the new European Prison Rules on 11 January 2006, which stipulate more strictly the duty of the state to ensure adequate imprisonment conditions. It is noteworthy that one of the fundamental principles laid down in the European Prison Rules states that prison conditions that infringe prisoners' human rights cannot be justified by lack of resources. The state must ensure that its law and practice complies with the provisions laid down in the Convention and is consistent with the practice of authorities monitoring the application thereof. The state should also follow the principles laid down in the recommendations of the Committee of Ministers of the Council of Europe.

## HEALTH CARE

Visits to imprisonment institutions (Alytus Correctional Labour Colony ("Alytus CLC") and Šiauliai RE) and analysis of complaints filed by prisoners and convicts have shown that there is shortage of health care service staff. There is no head of health care service and psychiatrist in Alytus CLC, while Šiauliai RE lacks a medical psychiatrist and psychologist.

Legal acts regulating enforcement of sentences and pre-trial detention stipulate that health care of convicts and prisoners should be based on the same principles and have the same scope as healthcare services provided to the Lithuanian population. It is obvious that lack of medical staff makes it extremely difficult to ensure adequate health care.

Recommendation No. R(98) 7 of the Committee of Ministers of the Council of Europe concerning the ethical and organisational aspects of health

care in prison stipulates that in order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penitentiary establishments. The Recommendation also specifies that the access to psychiatric consultation and counselling should be secured. There should be a psychiatric team in larger penitentiary establishments. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.

In 2005, the Seimas Ombudsman on numerous occasions warned the administration of Šiauliai RE that this institution failed to follow the principles of accessibility and adequacy of health care services.

The Seimas Ombudsman notes that honouring the human rights of prisoners should be understood as a duty to ensure adequate health services. Public authorities should take this into consideration when providing health care in imprisonment institutions.

## **CONVICTS' ACCESS TO FOODSTUFFS AND BASIC NECESSITIES**

On 21 April 2005, the Seimas of the Republic of Lithuania adopted the Law Amending and Supplementing the Penal Code. After relevant provisions entered into force on 1 January 2006, convicts are no longer able to receive postal and other packages with foodstuffs, hygiene supplies and other basic necessities. The Law provides that the convicts will be able to receive one parcel containing clothes and footwear once per six months.

Prisoners have access to foodstuffs and basic necessities as each penitentiary establishment has its own store where prisoners can buy foodstuffs, hygiene and other supplies. Prisoners can buy the required goods for the money in their personal accounts. These accounts are used to deposit money earned by prisoners and transferred by their relatives.

The Regulations for Payments to Arrested Persons and Prisoners Serving Sentences of Time-limited Imprisonment and Imprisonment for Life as approved by Order No. 4/07-260 of the Director of Department of Prisons of 23 December 2005 stipulate that prisoners may receive monthly payments amounting to 0.3 MSL

(decision on the amount of payment is made by the administration of the correctional institution based on the resources available to it for this purpose, behaviour of the prisoner and his work record, participation in social rehabilitation programmes, and category of the convict). Moreover, prisoners are entitled to receive benefits from the social support fund for convicts.

In 2005, the Seimas Ombudsman investigated complaints of prisoners concerning high prices for goods sold at stores in penitentiary establishments. Where it was found that the prices for foodstuffs and basic necessities exceeded the average market prices for these goods sold in stores within the territory of the town (or region) where the penitentiary establishment is located, this fact was put to the attention of the directors of Pravieniškės Strengthened Regime Colony No. 1 and Marijampolė Correctional Labour Colony and the proposal was made to take appropriate action to remedy the situation. Moreover, given that the prisoners will no longer be able to receive parcels from 1 January 2006, the Seimas Ombudsman noted once again that it is the duty of the administration of the correctional institution to ensure a wide range of goods in stores avoiding any restrictions which cannot be justified by legal provisions.

## **PROTECTION OF SOCIAL RIGHTS**

In 2005, the Seimas Ombudsman investigated 44 complaints concerning the validity of actions by officials of the State Social Insurance Fund Board under the Ministry of Social Security and Labour ("the SSIFB") and its territorial divisions. The applicants usually complained about the state social insurance old-age pensions, disability pensions, widower pensions as well as state pensions for victims. There were many cases when the applicants appealed against the refusal to grant a relevant state social insurance pension to them. The investigation of this category of complaints shows that one of the major reasons why an individual cannot be granted an old-age or disability pension is his or her inability to prove that he or she has the minimum work experience required for state social insurance pensions (Articles 22 and 31 of the Law on State Social Insurance Pensions ("the Law on Pensions") stipulate that the minimum work experience for the old-age pension is 15 years and that the disability pension is determined according to the age of the individual concerned). On a case-by-case basis, where an individual claims that he or she has the required minimum work experience but has no documentary proof, the Seimas Ombudsman acts as

an intermediary and applies to the SSIFB asking them to help find the required documents or, where the documents have been destroyed or not transferred to the archives according to the established procedure, the Seimas Ombudsman advises the applicant to bring an action on establishment of circumstances of legal importance, i.e. establishment that he or she actually worked during a certain period.

There are many cases where the applicants do not appeal against the actions of the SSIFB officials but ask the Seimas Ombudsman to make sure that the pension concerned was calculated correctly. In such cases, the scope of competence of the Seimas Ombudsman is explained to the applicant indicating that he or she should contact the relevant SSIFB territorial division responsible for granting, calculation, and payment of state social insurance pensions. Should the explanations given by the SSIFB territorial division regarding the pension calculation be unacceptable to the applicant, he or she is advised to contact the State Social Insurance Fund Board which controls the work of territorial divisions. However, seeking to ensure faster settlement of problems and to assess the level of good public administration and protection of human rights by the public body concerned, such applications, subject to applicants' approval, in some cases are forwarded to the SSIFB asking to notify both the applicant and the Seimas Ombudsman of the results of pension calculation review. There were cases when the State Social Insurance Fund Board, upon conducting a thorough investigation of the pension file, discovered errors in calculations, corrected them immediately, and paid the difference to the individual concerned.

## COMPLAINTS CONCERNING ACTIVITIES OF BAILIFFS

After the Law Amending the Law on the Seimas Ombudsmen entered into force on 25 November 2004, the Seimas Ombudsman is entitled to investigate and evaluate the actions of state agents exercising their statutory functions and activities of bailiffs.

During the reporting period, the Seimas Ombudsman received 31 complaints against the work of bailiffs and inadequate security of human rights and legitimate interests during the enforcement procedure. It is important to note that the Seimas Ombudsman is not entitled to evaluate the validity of procedural enforcement actions carried out by bailiffs (it is the

competence of courts) and that such complaints were only investigated in terms of violations of human rights.

The existing legal acts stipulate that the Ministry of Justice is responsible for policy-making and implementation of the national policy on bailiff activities, control and enforcement of judgements and, therefore, it is important to ensure that the Ministry of Justice has adequate control over the work of bailiffs, implements the required measures aimed at harmonisation of the enforcement practice, and conducts in-depth investigation of complaints against actions of bailiffs.

The Seimas Ombudsman believes and has pointed out in numerous letters that the Ministry of Justice should ensure better control of how private bailiffs fulfil the state function delegated to them. Moreover, the Law on Bailiffs stipulates that the Minister of Justice is entitled to suspend a bailiff, initiate a disciplinary action against a bailiff (or assistant) or impose a disciplinary penalty. Every three years, the Minister of Justice conducts certification of bailiffs and has other powers to control the activities of bailiffs. The Seimas Ombudsman noted to the Minister that with a view to ensuring the equality principle it would be necessary to revise the bailiffs' expenditure for enforcement, especially in cases where a relatively low amount is to be recovered.

It is noteworthy that the bailiff's right to calculate the enforcement expenditure and recover such expenditure cannot be exercised by the same person without any control. Otherwise, it is very likely that the person may abuse such a right. The Seimas Ombudsman believes that before the district court rules on enforcement expenditure, calculation of this expenditure should be monitored through the financial control of bailiffs carried out by the Ministry of Justice.

Some applicants allege disrespect, violation of principles of professional ethics or unacceptable behaviour during meetings at the bailiff offices, refusal to seek compromise or give explanations to the process members about the procedural steps. The Ministry of Justice was notified of such allegations. The Seimas Ombudsman believes that the Ministry should not limit its response to explanation of the right to appeal against procedural steps by bailiffs in court and should carry out the in-depth and full investigation of complaints filed by the citizens against bailiffs.

It is important to mention that Article 49(2) of the Law on Bailiffs stipulates that members of the Bailiffs



Court of Honour can only be appointed from among bailiffs. The Seimas Ombudsman has doubts whether the Court of Honour of such composition can be objective and give impartial assessment of bailiff activities in terms of disciplinary responsibility. This opinion was stated to the Committee on Human Rights and Committee on Legal Affairs of the Seimas of the Republic of Lithuania.

On numerous occasions the Seimas Ombudsman reminded of the bailiffs' duty not only to take all legal measures to protect the interests of persons seeking recovery, but also not to violate the rights and legitimate interests of other members of the enforcement procedure, especially where bailiffs seek to collect earnings which are the only source of living of a family without due consideration to the nature of the debtor's income and the actual financial standing of the debtor and family members.

The Seimas Ombudsman believes that bailiffs must ensure comprehensive protection of the rights and legitimate interests of all members of the enforcement procedure, use all statutory measures in due time and in a qualified manner to ensure faster and cheaper (both in terms of debtor and creditor) enforcement of judgements passed by courts and other bodies.

## ISSUES AND PROBLEMS RELATED TO THE REAL ESTATE REGISTER AND THE REGISTER OF LEGAL ENTITIES

Article 2 of the Republic of Lithuania Law on the Real Estate Register stipulates that the Real Estate Register was set up to register real property, titles and other interests to which it is subject, to register restrictions on the right of possession and statutory legal facts, and to provide official information about the data of the Register. Article 4 of the Law stipulates that all data registered in the Real Estate Register is deemed to be correct and complete from the date of entry thereof, unless invalidated in the manner prescribed by law.

The applicants usually complain to the Seimas Ombudsman about poor quality of services provided by the Register administrator, high prices for services, poor qualification of and bureaucracy by employees, delays in processing of orders, impolite service, and poor work organization. They allege that the quality of work performed by the Register administrator does not correspond to the prices, as high fees are charged for poor services, while advance payments for services that have not been provided are not

returned. The citizens complain that the data entered into the Register does not match the information in the documents submitted by them, that the identity of applicants is not verified when documents are submitted to or received from the Register administrator, compliance of the data submitted is not verified against the legal requirements and that the data in the Register is modified before the applicant submits the documents concerned.

During investigation of complaints, the Seimas Ombudsman determined cases when the Administrator of the Register kept improper records of document processing.

The Regulations of the Real Estate Register stipulate that legal facts in the Register are recorded upon submission of applications and documentary proof of such legal facts. However, there were cases of deviations from these requirements by the Administrator of the Register.

Analysis of the complaints investigated by the Seimas Ombudsman also shows that the Administrator of the Register sometimes fails to verify the authenticity of documents received and compliance thereof with legal requirements or fails to verify the identity of applicants when documents are accepted or issued. There are also cases when the data in the Register is modified at the request of individuals not entitled to represent a legal entity concerned. Unfortunately, the Administrator of the Register does not make every effort to prevent forgery of documents.

## PROTECTION OF CONSUMER RIGHTS

The Seimas Ombudsman investigates complaints alleging that public bodies authorised by law fail to represent their, as customers, interests properly.

The Seimas Ombudsman received a complaint wherein the applicant alleged that the State Department of Tourism under the Ministry of Economy breached the laws of the Republic of Lithuania refusing to investigate his complaint about the quality of services provided by the travel operator claiming that the complaint concerned fell outside the scope of competence of the State Department of Tourism. Article 19(12) of the Republic of Lithuania Law on Tourism stipulates that the State Department of Tourism represents the interests of consumers in the field of travel organisation according to the procedure laid down by law. However, such a procedure has

not been established. The Republic of Lithuania Law on Consumer Protection also does not stipulate an advance extrajudicial procedure for investigation of consumer complaints related to disputes over tourism services. The Seimas Ombudsman examined the facts outlined in the dispute and found that the State Department of Tourism investigated the complaint and gave its opinion but failed to notify the applicant that the Department is not competent to investigate any disputes between the travel operator and tourist and did not take any other action provided for in the Republic of Lithuania Law on Public Administration, i.e. did not pass the complaint to the competent body or return the complaints to the applicant explaining that the complaint should be investigated in court. The Seimas Ombudsman suggested the Ministry of Economy to take appropriate action and set the

procedure for representation of consumer interests in the field of travel organisation services by the State Department of Tourism. The notification of the investigation and results was sent to the National Consumer Rights Protection Board under the Ministry of Justice. It is important to mention that the draft Law Amending the Law on Consumer Protection drawn up by the Ministry of Justice stipulates that the National Consumer Rights Protection Board under the Ministry of Justice would be one of the bodies entitled to investigate consumer complaints under advance extrajudicial procedure for investigation of consumer complaints (including those in the field of tourism services), while the State Department of Tourism, as a body competent in the field of tourism services, should provide its expert opinion to the National Consumer Rights Protection Board.

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN VIRGINIJA PILIPAVIČIENĖ

*Virginija Pilipavičienė was appointed to the office of the Seimas Ombudsman for scrutiny of the activities of officials of the administration of the county governors and municipal bodies and institutions by Resolution No. X-90 of the Seimas of the Republic of Lithuania of 20 January 2005.*

*In 2005, the Seimas Ombudsman received 414 complaints and inquiries from individuals. Of all the complaints received in 2005, 71 were not investigated. In 2005, the Seimas Ombudsman investigated 409 complaints and replied to inquiries of 21 individuals. Of all the complaints investigated, 166 were recognised as grounded, 151 were dismissed and 92 investigations of complaints were terminated.*

*Most of the complaints received concerned restoration of ownership right to land. The reason for such a high number of complaints in this category is the fact that Vilnius County is the largest one in Lithuania. Its area comprises suburban areas of the city of Vilnius with a high concentration of land attractive in terms of recreational and investment value, which is in great demand. Therefore, there are many citizens wishing to restore their ownership by transfer, without payment, of equivalent land. Also, there are many villages that have not been divided into farmsteads; the process of restoration of ownership right to urban land is very problematic in the city of Vilnius, where there is high demand for free (undeveloped) land and, at the same time, a shortage of land for restoration and other purposes such as municipal operations, commercial and investment projects. Another reason is the fact that the process of restoration of ownership right to land is the slowest in Vilnius County.*

## RESTORATION OF OWNERSHIP RIGHT TO RURAL LAND

### Delays in Publication, Preparation and Implementation of Land Use Projects under Land Reform

One of the major obstacles in the process of restoration of ownership right to land for some citizens is delays in publishing land use projects under the land reform and unreasonably lengthy preparation and implementation of these projects. The Seimas Ombudsman put this problem to the attention of the Government of the Republic of Lithuania and the Committee on Rural Affairs of the Seimas of the Republic of Lithuania and suggested adopting legal acts stipulating the deadlines for completion of specific land reform tasks (design works and preparation of land use projects under the land reform). Although this proposal was not supported, it is likely that other measures, i.e. implementation of the Law on Approval of Financial Indicators of the State Budget 2006, which provides for additional financial resources to be appropriated for the functions of land use divisions, will eventually help to solve this problem in Vilnius County.

The Seimas Ombudsman believes that forcing citizens to wait five or six years for publication of a project is a flawed practice which violates the rights of citizens. On many occasions, she contacted the officials of the Administration of the Vilnius County Governor asking to take measures to speed up publication of land use projects under the land reform and ensure that such projects are completed as soon as possible.

By Order No. 2.3-7714 of 31 August 2005 on strengthening the control of land reform work the Governor of Vilnius County mandated heads of territorial land use divisions to solve the issue of amendments to cadastre location projects and to draw up by 1 April 2006 draft orders of the County Governor on announcement of the beginning of work to amend cadastre location projects under the land reform. Officials responsible for the land reform were required to complete land reform work within the time limits

laid down in relevant agreements. Therefore, we can hope that improvements in work organisation will speed up the process of project preparation.

### **Problems Related to Quality of Land Use Projects under Land Reform**

Analysis of complaints concerning the formation of other equivalent land parcels within Vilnius County showed that in 2000 the land use projects under the land reform were often prepared in a hurry and with lack of competence. The Seimas Ombudsmen's Office receives many complaints which show that the conclusions regarding the transfer into ownership, free of payment, of land, forest or water bodies drawn up according to the procedures and time limits laid down by law were often not taken into consideration during preparation of the land use projects under the land reform due to negligence of officials (such as the loss of documents). This constituted violations of legal acts and citizens' rights to good public administration in the field of land reform. At the moment, the issue of restoration of ownership right to land to those citizens is being solved conducting the follow-up of land use projects under the land reform. However, their possibilities of choosing another equivalent land parcel are limited (there is less or no free land in the land pool, they are offered land of lower quality such as scrub or swamp or land in another cadastre location, etc.).

In her reports on complaint investigation, the Seimas Ombudsman on numerous occasions stated that restoration of ownership right to land to such citizens should be carried out by publishing a separate amendment to the project, implementing only those conclusions which have not been included in the previous project phase due to the fault of officials or project authors. The Seimas Ombudsman put this problem to the attention of the Governor of Vilnius County on numerous occasions and suggested finding out which citizens did not receive, free of payment, land and/or forest parcels subject to restitution according to the established procedure and try to find ways to compensate for their violated rights. The Seimas Ombudsman contacted the National Land Service under the Ministry of Agriculture, but the problem has not been solved yet. Officials of this Service believe that such citizens should take action against violations of their rights under judicial procedure. It is worth noting that there are 136 such citizens (who submitted conclusions by 1 March 2000) in the cadastre location of Buivydiškės in Vilnius Region. There are plenty of them in other cadastre locations (Sudervė, Riešė, etc.) as well.

Both the timely preparation of land use projects under the land reform and their quality primarily depends on the work of land surveyors, i.e. officials directly responsible for implementation of the land reform. In their annual reports, Seimas Ombudsmen regularly emphasise to the Seimas and Government of the Republic of Lithuania as well as other public authorities that the work of land use project authors is of low quality and is poorly done. They suggested adopting the Law on Land Surveyors which would strictly and accurately regulate the rights, duties and responsibilities of individuals carrying out design and other works related to the land reform. The Seimas Ombudsman reminded the Seimas Committee on Rural Affairs and the Government of the Republic of Lithuania about the importance of this issue and the necessity to ensure legal regulation of powers and responsibilities of individuals carrying out the land reform work (land surveyors). The Law on Land Surveyors has been registered in the Seimas but has not been approved yet.

### **Restoration of Ownership Right to Urban Land**

Failure to Comply with Deadlines for Formation of Land Parcels Restored in Kind and Adoption of Decisions on Restoration of Ownership Right

As in previous years, most of the complaints received and investigated during the reporting period concerned restoration of ownership right to land in Vilnius. Analysis of complaints shows that officials of the Administration of the Vilnius City Municipality fail to comply with the time limits laid down in the legal acts for preparation of land parcel plans to be restored in kind in Vilnius as well as other documentation necessary for decisions on restoration of ownership right to land. These officials also adopt decisions on restoration of ownership right to land in the city failing to comply with the time limits laid down in the legal acts. The Seimas Ombudsman expressed her opinion that the situation when the public administration body fails to perform its functions within the time limits laid down in the legal acts is unacceptable and violates the rights and legitimate expectations of citizens (applicants). The situation cannot be justified by reasons given by the officials explaining what leads to delays in land parcel formation and the decision-making process. However, given the scope of work necessary for formation of land parcels and adoption of decisions on restoration of ownership right to land in villages that have not been divided into farmsteads as well as seeking to ensure that all documentation is drawn up properly, a possible way is to improve the existing legal acts and define realistic terms for completion of such work.

### **Classification of Urban and Forest Land as to be Bought out by the State**

Article 12 of the Law on Restoration of Ownership Right of Citizens to the Remaining Real Estate stipulates that free (undeveloped) land is classified as land to be bought out by the state on the basis of detailed plans approved according to the procedure laid down by law. However, in practice the areas without detailed plans and their classification as land to be bought out by the state are often disputed, especially in cases where detailed plans show that the disputed areas are intended for general needs of the population. Considering the necessity to ensure that public needs are duly satisfied, the Seimas Ombudsman believes that the absence of a detailed plan does not mean that the land is not necessary for public needs. However, by providing information to land use divisions about areas without detailed plans where such land is necessary for specific needs of the public, the municipality must ensure that the detailed plans will be prepared and approved within the required period and according to the procedure laid down by law, and that such plans will be used as the basis to classify the area concerned as land for public needs. Otherwise such land is to be deemed free (undeveloped) and must be returned in kind. This legal practice is also being established by the Supreme Administrative Court of Lithuania.

## **PROBLEMS RAISED IN COMPLAINTS CONCERNING TERRITORIAL PLANNING, CONSTRUCTION, RECONSTRUCTION AND REPAIR OF BUILDINGS**

During the reporting period, the Seimas Ombudsman investigated a number of complaints concerning actions (or inaction) of the officials working in municipalities of Vilnius County and the Administration of the County Governor responsible for public administration functions and territorial planning including construction. As in previous years, the majority of complaints in this category were submitted by citizens and communities appealing against decisions made in territorial planning documents and technical construction projects. The applicants usually complain about the procedures for drawing up these documents (or violations thereof) and allege violations of their rights and interests as third parties. The applicants allege that municipal

officials inappropriately co-ordinate and approve these documents, issue building permits in a wrongful manner (against the established procedures) or inappropriately respond to unauthorised construction work carried out without permits issued and approved according to the established procedure.

The complaint investigation practice shows that public participation in territorial planning procedures is another serious problem. People, especially those living in apartment buildings next to newly developed areas, often complain that they are not informed in a timely manner about territorial planning documents under preparation and that they become aware of such developments only when construction starts, which means that they cannot exercise their statutory right to submit comments or claims related to territorial planning documents or appeal against the relevant decisions. Analysing such complaints the Seimas Ombudsman concluded that current legal regulation does not provide sufficient protection of the rights of such applicants to receive timely information about the detailed plan under preparation and, therefore, applied to the Ministry of Environment suggesting amendment to the Regulations for Public Debate of Detailed Plans laying down the obligation of the administrators of common use establishments of apartment buildings to inform residents about new detailed plans under preparation and to establish specific procedural requirements. Officials of the Ministry of Environment told the Seimas Ombudsman that her suggestions would be taken into consideration and informed her that they were collecting material for pending amendments to the Regulations of Public Participation in Territorial Planning Process.

There is a separate category of complaints related to unauthorised construction. The Seimas Ombudsman analysed these complaints and concluded that more efforts should be taken for prevention of unauthorised construction. It is worth mentioning that there is no procedure or methodology approved on the national or local level stipulating how the state supervisory body for construction should carry out the function of unauthorised construction prevention. Therefore, the Seimas Ombudsman put forward a proposal to the Ministry of Environment with a view to stabilising and reducing the spread of unauthorised construction asking to consider whether it would be reasonable to draft a legal act stipulating legal and organisational measures for prevention of unauthorised construction by state supervisory bodies. The Ministry took this recommendation of the Seimas Ombudsman into consideration and on 20 January 2006 the Minister of Environment issued Order No. D1-33 approving

the Regulations for Actions of Public Authorities in the Field of Prevention of Unauthorised Construction and Counter Measures. The Seimas Ombudsman also suggested that the Ministry of Environment should speed up the process of drafting legal acts imposing stronger penalties for unauthorised construction.

During the reporting period, there were cases of confirmed abuse of office by public officials. Investigating who initiated demolition (destruction) of unauthorised buildings on the territory of the Romany settlement and which officials of the Administration of the Vilnius City Municipality organised and co-ordinated the campaign, the Seimas Ombudsman determined that the Head of the Policing and Surveillance Division organised and co-ordinated demolition (destruction) of unauthorised buildings on the territory of the Romany settlement pursuing the obligation stated in the minutes of the meeting with the Mayor of Vilnius and taking account of the "agreement" between the Head of the Chief Police Commissariat and the Mayor of Vilnius. Neither the regulations of the division managed by this official nor his job description stipulated that this public official could pursue the removal of unauthorised buildings. Therefore, pursuant to the provisions laid down in the Law on the Seimas Ombudsmen such actions of the official were classified as abuse of office, which means that the official concerned exceeded his powers. Since the official concerned was appointed to another office during the investigation of the complaint, the Seimas Ombudsman had no legal basis to raise the issue of his institutional responsibility.

## **PROBLEMS RAISED IN COMPLAINTS CONCERNING PUBLIC ADMINISTRATION AND ACCESS TO INFORMATION**

The purpose of the Republic of Lithuania Law on Public Administration is to create the necessary legal preconditions for the implementation of the clause of the Constitution of the Republic of Lithuania stipulating that the responsibility of all public bodies is to serve the people, also to strengthen the administrative capacities of public administration bodies and enhance their effectiveness. The purpose of activities of Seimas Ombudsmen is to protect an individual's right to good public administration securing human rights and freedoms, to supervise fulfilment by public authorities of their duty to properly serve the people. By investigating complaints concerning abuse of office

or bureaucracy of officials, the Seimas Ombudsman determined cases of bureaucracy where some officials do not act in good faith in their dealings with citizens, formally refuse to provide information, fail to give in-depth and properly substantiated answers based on established facts and legal norms, etc.

## **RECOMMENDATIONS OF THE SEIMAS OMBUDSMAN**

During the reporting period, most of the recommendations put forward by the Seimas Ombudsman were related to cases of negligence, violations of laws and other legal acts, and bureaucracy by officials. The Seimas Ombudsman recommended taking measures to eliminate such violations of laws or other legal acts, their causes and circumstances. Many of the recommendations made by the Seimas Ombudsman included proposals to improve the relevant legal acts, revoke or amend laws and decisions contradicting other legal acts, or proposals to adopt decisions which have not been adopted because of bureaucracy and abuse of office by officials. During the reporting period, the Seimas Ombudsman exercised other rights stipulated by law, i.e. in cases of alleged signs of criminal activity forwarded relevant material to the prosecutor, proposed imposition of disciplinary penalties on non-performing officials, suggested that the prosecutor should initiate the judicial procedure for protection of the public interest according to the requirements laid down by law, asked the Chief Institutional Ethics Commission to evaluate whether an official breached the provisions of the Law on Adjustment of Public Interests in the Public and Private Service, proposed to the body to compensate material and moral damage incurred by the applicant due to violations committed by the officials. During the reporting period, the Seimas Ombudsman put forward 324 recommendations.

During the reporting period, the Seimas Ombudsman closely followed up the implementation of her recommendations. Matters related to the complaints under investigation as well as implementation of recommendations given by the Seimas Ombudsman were discussed during meetings with the officials concerned. It should be noted that in most cases (about 80%) the officials took the recommendations put forward by the Seimas Ombudsman into account, fully or partially, which means that the Seimas Ombudsman ensured the protection of the rights of citizens, violations whereof were put to her attention (the Seimas Ombudsman continues to follow-up on the implementation of some recommendations).

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN AUGUSTINAS NORMANTAS

*The Seimas Ombudsman took office on 23 June 2005. By the end of the year he had investigated 150 complaints concerning alleged abuse of office, bureaucracy or other violations of human rights and freedoms by officials in the field of public administration, of which 44 complaints were recognised as ungrounded and 52 complaints were dismissed as the facts stated therein were not confirmed. Also, 54 complaints were excluded from investigation procedures according to Article 17 of the Republic of Lithuania Law on the Seimas Ombudsmen ("the Law on the Seimas Ombudsmen"). Therefore, the Seimas Ombudsman examined 96 complaints on their merits, of which 44 complaints (45%) were recognised as grounded, 36 (38%) as ungrounded, and the investigation of 16 complaints (17%) was terminated.*

*Analysis of the investigated complaints shows that citizens were mostly complaining about the action or inaction of officials in matters related to restoration of ownership right to land. Of all the complaints received by the Seimas Ombudsman, 50 (33%) were related to restoration of ownership right to rural and urban land; 32 complaints (21%) were related to various land use issues. Moreover, 18 complaints (12%) were related to restitution of buildings.*

## RESTORATION OF OWNERSHIP RIGHT TO LAND

Statistical data show that the main problem indicated in the complaints is the restoration of ownership right to land.

### Issues Raised in Complaints Related to Restoration of Ownership Right to Land

Restoration of ownership right to land can be divided into two groups: some problems arise in the process of restoration of ownership right to rural land, while other problems relate to urban land.

In terms of restoration of ownership right to rural land, the main problems specified by applicants relate to restoration of ownership right to land located in forest parks, land allocated to science and education bodies, and land given for private farms.

Restoration of ownership right to urban land poses many more problems. Applicants complain that the land of the previous owner was unreasonably classified as land to be bought out by the state, about non-compliance with time limits and procedures of detailed planning or absence of detailed plans. It is also evident that there is a shortage of free urban land to restore the ownership of all applicants or to give them equivalent land parcels.

### Restoration of Ownership Right to Land Located in Forest Parks

The existing legislation stipulates that land parcels classified as forest parks are to be bought out by the state and cannot be restored to previous owners. This causes much discontent among applicants asking for restoration of ownership right, as forest parcels located in forest parks are attractive both in terms of their recreational and financial value. However, it is also necessary to remember that forests classified as forest parks are among the most beautiful sites, they surround lakes and are used for recreational activities, which means that such forests are used for public benefit. This is a case of conflict between private and public interests. It is necessary to note that private and public interests must be balanced according to the equality principle and mutual agreement between both sides.

### Restoration of Ownership Right to Land Allocated to Science and Education Bodies

The Seimas Ombudsman investigated a number of complaints concerning restoration of ownership right in kind of land allocated to the Lithuanian University of Agriculture and Lithuanian Veterinary Academy. Complainants allege that science and education bodies do not use the whole land allocated to them

by the Government of the Republic of Lithuania for educational purposes and, therefore, such land can be restored to them. The major concern of complainants is that the land which they ask to be restored to them and which has been allocated to these education bodies might be given to other persons for construction of private housing.

The law regulating the land stipulates that the rural land allocated to science and education bodies, state social care and welfare institutions or specialised state seed farming and animal breeding farms or special purpose animal breeding companies is to be bought out by the state. The list of such land users and the size of land parcels is determined by the Government.

On 10 May 2002, the Constitutional Court ruled that "one of the cases where the land cannot be restored in kind to previous owners is when it has been allocated to science and education bodies. It is clear that these bodies would not be able to perform their functions of public importance without real estate (land, buildings, etc). Therefore, the status of land to be bought out by the state may only be granted to the land allocated to science and education bodies which is necessary for their objectives and functions, i.e. satisfaction of public rather than individual needs."

In the process of investigation of complaints concerning restoration of ownership right to land allocated to science and education bodies, the Seimas Ombudsman explained to the applicants that the current legal framework does not allow restoration of ownership right in kind, i.e. restoration of ownership right to a specific land parcel of the previous owner.

### **Restoration of Ownership Right to Land Given for Private Farms**

Some of the complaints received by the Seimas Ombudsman concerned the land given for private farms. In 1991-1992, agricultural land was given to people living in rural areas for private use. Such land is called private farmland. The biggest problem is the fact that many citizens apply for restoration of ownership right to a number of land parcels that have been given for private farms and cannot be restored in kind according to the current legal provisions. The applicants often allege that private farmland users do not use their land parcels, that such land is leased to other persons or that some private farmland users are even living in other regions. The applicants want their land to be restored in kind or bought out at the market price and refuse to accept other compensation methods. Private farmland users, on the other hand, refuse to choose replacement private farmland elsewhere.

### **Restoration of Ownership Right to Urban Land**

Legal acts stipulate which land in urban areas is currently classified as to be bought out by the state and cannot be restored in kind. Such land includes the land reserved in approved detailed plans for parcels of land necessary for the operation of buildings, structures or equipment.

The practice of complaint investigation shows that sometimes officials of municipal administrations classify the land as to be bought out by the states in cases not stipulated in legal acts.

Often all that county and municipal officials do is correspond back and forth, while the problems of applicants remain unsolved. The Seimas Ombudsman determined that the provisions of the resolution on the procedure of restoration of ownership right adopted by the Government of the Republic of Lithuania were violated (failure to comply with time limits) in nine out of 44 complaints recognised as grounded.

A long procedure of detailed planning is also significantly delaying the process of restoration of ownership right to land. The decision on restoration of ownership right to land may only be adopted after approval of the land parcel plan (in some cases – the detailed plan of the area). Therefore, the territorial planning process is one of the major obstacles in the long process of restoration of ownership right to urban land.

It is also necessary to note that there is a shortage of urban land to be restored in kind or transferred without payment. It is obvious that such land will not be sufficiently available in the majority of cities and towns. It is especially problematic in Kaunas as 6,500 individuals have applied for restoration of ownership right while it will only be possible to prepare about 1,500 land parcels.

### **Causes of the Long Process of Restoration of Ownership Right to Land**

First of all, analysis of complaint investigation shows that there was poor preparation for restoration of ownership right to land as no inventory of land had been carried out, land parcel plans were inaccurate, and there was a shortage of qualified specialists. Moreover, the state tried to complete restoration of ownership right to land as quickly as possible and to as many applicants as possible.

Secondly, it is necessary to note that at the very beginning of the land reform, land use specialists



or land surveyors made a lot of errors (due to lack of experience or urgency of work). These errors are often irreversible and it is impossible to appeal against them in court because of expired deadlines.

Another important reason for the long process of restoration of ownership right to land is the lack of co-operation between officials of the county governor administrations and municipal administrations. Analysis of complaints shows that county governor administrations and municipal administrations blame each other for delays in taking actions within the scope of their competence which are necessary in the process of restoration of ownership right to land. In addition, they engage in long correspondence instead of taking joint action to solve particular problems.

However, municipal or county officials cannot be the only ones to blame for the long land restoration of ownership right process. There are cases when restoration of ownership right to land takes a long time because of actions of the applicants themselves who delay the submission of documents proving their ownership rights, fail to arrive for the selection of land parcels or familiarise themselves with the draft decisions of the county governor, etc.

It can be concluded that co-operation between land use specialists and applicants is extremely important in the process of restoration of ownership right to land. The officials must give reasons for their every decision and give explanations to the applicants. They must perform their duties according to the requirements laid down in the legal acts and in such a manner as to assure the applicants that their interests have not been violated. The applicants themselves should be more understanding and show more interest in the process. More mutual understanding and the good faith of the applicants and officials as well as less ambitions and unfounded allegations would definitely reduce the number of complaints sent to the Seimas Ombudsman concerning the restoration of ownership right to land.

## **RESTITUTION OF OWNERSHIP RIGHT TO RESIDENTIAL HOUSES, PARTS THEREOF AND FLATS**

Legal acts regulating restitution stipulate that ownership of economic-commercial buildings, residential houses and their annexes can be restored to citizens.

The issue of restitution of houses and parts thereof is extremely important in Kaunas. The Seimas Ombudsman investigated 10 complaints related to this topic. Analysis of these complaints showed that the Kaunas City Municipality concluded lease contracts of different contents with the owners of residential houses subject to restitution. In some lease agreements the municipality undertook to repair the premises to be returned, while in others it did not. Therefore, a logical question is whether the municipality violated the equality principle in concluding such agreements with the applicants.

Although the obligations of the municipality to repair the premises in the houses, parts thereof or flats to be returned to previous owners are not justified, the demand of citizens that the municipality should keep its promises is quite understandable. The Seimas Ombudsman believes that the municipality should either fulfil its contractual obligations or change the provisions of lease agreements.

## **PUBLIC ADMINISTRATION PROBLEMS**

Article 3 of the Law on the Seimas Ombudsmen stipulates the purpose of activities of Seimas Ombudsmen: to protect an individual's right to good public administration securing human rights and freedoms, to supervise fulfilment by public authorities of their duty to properly serve the people.

Applicants complain to the Seimas Ombudsman not only about restitution. A large share of justified complaints is related to non-compliance with the Republic of Lithuania Law on Public Administration.

The Law on Public Administration stipulates that every public administration body must accept applications from individuals and investigate them according to its competence (Article 19(1)), that the administrative procedure (compulsory actions of public administration bodies during the application investigation procedure and decision-making procedure) is completed after the decision is made to grant or to reject the application and after notification of the applicant or another person concerned thereof (Article 16(1) and Article 31(3)) and that the investigation of a complaint may not last longer than 30 days, unless the law provides otherwise (Article 28(1)). Moreover, Article 14 of the Republic of Lithuania Law on Access to Information from Public and Municipal Bodies stipulates that a public or municipal body or institution must submit

available documents or information to an applicant within 20 working days from the date of receipt of the application by the body concerned.

Violations of time limits laid down in legal acts regulating public administration not only prevent maintaining the goodwill of the body but also contribute to mistrust in the body itself. Therefore, each body and institution must devote much effort to good public administration.

## PROPOSALS OF THE SEIMAS OMBUDSMAN AND IMPLEMENTATION THEREOF

Having investigated a complaint filed by a citizen, the Seimas Ombudsman gives a legal assessment of the actions of the official concerned. If the Seimas Ombudsman finds the complaint to be grounded, he may put forward recommendations to relevant bodies as provided for in Article 19 of the Law on the Seimas Ombudsmen: propose amendments to the laws or other regulatory enactments; emphasise to officials the cases of non-compliance with legal acts, abuse of office, bureaucracy or violations of human rights and freedoms and to propose taking measures to eliminate violations of legal acts, their causes and circumstances; propose cancellation of decisions which contradict legal acts; propose disciplinary penalties to be imposed by the manager on non-performing officials, etc.

As already mentioned, during the reporting period the Seimas Ombudsman recognised 44 complaints as grounded and put forward 61 recommendations to the bodies concerned. The following recommendations were made:

- to take certain concrete action (32 times);
- to put to officials' attention (21 times);
- to assess the actions of officials named in complaints (2 times);
- to pass a regulatory enactment (1 time);
- to propose an amendment to the regulatory enactment (1 time);
- to propose compensation of damages (1 time);
- to propose imposition of a disciplinary penalty (1 time);
- to propose adopting the decision which has not been adopted due to bureaucracy (1 time).

The majority of recommendations put forward by the Seimas Ombudsman were implemented.

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The Seimas Ombudsman would like to note that Article 5 of the Constitution of the Republic of Lithuania stipulates that all public authorities should seek to serve people and it is encouraging that officials are paying increasingly more attention to this purpose. The more co-operation among all public authorities, the easier it will be to solve individual problems.

# ACTIVITY REPORT OF SEIMAS OMBUDSMAN ZITA ZAMŽICKIENĖ

*In 2005, the Seimas Ombudsman received 386 complaints alleging abuse of office, bureaucracy or other violations of human rights and freedoms by officials in the field of public administration, including three investigations launched on the Ombudsman's initiative following media reports and several investigations based on complaints submitted to the Seimas Ombudsman by parliamentarians.*

During the reporting period, the Seimas Ombudsman received 14 applications whereby applicants did not allege any abuse by officials but asked for explanations, additional information or necessary documents. The Law on the Seimas Ombudsmen stipulates that such applications are not deemed to be complaints.

Comparison of the number of complaints lodged in 2004 and 2005 shows that the number of complaints received in 2005 grew by 50%.

At the end of 2004 and the beginning of 2005, the Board of the Seimas Ombudsmen's Office decided to expand the scope of activities of the Seimas Ombudsman and to add two more counties, i.e. Tauragė County and Telšiai County with their respective municipalities, to the four counties and their respective municipalities already supervised by the Seimas Ombudsman. It is also worth mentioning that for several months during the reporting period, the Seimas Ombudsman served as acting Seimas Ombudsman for Kaunas, Utena and Panevėžys Counties and their respective municipalities. This is one of the main factors that contributed to the increase in the number of complaints in 2005. It is also worth noting that after the Seimas Ombudsman receives citizens in the supervised counties and their respective municipalities, people start to defend violations of their rights more actively and send complaints to the Seimas Ombudsman, which also contributes to the higher number of complaints.

During the reporting period, 259 complaints were investigated, of which 79 were recognised as grounded, 128 were dismissed because the allegations were found to be unjustified and 52 investigations of

complaints were terminated. Furthermore, in addition to complaints that were investigated, 81 complaints were returned to the applicants without examination of the merits.

It is worth noting that the wording of the Law on the Seimas Ombudsmen which was in effect before 25 November 2004 did not provide for the so-called complaint screening mechanism. Each complaint used to be examined under the same procedure, irrespective of the fact whether the complaint concerned an individual case or the problem raised in the complaint was characteristic to a certain situation or a group of people and was reoccurring in nature. The procedure also remained unchanged where the preliminary phase of investigation revealed that the official concerned had satisfied the applicant's request. Therefore, it was necessary to provide for the differentiation of the complaint investigation procedure with a view to ensuring quicker response to inquiries made by citizens and people and more efficient protection of their rights.

After the new wording of the Republic of Lithuania Law on the Seimas Ombudsmen entered into force, Seimas Ombudsmen were able to start exercising their power of discretion, which is a worldwide practice.

During the reporting period, the Seimas Ombudsman exercised her discretion a number of times coming to the conclusion that the complaint had to be investigated by another institution or agency. Citizens were advised to apply first to the institution or agency competent to investigate the complaint. This referral of citizens to competent institutions or agencies, which should have been contacted in the first place, by the Seimas Ombudsman allows public administration bodies to investigate the dispute at first hand, solve problems caused by their own practices or decisions and correct their mistakes. This discretionary power ensures qualitative improvement of the Seimas Ombudsman's performance and allows focusing on the complaints concerning reoccurring problems characteristic of certain situations or groups of persons and searching for common problems which may lead to the existence of individual complaints.

The new wording of the Law on the Seimas Ombudsmen also entitled the Seimas Ombudsman to terminate the complaint investigation if, during the investigation, the alleged circumstances disappeared or the intermediation by the Seimas Ombudsmen resulted in an amicable settlement and solution of the problems specified in the complaint.

During the reporting period, the Seimas Ombudsman invited, on numerous occasions, officials from public administration bodies and complainants to sit at one table and look for solutions to the problems together. Sometimes just good will is enough to solve the problems indicated in the complaint. Therefore, the role of the Seimas Ombudsman as a mediator is crucial in the field of protection of human rights. As problems indicated in the complaint are solved, the investigation procedure is terminated.

With a view to ensuring the best possible exercise of the individual's right to good public administration, during the reporting period the Seimas Ombudsman visited supervised counties and municipalities and received citizens, listening to their problems and complaints. During these visits, people indicated that they were unable to exercise their right to good public administration because public administration bodies tend to restrict their rights and freedoms without due reason or cause. During these visits, the Seimas Ombudsman also met with managers and senior officials of public administration bodies and indicated the facts of poor administration by their organisation brought to her attention by citizens, and forward proposals how to avoid such occurrences, thus contributing to the improvement of administration in that particular body.

Visits by the Seimas Ombudsman and her meetings with citizens where they have direct communication with the Seimas Ombudsman and discuss actions against violation of their rights as well as subsequent meetings with managers and senior officials of public administration bodies attract much attention from the regional media: reporters show interest in problems raised by community members, cases of violations of human rights, facts of poor administration practices in the relevant municipalities and efforts aimed at trying to improve administration in the relevant bodies. The media also plays an important role in protecting human rights. Often the media is the preferred choice of first contact by people who believe that it is the only option in order to protect his or her rights. The media is also a primary source of information for people to learn about the Seimas Ombudsmen, how they act against violations of human rights and monitor how public authorities comply with their duties to serve

people. Quite often Seimas Ombudsmen start the investigation procedure on their own initiative after they learn about possible abuse of office, bureaucracy or other violations of human rights and freedoms by officials from media reports. Therefore, co-operation between the media and Seimas Ombudsmen is necessary to ensure broad publicity related to cases of violations of human rights and facts of poor administration in public administration bodies. Such co-operation is one of the ways to improve public administration.

The Law on the Seimas Ombudsmen stipulates that a Seimas Ombudsman is entitled to recommend to the Seimas, the Government, and other public or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms. The Seimas Ombudsman is also entitled to inform the Seimas, the Government and other public institutions and agencies or the appropriate municipal council of shortcomings, contradictions of or gaps in laws or other legal acts.

During the reporting period, the Seimas Ombudsman made several recommendations to the Seimas, the Government, other public institutions and municipal councils to amend the laws or other legal acts which restrict human rights and freedoms.

The Law on the Seimas Ombudsmen stipulates that a Seimas Ombudsman may exercise his or her rights not only for the purposes of complaint investigation but also in cases where there is no complaint, i.e. when only information is available about the violation of human rights and freedoms in the field of public administration. In such a case, the Seimas Ombudsman may put forward proposals or comments to the relevant institutions and agencies concerning improvements of public administration to avoid violations of human rights and freedoms.

It is important to note that both in 2004 and 2005 the problems outlined in investigated complaints were virtually the same. In 2005, citizens were concerned about the same problems as in 2004. Most of the complaints received concerned actions by officials in cases related to restoration of ownership right to privatisation of land for housing and private farming purposes, drawing up, discussion and approval of territorial planning documents, and issue of building permits.

In 2005, the Seimas Ombudsman received a number of complaints from citizens and other individuals alleging that public administration bodies fail to comply with the provisions of the Law

on Public Administration related to processing of requests filed by citizens and other individuals with public administration bodies. The Law on Public Administration stipulates that requests must be processed within 30 days, unless the law provides otherwise. The deadline may be prolonged by agreement of the parties. It should be noted that the Law on Public Administration stipulates that in cases where no decision is made within the time limits for request processing stipulated in the Law, it is deemed that the decision is unfavourable and the individual (applicant) may lodge a complaint against this decision. However, citizens are often unaware of their rights stipulated in the law, where to apply in cases of non-compliance with time limits or other violations related to request processing procedures. There are cases when citizens send multiple inquiries to the same public administration body waiting for a response, and these inquiries are forwarded to the same public official who delays his or her response for unknown reasons while he or she controls his or her activities and performance of duties. Upon examining the complaints of this nature and determining the facts of poor administration by the relevant body, the Seimas Ombudsman put such facts to the attention of managers of the said institutions and advised how to improve performance, proposing to carry out internal investigations to assess the performance of officials who fail to examine the requests filed by citizens or other individuals within the prescribed time limits. In this way, the Seimas Ombudsman contributed to improvement of administration in the relevant body and to improvement of public administration in general.

During the reporting period, the Seimas Ombudsman issued 225 recommendations to the relevant public administration bodies. In most cases, the Seimas Ombudsman recommended that officials of the relevant bodies should pay more attention to cases of negligence, failure to comply with the laws or other legal acts, violations of good administrative conduct, abuse of office, bureaucracy or violations of human rights and freedoms and suggested taking measures to eliminate such violations of laws or other legal acts, their causes and circumstances, and imposing disciplinary penalties on non-performing officials. Most of the measures proposed by the Seimas Ombudsman were implemented. However, there were cases when these recommendations were ignored. Such cases require the special persistence of the Seimas Ombudsman, as only strong arguments can prove the necessity to implement these recommendations. The Seimas Ombudsman must find out and listen to all arguments made by public administration bodies refusing the recommendation and, where she feels that the recommendation is still justified, must pursue its implementation. Then the Seimas Ombudsman may use other avenues stipulated in the Law on the Seimas Ombudsmen, i.e. the right to apply to the Seimas, the Government or Prosecutor General's Office. In 2005, the Seimas Ombudsman applied to the Prosecutor General's Office on a number of occasions asking the Office to seek the protection of public interest in court. It is important to note that currently the Prosecutor's Office is the only body entitled to protect public interests.