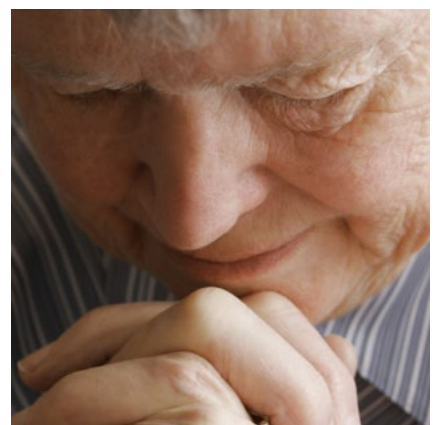
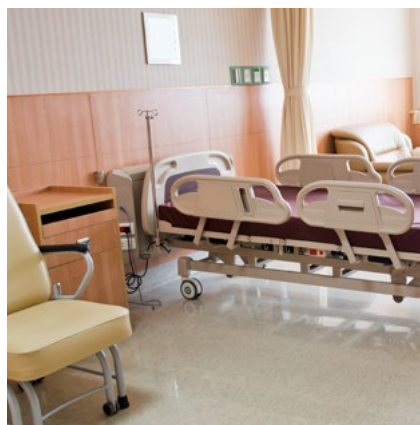




Office of the Public
Defender of Rights

RESIDENTIAL FACILITIES PROVIDING CARE WITHOUT AUTHORISATION



REPORT

ON SYSTEMATIC VISITS CARRIED OUT BY
THE PUBLIC DEFENDER OF RIGHTS 2015

MISSION OF THE DEFENDER

Pursuant to Section 349/1999 Coll., on the Public Defender of Rights, the Public Defender of Rights (Ombudsman) protects persons against the **conduct of authorities and other institutions** if such conduct is contrary to the law, does not correspond to the **principles of democratic rule of law and good governance** or in case the authorities fail to act. While performing investigation, the Defender may peruse administrative and court files, request explanation from the authorities and carry out unannounced investigation on site. If the Defender finds shortcomings in the activities of an authority and if subsequently the authority fails to provide for a remedy, the Defender may inform the superior authority or the public.

Since 2006, the Defender has acted in the capacity of the **national preventive mechanism** pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of the systematic visits is to strengthen the protection of persons restricted in their freedom against **ill-treatment**. The visits are performed in places where restriction of freedom occurs ex officio as well as in facilities providing care on which the recipients are dependent. The Defender generalises his or her findings and recommendations concerning the conditions in a given type of facility in summary reports on visits and formulates general standards of treatment on their basis. Recommendations of the Defender concerning improvement of the conditions found and elimination of ill-treatment, if applicable, is directed both to the facilities themselves and their operators and the central governmental authorities.

In 2009, the Defender was also given the role of the **national equality body** pursuant to the European Union legislation. The Defender thus contributes to the enforcement of the right to equal treatment of all persons

regardless of their race or ethnicity, nationality, gender, sexual orientation, age, disability, religion, belief or worldview. For that purpose, the Defender provides assistance to victims of discrimination, carries out research, publishes reports and issues recommendations with respect to matters of discrimination, and ensures exchange of available information with the relevant European bodies.

Since 2011, the Defender has also been **monitoring detention of foreigners and the performance of administrative expulsion**.

The **special powers** of the Defender include the right to file a petition with the Constitutional Court to repeal subordinate legal regulations, the right to become an enjoined party in Constitutional Court proceedings on repealing an act or its part, the right to lodge action to protect a general interest or application to initiate disciplinary proceedings with the president or vice-president of a court. The Defender may also make recommendations to the Government concerning adoption, amendment or repealing of a law.

The Defender is **independent and impartial**, accountable for the performance of his/her office only to the Chamber of Deputies which elected him/her. The Defender has one **deputy** elected in the same manner, who can be authorised to assume a part of the Defender's competence. The Defender regularly acquaints the public with his or her findings through the internet, social networks, professional workshops, roundtables and conferences. The most important findings and recommendations are summarised in the **Annual Report on the Activities of the Public Defender of Rights** submitted to the Chamber of Deputies of the Parliament of the Czech Republic.

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INTRODUCTION

In the Czech republic, there is currently 1,825 thousand persons over the age of 65¹, 140 thousand with dementia and 160 thousand with mild cognitive impairment.² According to the Czech Statistical Office forecasts, persons over 65 will make up 22.8 % of the population by 2030 and 31.3 % of the population by 2050, which will correspond to approximately 3 million people. The change of the age structure of the population is a social fact which calls for a reasonable and constructive approach. Due to the importance of this change for the society, I decided to make a contribution by informing about the situation of the elderly in institutions – this report represents a part of my work in this area.

In this report, I list the risks (ill-treatment of clients) posed by facilities providing care without authorisation (the “unregistered residential social services facilities”) and explain why good co-operation among all governmental authorities is necessary to penalise these facilities. I call on municipal authorities, healthcare services providers, legal guardians and families of the clients to remain vigilant while looking for a residential care facility for the elderly in need and to always make sure that the facility has the authorisation to provide residential social services; if the facility in question does not have such authorisation, they should inform the locally competent Regional Authority of this fact.

Aside from remaining vigilant, this sort of illegal activity must be penalised by Regional Authorities on the administrative level and by the prosecuting bodies on the criminal level. I stress the importance of an active approach on the part of public authorities, even if the penalty does not primarily entail drastic sanctions, since otherwise their failure to act would send a message that unregistered services are de facto accepted by them.

However, the solution to the problem of unregistered residential social services facilities and ill-treatment occurring in them does not, in my opinion, lie in repression. The aforementioned data show that the demand for social services for the elderly and persons with dementia will only grow in the coming years. The state as the guarantor of the quality of social services



Mgr. Anna Šabatová, Ph.D., the
Public Defender of Rights

1 Age structure of Population in Regions. [online]. Prague: Czech Statistical Office, data as of 31 December 2013 [retrieved Available at: http://vdb.czso.cz/vdbvo/tabparam.jsp?voa=tabulka&cislatab=DEMO_040PU_KR&vo=tabulka&kapitola_id=19].

2 HOLMEROVÁ, Iva. Úvodní stručná informace o problematice demence (Basic Introduction to the Issues Concerning Dementia). In: Ochrana práv seniorů v institucích s důrazem na osoby s demencí (Protection of Rights of the Elderly in Institutions, Focusing in Particular on Persons with Dementia). Brno: Office of the Public Defender of Rights, 2014, pp. 6-13. ISBN 978-80-8 7 949-03-0. Also available at: <http://spolecne.ochrance.cz/dokumenty-ke-stazeni/konference/konference-ochrana-prav-senioru-v-instituci-s-durazem-na-osoby-s-demenci/>.

should, in accordance with state responsibilities in the area of social rights, respond to the situation by supporting legal social services as well as families and community services in order to enable persons dependent on care to remain in their natural social environment for as long as possible. The government must address the problem of unregistered residential social services facilities right now by providing support to people who have found themselves in these institutions or those who are about to enter them. I believe that for this support to be effective, it must include financial help. Without proactive steps, these people will have no other possibility than to use the services provided by unregistered facilities and the repression itself will lose its primary meaning and legitimacy.

In conclusion, I wish to stress the fact that the clients of unregistered residential social services facilities are often persons who are in a very vulnerable position due to their dependence on care provided by others. Often they do not have families willing or able to take care of them, therefore they put their hope and trust in the facility operators, which makes them willing to spend all their income on residence fees and suffer degrading hygienic conditions and ill-treatment. Only rarely did I encounter cases where the clients complained about the conditions in the facility, although it was obvious that the quality of the services provided was far below the social services quality standards. The clients in unregistered facilities must be approached with the knowledge of this fact in mind. We need to realise that the system of social services created now for our parents will one day serve us as well.

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SUMMARY

1

In my terminology, “unregistered residential social services facilities” are residential- or hotel-type facilities which provide care to the extent corresponding to the residential social service designated “retirement home” [Section 49 of Act No. 108/2006 Coll., on social services, as amended) or “special regime home” [Section 50 of the Act] aside from accommodation and food/drinks.

2

The facilities visited have targeted the elderly and persons suffering from mental disorders who are dependent on care provided by another person. Their degree of dependence on care differs, ranging from the need of assistance in walking, personal hygiene and self-care to the need of day-long care for a bedridden person. The clients’ medical condition often requires nursing care.

3

In the visited facilities, the clients were not provided with care which they required due to their medical condition. This was predominately a result of the fact that the clients were given care by unqualified personnel carrying out tasks for which only medical personnel are authorised, regular records on the care provided and the needs of the clients were not kept and social services quality standards were not met. The material and technical equipment of the facilities was also not adjusted for the needs of the elderly and mentally disabled persons and in many aspects represented a risk to the clients (stairways too steep, dark corridors, no lifts present, etc.).

4

The Inspectorate of Social Services could not determine the quality of the care provided in these facilities since its competence covers only registered social services facilities.

5

I have identified ill-treatment in all the visited facilities. Depending on the circumstances, it consisted in insufficient or unsuitable foods and the absence of prevention of malnutrition, in amateurish provision of nursing care, in restrictions of the clients’ freedom of movement, in careless disposition of medication, in accelerating the onset of incontinence, in degrading hygienic conditions and in the lack of respect for privacy.

6

I consider the restrictions of the clients’ freedom of movement to be a major problem. The operators of all the visited facilities have prevented certain clients from leaving the facility and in some cases the clients were even locked in their rooms against their will. In some of the facilities, fixation tools and bed rails were used in a manner that also resulted in restriction of free movement. I stress that unregistered residential-type facilities may not restrict free movement of accommodated persons.

7

Aside from the health risks, a stay in an unregistered facility also represents a risk to the client's financial standing. The clients usually pay for their stay in the facility with their whole income – i.e. the old-age pension (facilities fail to let the clients retain 15 % of their income). In order to meet the required fee for their stay, some clients also clearly give the facility the allowance for care they receive. The recipient of the allowance is not authorised to hand it over to the residential facility and so the allowance may be withdrawn. This would further aggravate the client's financial standing since he/she would then incur debt. Finally, the contractual provisions are often ambiguous, which represents a risk for the client in the future since it is not clear what his/her obligations are.

8

The facilities' staff is also exposed to risk since their daily activities could give cause to administrative and criminal penalties. A number of activities routinely carried out by the staff are reserved for persons with a clearly defined education and authorisation pursuant to legal regulations. With respect to incorrectly provided care which in some cases could have led to a harm to the client's health, I believe that criminal offences of bodily harm caused by negligence, cruelty to a person entrusted into care, and restriction of personal freedom may come into consideration. I am greatly alarmed by the notion that legal responsibility should be borne solely by the staff in these facilities, which often have little idea concerning the nature of the entity that employs them and the fact that some of the acts of their superiors may not be legal.

9

Families, guardians and healthcare services providers (physicians) often have little idea that the facility where their close ones or patients are accommodated is not a registered provider of social services. They are then acting under mistaken assumptions (e.g. the guardian concludes a contract on provision of accommodation and services in a facility on behalf of the client, or a treatment facility for long-term patients recommends the facility to the client upon release, etc.). I call on physicians, guardians and relatives of the clients to always diligently verify whether the facility which they have contacted has an authorisation for provision of social services. This fact can be easily verified using the Register of Social Services Providers available at the website of the Ministry of Labour and Social Affairs (<http://iregistr.mpsv.cz>).

10

The systematic visits to nine unregistered facilities revealed that in a vast majority of cases the operators are well aware of their illegal activities (in contrast to the clients, their families and often also the staff) and are trying to "conceal" their activities using a trade license or a registration to provide field social services (personal assistance or care service) or abuse the institute of social care assistant. The law does not permit provision of social services on the basis of a trade license. Likewise, residential-type social services may not be provided on the basis of a registration for a field social service or using the services of social care assistants. The aforementioned ways of avoiding the duty to register for a residential social service represent circumvention of the law.

11

Some governmental authorities tolerate this illegal state of affairs or at least do not fully recognize it.

For instance, public guardians (municipalities) have signed contracts for provision of accommodation and services to persons entrusted in their care with such unregistered facilities. One regional branch of the Labour Office has tolerated the existence of an unregistered facility which has provided services through social care assistants. I am of the opinion that this does not happen on purpose, but rather because of the lack of information or recognition of the danger posed by unregistered residential social services facilities. I call on all governmental authorities to remain vigilant in dealings with "residential-type" facilities and always check with the Register whether the relevant facility has an authorisation to provide residential social services.

12

I call on public authorities to take action.

In the report, I formulate recommendations for Regional Authorities, municipal authorities of municipalities with extended competence, regional branches of the Labour Office and Regional Public Health Stations. I recommend specific steps for penalisation as well as prevention. However, the problem of unregistered services cannot be solved without an active participation of the government. State authorities must act now by providing support to people who are staying in these institution or who are about to enter them. I believe than for this support to be effective, it must include financial help.

13

I am formulating the following recommendations and pieces of advice:

- **Anyone who suspects that a facility with which he/she has been in contact is providing social services without authorisation may turn to the Regional Authority with an instigation. The Regional Authority has the power to investigate the situation and penalise the operator if appropriate.**
- **Nobody should send a person dependent on care into an unregistered residential social services facility or provide advice, instruction or help for that purpose.**
- **I warn healthcare services providers, in particular physicians, of the possibility of error and I recommend to verify the nature of the facility with which they are in contact. Depending on circumstances, they should also reduce the scope of the information concerning the client's medical condition they are communicating.**
- **To the unregistered residential social services facilities I recommend immediate creation of conditions for successful registration as residential social services and application for registration. Otherwise, they must terminate their activities.**

I) Systematic visits

Based on the provisions in Section 1 (3) and (4) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, the Public Defender of Rights carries out systematic visits to places (facilities) where persons restricted in their freedom are or may be present. The cause of the restriction may either be a decision of a public authority or it may result from dependence on the care provided.

The Public Defender of Rights has been carrying out systematic visits since 2006. Information on generalised findings concerning the situation in the individual types of facilities is released to the public. The information is available online¹ in order to serve as reference material for the recommendations of the Defender both to the public and to facilities yet to be visited.

The aim of the systematic visits is to strengthen the protection of persons against all forms of ill-treatment. Generally speaking, ill-treatment is defined as treatment which does not respect human dignity. In the extreme it can take the form of torture, cruel, inhuman or humiliating treatment or punishment; in its lesser forms it manifests as disrespect to human beings and their rights, a lack of respect for their social autonomy, privacy or their right to involvement in control over their own lives, and abuse of the dependence on care or a further intensification of such dependence. Formally speaking, ill-treatment may represent an infringement on the rights guaranteed by the Charter of Fundamental Rights and Freedoms,² international conventions, laws and subordinate legislation, as well as the failure to implement the more or less binding instructions, guidelines, standards of care, principles of good practice or procedures.

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1) Systematic visits to unregistered social services facilities

For my systematic visits in 2014, I selected those facilities which, aside from accommodation and food/drinks, also provide the clients with care, focusing on vulnerable groups of people such as frail elderly people or people with mental disorders in their activities. In this, they emulate residential social services provided to persons dependent on care, even though they lack authorisation to (registration for) such activities pursuant to Section 78 et seq. of Act No. 108/2006 Coll., on social services, as amended.

I have designated such facilities under the general term “unregistered residential social services facilities”.

I have based these visits on my experiences from two of the facilities visited in 2012: Domov důstojného stáří Harmony Líchovy (Harmony – Home for Retirement with Dignity in Líchovy) and Ubytovací zařízení pro seniory Tuchlovice (Residential Facility for the Elderly in Tuchlovice). (The facility in Líchovy ignored the recommendations

1 The Public Defender of Rights. Ochrana osob omezených na svobodě (Protection of Persons Restricted in their Freedom) [online]. Brno: 2006-2015 [retrieved 12 January 2015]. Available at: <http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/>.

2 Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., promulgating the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

and the Defender thus exercised the right to inform the public about the ill-treatment found there.³ On the other hand, the facility in Tuchlovice implemented a remedy.)

The reason why I decided to include this type of facilities in my programme of visits was the realisation that illegal provision of services is on the rise in the Czech Republic. The providers of these services focus on a highly vulnerable segment of the population (elderly and people with mental disorder) to whom they attempt to provide social services in residential-type facilities that would correspond to the residential social service designated “retirement home” [Section 49 of Act No. 108/2006 Coll., on social services) or “special regime home” [Section 50 of the Act]. Unauthorised provision of healthcare services (nursing care) often accompanies the above. The fact that these facilities are unregistered and therefore operate completely outside the bounds of the Social Services Act carries a serious risk of ill-treatment of the accommodated clients. To provide an example, such facilities do not have to meet social services quality standards⁴ and statutory duties of the provider, ensure provision of services by qualified staff, let the clients retain 15 % of their income after deducting the amount of payment for the services, and such facilities are also not subject to the competence of the Inspectorate of Social Services. For more information on the manifestations of unregistered residential social service as well as on my specific findings, visit <http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/neregistrovane-sluzby>.

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The facilities often present themselves as retirement homes on their web pages, in media and in contact with the clients, thus creating a false notion that they provide similar services as the registered social service “retirement home”.

2) Course of the visits

The systematic visits were unannounced, but the facility management was informed on site. The visits were carried out by the staff of the Office of the Public Defender of Rights; in one instance I participated in the visit personally. The visits consisted in an inspection of the facility, interviews with the staff and the clients, and further in observation and study of the documents (records on the client’s medical condition, daily reports, individualised plans, contracts, etc.). From these sources, I ascertained the scope of the services provided, the kind of clients that use the services, the kind of personnel that actually provides those services and the nature of the relationship between the personnel and the operator of the facility. A medical professional always took part in the visit as an external consultant of the Office of the Public Defender of Rights. After the visit, I sent the facility a report on the visit which reflected my findings and contained recommendations for remedial measures. I always invited the management of the facility to provide a written statement to my findings and recommendations within 30 days. I received this statement to the report from six out of nine of the facilities visited.

³ See the Public Defender of Rights. Špatné zacházení se seniory v Domově důstojného stáří Harmony v Lichově (Ill-treatment of Elderly People at Harmony – Home for Retirement with Dignity in Lichovy). In: Ochrance.cz [on-line]. Brno: Public Defender of Rights, 2012 [retrieved 12 January 2015]. Available at: <http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/sankce/sankce-lichovy/>.

⁴ Annex No. 2 to Decree No. 505/2006 Coll., implementing certain provisions of the Social Services Act, as amended.

II) Legal rules regulating the registration

Section 78 (1) of the Social Services Act stipulates that social services may be provided only on the basis of an authorisation for the provision of social services. The authorisation arises upon the issuance of the registration by the locally competent Regional Authority¹ according to the permanent or reported address of the relevant natural person or the registered office of the relevant legal entity. In order for the operator to obtain registration, it must meet a number of statutory requirements (e.g. it must ensure professional qualification and the absence of a criminal record on the part of all natural persons who will directly provide social services, provide for suitable hygienic conditions, material and technical means, etc.).

Subsequently, during the term of provision of social services, the provider is obliged to comply with the Social Services Act, social services quality standards, has to let the clients retain 15 % of their income, etc. The status of provider of social services brings the possibility for the client to use the allowance for care to pay for the services; the provider may also apply for a subsidy from the state budget.

The above-specified statutory requirements aim to guarantee the quality of the social services provided and in so doing protect the rights of their clients. Social services are provided to underprivileged people. In the Act, they are defined as persons in adverse social situations [Section 3 (b) of the Social Services Act], to whom social services provide assistance and support for the purposes of social integration or prevention of social exclusion [Section 3 (a) of the Act].



If the operator provides social services without a registration, it is guilty of the administrative offence of unauthorised provision of social services pursuant to Section 107 (1) of the Social Services Act, which falls within the local competence of the Regional Authority for the region where the facility is located. For such administrative offence, the Regional Authority may impose a fine of up to CZK 1,000,000 on an operator of the facility.

Registration is not required if assistance is provided by a close person or a social care assistant [Section 83 of the Social Services Act]. This provision is often misconstrued by the operators of unregistered facilities providing social services through social care assistants where they argue that this means they do not require registration ([page 28](#)).

¹ References to Regional Authorities in the text mean also the Municipal Authority of the Capital City of Prague.

III) Other activities of the Defender

After the first systematic visits, my predecessor JUDr. Pavel Varvařovský addressed the Ministry of Labour and Social Affairs with a plea to address the issue of unregistered residential social services facilities.

In April 2013, the Defender issued a Statement concerning the provision of social care on the basis of a trade license,¹ which he discussed with the Ministry of Labour and Social Affairs and the Ministry of Industry and Trade. In the Statement, the Defender invited the Ministry of Labour and Social Affairs to issue guidelines regulating the procedure of the Regional Authorities in penalising the administrative offence of provision of social services without authorisation.

At the same time, the Defender investigated the steps taken by the Prague City Hall and concluded that if an administrative body has grounds to suspect that an operator is providing social services without authorisation, it should initiate proceedings ex officio on the administrative offence of provision of social services without authorisation pursuant to Section 46 (1) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.²

In November 2013, authorised staff members of the Office of the Public Defender of Rights took part in the round table talks on “Provision of services to the elderly in facilities not registered as social services” held by the Ministry of Labour and Social Affairs. On this occasion, they informed staff members of the Ministry and the Regional Authorities on the general findings of the systematic visits in unregistered residential social services facilities and called for active penalisation of the administrative offence of unauthorised provision of social services pursuant to Section 107 (1) of the Social Services Act on the grounds of protection of the rights of clients.

In April 2014, I again informed the Ministry of Labour and Social Affairs that the steps taken by Regional Authorities in penalising of the administrative offence of unauthorised provision of social services are inconsistent and it is often very difficult to bear the onus of proof in proving unauthorised provision of social service; for that reason I again advised to create guidelines to unify the procedure of the Regional Authorities. For the purposes of work on the guidelines, I provided the Ministry with an analysis of unregistered residential social services facilities which was based on the findings obtained from the systematic visits.

After carrying out the systematic visits, I informed the public of my findings and in some cases I informed also the prosecuting bodies since I had reasons to suspect that a criminal offence may have been committed.

In the majority of cases, I also delivered my findings to the Regional Authorities for the purpose of initiating proceedings on the administrative offence of unauthorised provision of social services and I continue to monitor the activities of the Regional Authorities. I also focused on the activities of a number of public guardians who placed persons entrusted in their care to unregistered residential social services facilities. On the basis of these findings, I issued the Statement of the Public Defender of Rights concerning the performance of public guardianship and provision of social service.

This summary report represents the peak of my efforts to contribute to solving the issue of unregistered residential social services. It is meant to serve public authorities, providers of healthcare and social services and in particular the clients of these services and their families.

1 The Public Defender of Rights. Statement of the Public Defender of Rights on the Provision of Social Care on the Basis of a Trade Licence [online]. Brno: © The Office of the Public Defender of Rights [retrieved 12 January 2015]. Available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/Stanovisko-soc_sluzby_po_zivnostensku.pdf.

2 The Public Defender of Rights reached this conclusion in the final statement on case Ref. No. 2416/2012/VOP/MLU. Public Defender of Rights [online]. Brno: © The Office of the Public Defender of Rights [retrieved 12 January 2015]. Available at: http://www.ochrance.cz/fileadmin/user_upload/STANOVISKA/ochrana_osob_omezenych_na_svobodeZ2416-2012-MLU-ZSO.pdf.

IV) Facilities visited

1) Information on the facilities visited

Employees of the Office of the Public Defender of Rights visited nine unregistered residential social services facilities, of which seven are operated by a legal entity (limited liability company, benevolent society) and two facilities are operated by a natural person – entrepreneur. I have found ill-treatment of clients in all the visited facilities.

The facilities are providing social services on the basis of a trade licence (all nine facilities) and some also on the basis of registration as providers of social services in the form of beneficial services in the Register of Beneficiary Societies (two facilities).¹ Two facilities had authorisations to provide field social services. Only one of the facilities responded to my recommendations and obtained registration to provide the residential social service “special regime home” (the Residential Facility for the Elderly in Tuchlovice); in the other cases the illegal state of affairs persists.

The facility buildings usually had several floors and had previously been used as accommodation facilities for the general public, hotels or a family homes. They included multi-bed rooms (sometimes also single-bed rooms). The client’s room often included positioning beds, beds with bed rails and handles, toilet chairs, incontinence aids and compensatory aids. In some facilities there was also medication present in the rooms (drugs, ointments, bandages); in other facilities medication was stored centrally. In some facilities, rebandaging equipment was found; in one facility a syringe with a tube from an infusion set used to hydrate a client was present.

Further details on the facilities visited, including their capacity, are included in the table below.²

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ill-treatment
was found in
each facility
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buildings of two of the facilities visited

1 In the sense of the repealed Act No. 248/1995 Coll., on benevolent associations.

2 Information on allowance for care may be incomplete – it follows from information received during the visit.

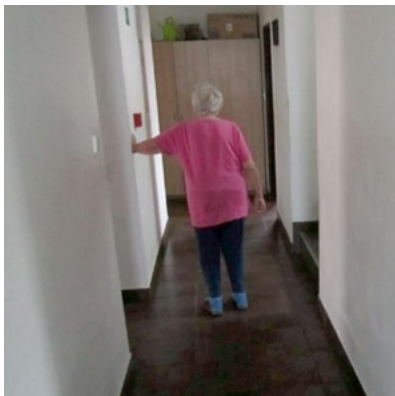
Tab. 1: Overview of the facilities visited

facility	operator	capacity	number of clients	number of clients with allowance for care (degree)				municipality	region
				1.	2.	3.	4.		
Senior dům Marta (Marta Senior House)	Victoriana, s. r. o.	40	38	6	2	0	0	Říčany u Prahy	Central Bohemia
Domov Na kopci (Home on the Hill)	Domov Na kopci, s. r. o.	700	52	10	6	1	2	Červený Újezd	Ústecký
Penzion pro seniory Atrium (Atrium – Guest-house for the Elderly)	Společnost spokojeného stáří, o. p. s.	50	51	4	16	15	7	Liberec	Liberec
Centrum komplexních služeb pro rodinu a domácnost (Comprehensive Family and Household Services Centre)	Retol – Agro, spol. s r. o.	20	17	4	1	2	6	Kunštát na Moravě	Southern Moravia
Penzion Jitřenka (Jitřenka Guest-house)	Eva Žaludová	10	6	0	1	1	1	Brno	Southern Moravia
Domov Petruška (Petruška Home)	Petra Brožová	24	23	3	1	0	2	Šestajovice	Central Bohemia
Domov důstojného stáří Harmony Lichovy (Harmony – Home for Retirement with Dignity in Lichovy)	Verdana, s. r. o.	24	23	3	1	0	2	Lichovy	Central Bohemia
Penzion spokojeného stáří Luhačovice (Guest-house for Comfortable Retirement in Luhačovice)	Luhačovická o. p. s.	100	54	10	12	12	10	Luhačovice	Zlín
Ubytovací zařízení pro seniory Tuchlovice (Residential Facility for the Elderly in Tuchlovice)	Senior Home, s. r. o.	50	49	–	–	–	–	Tuchlovice	Central Bohemia

Most of the facilities were visited in 2014; the facility in Kunštát na Moravě was visited in 2013 and the facilities in Lichovy and Tuchlovice in 2012 – the facility in Tuchlovice subsequently accepted the Defender's recommendation and obtained registration to provide social services.

2) Information on the clients of the facilities visited

Persons dependent on the care provided were present in varying degree in all the visited facilities. This included different degrees of dependence on care, from dependence in degree I (slight dependence) to degree IV (total dependence).³ According to the available documentation, they suffered from mental disorders (Alzheimer's disease, bipolar affective disorder, alcohol-related dementia, organic brain syndrome, paranoid schizophrenia, etc.), incontinence, impaired mobility, food intake problems, movement impairment, etc. In some facilities, the cli-



movement in corridors without railings or markings



bedridden catheterised person – the outlet is in a plastic bucket

ents were also fully immobile and completely dependent on the care provided. Diabetics, catheterised clients, clients with PEG (percutaneous endoscopic gastrostomy) and tracheostomy were present in some facilities. In general, I concluded that, in all of the facilities visited, persons were present whose medical condition required provision of care, including nursing and rehabilitation care (clients with decubitus ulcers, injuries, recovering from a surgery, etc.).

The fact that the facilities focused on persons dependent on care was often obvious from their web pages, the contracts concluded with the clients, various advertisements, but also from the very environment in the facilities (page 12). The contract on provision of services in one of the facilities defines the target group as follows: *“Services are provided to persons who are in difficult life situations, or to persons in situations where they require the help of another natural person.”*

³ Section 8 of the Social Services Act.

3) Care provided to clients in the facilities visited

The operators provided accommodation and food/drinks to clients in all the facilities visited. The staff was providing the clients with assistance in self-care, personal hygiene, limited mobilisation, social-therapeutic activities and assistance in the exercise of rights, legitimate interests and in running personal errands. Specifically, the staff assisted the clients with dressing up, movement (moving to the bed, to the toilet, to the dining area, during outings), change of incontinence aids, eating, personal hygiene, managing the clients' medication, etc. Furthermore, the staff was in communication with the clients' doctors and took care of administrative matters (particularly financial). The staff used special regime with some of the clients: they controlled their movement and personal items, set a rigid daily schedule without individualisation, and issued bans on leaving the facility. I have documented a number of cases of restriction of the freedom of movement of persons (improvised straps, bed rails, strapping to a chair). I cannot say that the staff tried to ensure that the clients stay in contact with the social environment; on the contrary, I observed tendencies to isolate them from the society and deepen their dependence on care.

The specified scope of care tasks correspond to the residential social service designated "retirement home" [Section 49 (2) of Act No. 108/2006 Coll., on social services] and "special regime home" [Section 50 (2) of the Act]. A facility is not authorised to provide services resembling residential social service if it has not obtained authorisation pursuant to Section 78 et seq. of the Social Services Act.

In addition to care tasks, the staff also provided nursing care to some of the clients. Treatment and rebandaging of decubitus ulcers, serving of food through PEG, administration of medication (including psychopharmaceuticals, also through intramuscular injections), treating wounds, glycemia testing using fingerstick measurement, subcutaneous insulin application, and other forms of nursing care. The external consultant for the Office noted a client in one of the facilities who suffered of multiple stage III and IV decubitus ulcers (the largest with diameter of 10cm) which were rebandaged daily by the staff; rebandaging of tracheostomy was also performed.

Nursing care is a form of health care under Section 5 (2)(g) of Act No. 372/2011 Coll., on healthcare services and the conditions for their provision, as amended, which may be performed by a registered provider of health or social services, through persons qualified to perform a medical profession or to perform activities associated with the provision of healthcare services [Section 11 of the Healthcare Services Act]. Pursuant



storage of medical products, including products for treatment of decubitus ulcers, in the rooms with a bedridden client



storage of medication for all the clients in a cabinet in the "nurses station"

to Decree No. 55/2011 Coll., on activities of healthcare workers and other professionals, as amended, some of the above activities may only be independently carried out by a healthcare worker meeting the educational qualification minimum of “general registered nurse” employed by a registered provider of social or healthcare services. Thus, employees of unregistered providers of residential social services may not provide any nursing care tasks.

4) Personnel in care

Care is provided to the clients in the facilities by various members of the staff: nurses, social care assistants, care service,⁴ or personal assistance.⁵ In all of the facilities visited, persons with no professional qualifications in the field of social and healthcare services participated in care (e.g. shop assistant with vocational training, cook, receptionist), although with job titles such as “carer”, “nurse”, etc. These persons were also participating in various nursing care tasks (administration of medication, rebandaging of decubitus ulcers, treating of wounds, etc.).

Nursing care as provided by non-professionals exposed the clients to a considerable risk of health damage. The staff members themselves are balancing on the edge of an administrative or, as the case may be, criminal penalty. A natural person faces the risk of penalty for the infraction of provision of healthcare services without authorisation under Section 114 (1)(a) of the Healthcare Services Act. If damage to the client’s health has occurred, there is also the risk of criminal penalty for the criminal offence of bodily harm caused by negligence [Section 147 of Act No. 40/2009 Coll., the Criminal Code, as amended), or cruelty to a person entrusted into care [Section 198 of the Criminal Code).

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unqualified
personnel
participated
in care

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The nature of the relationship between the persons working in the facilities visited and their operators was not always clear from the viewpoint of the law (according to my sources, in some cases a proper labour-law relationship was not concluded and there was no signed employment contract]. However, I believe that a more detailed analysis would prove that the relationship was that of dependent work. A common feature of the characteristic signs of dependent work is



client’s bed with an urinary catheter

4 Section 40 of the Social Services Act.

5 Section 39 of the Social Services Act.

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the personnel
is exposed to
a risk of penalty
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a personal or economic dependence of the employee on the employer.⁶ In all of the facilities visited, the staff was in a subordinate position vis-à-vis the operator. The operator was giving tasks, managed, controlled and provided a pay to the staff. This means it was in fact a dependent work relationship. However, if the employees had not concluded a proper employment contract, this could have constituted illegal work for which both the employer and the employee may face a penalty.

I have encountered arguments from the operators of the facilities who claimed that they were providing only accommodation and food/drinks and that they only mediate the provision of care, which is provided by social care assistants, care services, or personal assistants. They wished to create the illusion that they themselves were not providing any social or healthcare services and thus were not committing the

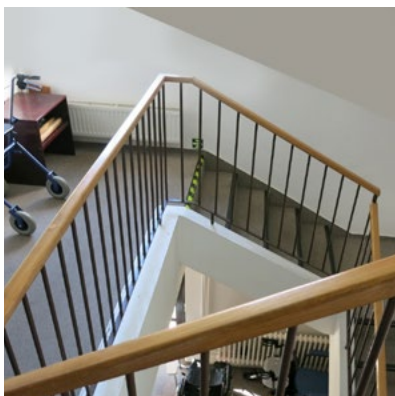
administrative offence of unauthorised provision of social and healthcare services, since all care provided (including nursing care) was provided simply by persons independent of them. (For more information on the issue of social care assistants, care services and personal assistance in unregistered residential social services facilities, see [pages 28 and 29](#).)

6 Judgement of the Supreme Administrative Court of 13 February 2014, Ref. No. 6 Ads 46/2013-35, www.nssoud.cz. Also: “*Dependent work is always performed on the employer’s behalf, for a salary, pay or remuneration for work, during working hours or at otherwise agreed or determined time at the employer’s workplace, or at a place that is otherwise agreed, at the employer’s expense and responsibility.*” BĚLINA, Miroslav et al. *Zákoník práce. Komentář.* (Labour Code. Commentary.) 2nd ed. [online]. Prague: C. H. Beck, 2010, p. 15. [retrieved 12 January 2015]. Available at: <https://www.beck-online.cz/bo/document-view.seam?documentId=nnptembrgbpwk232geytmlltmjptembqgzptenrs15ygmmq>.

V) Common shortcomings



an obstacle in the form of uneven floor level hindering movement in wheelchair



staircase over which some clients were moved manually



a client's room (walls are tiled)

1) Inadequate material and technical equipment

Facilities such as a lodging house or a hotel a priori do not have to conform to the same requirements for internal equipment or environmental modifications as the social services facilities, i.e. requirements beyond the scope of the general construction and public health requirements. However, given the fact that the facilities visited focus on persons dependent on assistance of another person, I will draw attention to borderline or unacceptable cases in terms of the dignity and safety of the clients and the staff.

People with dementia were often present in the facilities. Dementia causes problems with spatial orientation, recognition of the person's own room, the toilet, wardrobe, bed, etc.¹ However, markings or any kind of illustration for ease of orientation were missing from the common premises (staircases, corridors), client's rooms and appurtenances. Movement in corridors and staircases was also very problematic since they often lacked any kind of safety elements, thus creating a serious risk of fall.

The buildings were usually not barrier-free. In one facility the staff had to bring the clients from upper floors manually down the stairs; however, people on wheelchairs and bed-ridden persons were still given rooms in the upper floor. Some of the clients had not left their rooms for months.

None of the facilities was equipped with an effective signalling equipment allowing to call for assistance, although this was often the only way for bed-ridden clients to call the staff in case of need. Absence of a suitable and safe space outdoors for outings was also a common issue in most of the facilities.

2) Insufficient hygiene

In most of the facilities visited, there was a discernible smell of urine and faeces during the visit. The need for increased cleaning and assistance in the area of self-maintenance activities was documented by the records of frequent cases of accidental urinary and faecal leakage in bed or on

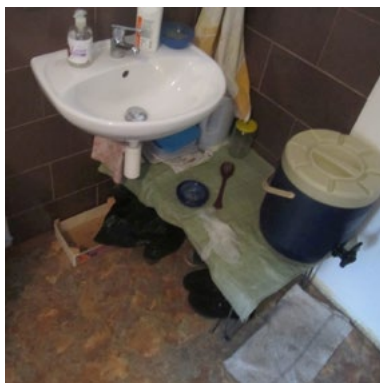
¹ HOLMEROVÁ, Iva, JAROLÍMOVÁ, Eva, SUCHÁ, Jitka et al. Péče o pacienty s kognitivní poruchou (Care of Patients with Cognitive Disorders). Prague: Gerontologické centrum, 2007, Vážka series, p. 177. ISBN 978-80-254-0 177-4.

the floor included in the documentation (usually referred to as “daily reports”). Despite the fact that most clients suffered from incontinence, they were often bathed just once per week.

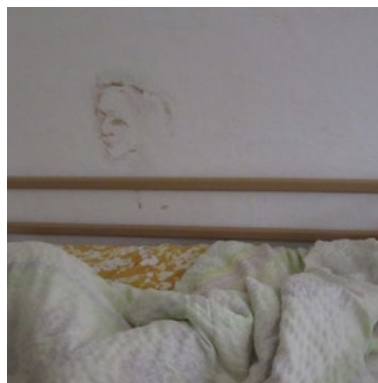
In one of the facilities there was a “picture” made of faeces over the bed in a client’s room.

Other findings: cleaning articles unsuitably placed next to food; mouse droppings; laundry kept in piles on the floor.

In most of the facilities visited, the hygienic conditions bordered on infringement of human dignity and in one occasion I had to note that the severity of the hygienic conditions qualified as ill-treatment.



insufficient hygienic conditions in a client’s room



“picture” made of faeces on the wall next to a client’s bed



carpet soiled with blood in a client’s room

3) Low-quality care

In all the facilities visited, the low quality of the care provided qualified as ill-treatment in terms of its severity. One of the causes of ill-treatment of clients is the fact that the staff do not have the necessary qualifications to provide care in the scope in which it was actually provided. This was especially clear in the case of nursing care, which was usually provided on a completely non-professional basis. The way care was provided was random, intuitive and amateurish, not standardised as required by the Social Services Act together with the social services quality standards. When providing care, the staff often referred to the client’s doctors who in some cases ordered nursing care, not aware that nobody in the facility could legally provide it.

Examples of shortcomings: administration of medication by unqualified staff using insufficient tools (i.e. various schedules), misuse of psychopharmaceuticals, neglectful storage of medication (there was a risk of unauthorised use of medication and overdose), rebandaging of decubitus ulcers



bed with a home-made bed-rail

and wounds by non-professionals, no prevention of falls, absence of a bladder voiding regimen and acceleration of the onset of incontinence.

The above was associated with negligent keeping of records of the care provided, which lacked the necessary information value and thus could not represent a sufficient guarantee of continuity of care. The “daily reports” often showed that the clients were falling, did not take in food and fluids, their mental disability was progressing, they began wetting themselves, had blood in the urine, etc., but the staff did not work with this information any further which led to further aggravation of the clients’ medical condition. This fact is also documented by some of the found discharge reports issued by hospitals where the clients were hospitalised. For instance one of the reports states: *“Patient sent to RH”² due to febrile condition with urinary tract infection, strong dehydration and very concentrated urine with signs of inflammation.*” In a different case, a client returned from the hospital after a hip surgery where the doctor ordered rehabilitation; however, there was nobody in the facility who could provide it and the client was placed in a room in the upper-floor with no lift available.

4) Unsuitable foods and risk of malnutrition

As I stated above, the lack of professional qualification on the part of the staff together with negligent keeping of records of the care provided contributed to the ill-treatment of the clients. The above is true also for provision of foods to the clients, since none of the facilities visited were systematically monitoring the clients’ weight and their intake of food and fluids, there was no reaction if clients were not finishing their foods or drinks, and no active co-operation with a nutritional therapist.

The situation is especially serious when persons with dementia are concerned, since they have specific nutritional needs.³ Foods were not adjusted to their needs – they were not varied and nutritious enough and on certain occasions there was not even enough food. Foods provided to diabetics were not suitable to their needs. In one of the facilities,



food served in degrading plastic bowls

2 By “RH”, the physician probably meant “retirement home”, i.e. in this case an unregistered residential social services facility and not the registered social service designated “retirement home”.

3 Alzheimer’s disease in particular is characterised by an increased energy output and studies have also shown a spontaneous loss of weight in patients. For this reason, the care for these clients must include a nutritionally and energetically balanced diet reflecting also the patient’s individual needs. For more information on the nutrition of elderly people, see: HOLMEROVÁ, Iva, JURÁŠKOVÁ, Božena, ZIKMUNDOVÁ, Květa et al. *Vybrané kapitoly z gerontologie (Selected Chapters from Gerontology)*. 3rd reworked and supplemented ed. [online]. Prague: EV public relations, 2007, pp. 101-110. [retrieved 12 January 2015]. Available at: <http://www.geriatrie.cz/dokumenty/VybrKapZGerontologie.pdf>.

NAVRÁTILOVÁ, Miroslava. *Nutriční problematika u Alzheimerovy choroby, vztah výživy a kognitivních funkcí u osob trpících demencí (výsledky výzkumu)*. Issues of Nutrition Related to Alzheimer’s Disease and the Relation between Nutrition and Cognitive Functions in Persons Suffering from Dementia (Research Results). In: *Ochrana práv seniorů v instituci s důrazem na osoby s demencí (Protection of Rights of the Elderly in Institutions, Focusing in Particular on Persons with Dementia)*. Brno: Office of the Public Defender of Rights, 2014, pp. 25-33. ISBN 978-80-87949-03-0. Also available at: <http://spolecne.ochrance.cz/dokumenty-ke-stazeni/konference/konference-ochrana-prav-senioru-v-instituci-s-durazem-na-osoby-s-demenci/>.

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some of
the clients
suffered from
malnutrition

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foods for diabetics consisted in smaller servings of side dishes with main courses, use of honey instead of sugar and the provision of a second dinner.

The risk of malnutrition was not evaluated for the individual clients, not even for the bed-ridden ones who were most in danger of malnutrition. In some cases the external consultant for the Office found malnutrition in clients. The employees of the Office witnessed taking away of unfinished meals where no information of the fact was subsequently recorded and evaluated.

The fact that the staff did not know how to react to the clients' nutritional needs are documented by the records in the "daily reports" and reports from hospitals, where clients with dehydration and malnutrition

were moved. For example, a daily report from one of the facilities states: *"[The client] refuses drinks, spits it out, not even the syringe helped; we think her body is becoming dehydrated."*

In some of the facilities, I encountered degrading conditions in the serving of meals: a carer was feeding an immobile client in a rush while standing. Another, blind client received no assistance at all. The staff often served meals in unsightly plastic bowls (in one case plastic food storage boxes) and the clients were not given the whole set of cutlery, but just the spoon.

In some cases the staff served meals cold and sometimes only the leftovers were served (e.g. previous day's lunch); in one case I even encountered foods with expired use-before date.

5) Insufficient safety provisions

Taking into consideration the needs of the clients in the facilities visited (page 12), their safety during their stay in the facility was not adequately ensured. Staircases and corridors often lacked railings, the corridors were dark and the staircases too steep. In some of the facilities, the thresholds in doorways were elevated, which increased the risk of trip and fall.

Falls were very common. The staff did not systematically evaluate the causes of the falls and did not introduce any measures to prevent or at least minimise their occurrence in the future. Records of the clients' falls were included in the "daily reports", but these often merely noted that the fall had occurred. There was no effort to prevent their re-occurrence. Quotation from the "daily reports" of one of the facilities: *"Ms H. – skin laceration on the leg. We don't know how it happened." "Mr P. – fell from a chair, laceration on the head. P. P. has to be watched; in case of vomiting, call emergency; Ms K. R. – fell from the stairs near the dining room." "Head injury, a lot of blood, called an ambulance, returned back." "Mr R. – fell, skin laceration on the left arm." "Ms N. – fell in the corridor on her way to the dining room, hit her head but isn't complaining, skin scratched on the left arm, please rebandage." "Ms V. – wetted herself, leg swollen,*

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there was
no signalling
equipment

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couldn't stand on it; sent her to RTG, found it only sprained." "Ms P. – fell, lacerations on the head – treated. D. – night shift, pay more attention; she fell during the night!!" "Ms V. – fell two days ago, said nothing to anybody; swollen knees found today, instructed to arrange an appointment with her doctor, please make sure she does it."

I noted on page 18 that none of the facilities had an effective signaling equipment to call the staff if need of assistance [one of the facilities had rooms equipped with housephones (landline), but some of them did not work and others connected to the reception desk where no staff members were present during half of the night shift]. In one case I found that no staff was present in the facility during the night (7 p.m. to 7 a.m.) and the clients – including those requiring constant assistance – were left on their own for the whole night. Some of the clients were even left locked in their rooms.

6) Restriction of the freedom of movement of clients

I encountered restriction of free movement in each of the visited facilities – in various ways and with varying intensity. Most often the restriction meant that the clients were prevented from leaving the facility or their room. I had reason to suspect that some facilities used sedative medication to restrict the clients' movement. Bed rails and fixation straps were sometimes used for restriction purposes.

Selected clients were locked in their rooms for the night in two of the facilities (especially very restless clients). Quotation from a "daily report": "Mrs B. roams in the corridors in a t-shirt, without underpants – put to bed, locked. p. again struggling to get out of the room, saying he needs fresh air. p. banged on the door to say that L. had wetted her pants; it'll surely be a difficult one (3.50 a. m.); Mrs L. banged on the door ;-), L. bashed the door – Heeelp :-(. The practice in one of the facilities was that the employees locked the most difficult clients in their rooms at 7.00 p. m. and left the facility. They did not return until 7.00 in the morning.

All the visited facilities restricted the movement of clients outside the facility. As a rule, the employees did not allow persons with symptoms of a mental illness to leave the facility, explaining this by fear of their safety. In one facility clients had to show a permit to leave, in another one it was necessary to obtain consent from the head of the facility and in one case the receptionist had to be asked for permission to leave. In two cases



homemade fixation straps



room with clients locked from outside



"common for all" medicine Haloperidol

a client had fled the facility and was brought back by the Police. As a rule, the clients were not allowed to leave the facility at night.

In residential facilities, which do not fall among providers of medical or social services, any form of restriction of the clients' movement is impermissible. The nature and scope of the above-described practice is very similar to the regime of involuntary hospitalisation or imprisonment and has an intensity which, in my opinion, amounts to the crime of restriction of personal freedom under Section 171 of the Criminal Code. People who may be endangered in independent movement should receive a suitable social service that would satisfy their needs (especially "special regime home" under Section 50 of the Social Services Act).

Sedatives (Haloperidol, Tramal, Tiapridal, Buronil, etc.) were available to the employees in all the visited facilities. The employees administered psychopharmaceuticals to the clients on the basis of the physician's regular order (precisely determined dosing for daily administration – for example, prescribed as "Buronil 1-0-1"), on the basis of the physician's arbitrary order (outside regular administration, for example as "Buronil 2 tablets in case of unrest") as well as according to the employees' discretion, entirely without prescription by a physician. Quotation from the "daily reports" of several facilities: "P. K. – shouts, given a sleeping pill, wanted light. Did not sleep all night." "P.K. – at 8.00 p. m.. 1 Buronil, can't sleep..." "Mrs L. – very restless – administered Lexaurin"; record of the administration of one half of a Haloperidol tablet 1.5 "at the director's recommendation".

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some clients
were locked
in their
rooms during
the night “

In social services facilities, the administration of a sedative other than on the basis of the regular orders of a physician may represent a measure restricting the freedom of movement or also ad hoc administration of a drug prescribed by a physician for specific foreseen and clearly defined situations. If the administration of medication is aimed at restricting the freedom of movement of a client (walking, getting up from bed, touching objects or persons, etc.), this will mostly be a measure restricting the freedom of movement under the Social Services Act. A situation where a drug is administered to a client due to aggressive behaviour is also a measure restricting the freedom of movement. The law stipulates stringent rules for the use of measures restricting the freedom of movement; amongst other things, it requires the presence of a physician. An incorrectly administered sedative may endanger the client's health or even life.

It is impermissible for the employees of residential-type facilities to administer sedatives – still less in order to manage a person's restlessness or aggression. As they do not represent providers of health services (not even in the sense of Section 36 of the Social Services Act), they have no statutory authorisation to administer medicines. I offered the prosecuting bodies the legal view that the administration of sedatives with a view to restricting a client's movement may represent the crime of restriction of personal freedom under Section 171 of the Criminal Code.

The authorised employees of the Office noted the use of bed rails and fixation straps in some of the visited facilities. The use of these means is also recorded in the documentation of the care provided. Quotation from the "daily reports" of the visited facilities: "Mrs H. – again legs over the barrier on the bed (must not have any other barrier at request of the evening shift), Mrs L. – don't install the barrier for the daytime, she can get over it." "If someone interested in placement comes here, nobody will be fixated in the common areas. And be so kind as to try and cover the fixation tools when making an empty bed."

Bed rails represent a standard and legal means for the provision of nursing care and for preventing falls from the bed. However, it must be noted that they can equally cause an unauthorised restriction of the freedom of movement, in a situation where the client is able to leave the bed independently but is prevented from this by raised bed rails. Considering that bed rails are a care intervention, they may not be used in a residential facility.

7) Interference with privacy



personal documents stored in an unlocked drawer

One of the problems monitored during the visits was the privacy of clients. Exchange of incontinence aids and assistance with hygienic activities in the presence of other persons without using screens was a frequent violation. It is unacceptable to let a client be watched by others when receiving delicate care. A frequent problem was a lack of privacy in using sanitary conveniences (shower, toilet) because the doors were not lockable or provided with signals showing that the room is occupied (for example, a scutcheon). In this arrangement, anyone could enter and see the client undressed.

Some of the visited facilities also interfered with the privacy of their clients by denying them the possibility of locking the room, personal items in a cabinet, bedside table, etc. and the clients had to tolerate checks of their personal items carried out by the employees. Regime measures that are capable of affecting the clients' privacy can be accepted in facilities providing social or healthcare services (for example, it is acceptable that after evaluating all risks, a client with a mental disorder is not permitted to lock his/her room). However, this does not apply to residential-type facilities where the clients are in the position of hotel guests.

8) Personal data protection

All the visited facilities processed personal and sensitive data⁴ of their clients. These included data contained in service provision contracts, documents gathered on the clients' health, (official) documents stored, records made, etc. A wide range of persons had access to these data. Nothing suggested that the facilities had obtained the clients' consent to

⁴ The Personal Data Protection Act provides that sensitive data means "personal data on nationality, race or ethnic origin, political attitudes, membership of trade union organisations, religion and philosophical belief, conviction of a crime, state of health and sexual life of the data subject and genetic data of the data subject; sensitive data also include biometric data allowing for direct identification or authentication of the data subject."

the processing of sensitive data. Health information, which constitutes sensitive data, is thus processed at variance with the law (without express consent⁵).

Under Section 13 of Act No. 101/2000 Coll., on personal data protection and on amendment to certain laws, a facility must take such measures as to prevent any unauthorised or random access to personal data, unauthorised processing or other misuse of data. In reality, this duty was not complied with in the visited facilities because documents containing personal data were most often kept in unlocked rooms and virtually anyone was able to examine them.

It is appropriate to provide brief information on the legislation regulating disclosure of information concerning health by physicians: a provider of healthcare services is authorised to disclose the minimum information required to ensure care or to protect a patient's health, to the persons who will care for the patient. 6 A physician may not provide any other information to the employees of a residential facility without the patient's consent. (For more on this, see [page 37](#).)

Identity cards and insurance cards are taken away from the clients and stored centrally in some of the visited facilities. Again, nothing suggested that the clients have given consent to having their personal documents kept in custody. It should be pointed out that pursuant to Section 15a (1) of Act No. 328/1999 Coll., on citizen's identity cards, as amended, it is prohibited to take away one's identity card upon entry to premises or properties. An accommodation facility is not authorised to take away identity cards and other documents from their clients. If the facility keeps such documents on the basis of the explicit request of a client (documented by written consent), and the client hands the documents over for custody, it is desirable to store them in a separate lockable space, to specify access authorisation and to establish access records.

9) Financial dependence on the operator

The facilities concerned are not registered providers of residential social services and do not follow the rules contained in the Social Services Act; as such they do not allow their clients to retain a 15 % balance of their income [cf. Section 73 (3) of the Social Services Act], and the limits for a maximum price for services as in social services also do not apply.

The amounts of payments varied and they sometimes differed even within a single facility. The head of one of the facilities stated that the clients paid for the services "as much as they have". The same system is applied also in some of the other visited facilities. In these cases, the amounts are exactly determined in the service provision

5 Section 9 (a) of the Personal Data Protection Act: "Sensitive data may be processed only if the data subject provides his/her express consent to the processing. When granting the consent, the data subject must be informed of the purpose of processing and for what personal data the consent is being granted, to which controller and for what period of time. The controller must be capable of demonstrating the existence of the consent of the data subject to personal data processing throughout the entire period of processing. The controller is obliged to advise the data subject of his rights pursuant to Section 12 and 21."

6 Section 31 (6) of the Healthcare Services Act: "If required by the state of health or nature of a patient's disease, the provider is authorised to disclose information required to ensure care or to protect the patient's health, to the persons who will care for the patient in person."

contract without reflecting the financial situation of the client or whether s/he pays for the services using his/her pension or allowance for care. The amount of payments varies in different facilities and their calculation is often undecipherable and chaotic. This is suspicious and also potentially dangerous for the client considering the lack of clarity regarding the nature of his/her commitment.

To make a very general conclusion regarding the amount of payments in the visited facilities, the average was around CZK 15,000 but in one of the facilities the upper limit was no less than CZK 26,500.

The clients often have the entire income taken away, which increases their financial dependence on the operator and substantially diminishes their chance for leaving the facility on their own.

It was common that the payments were set higher than the client's income, and it is quite obvious then that the set amount was obtained by collecting the allowance for care. The problem is that paying the allowance to an accommodation facility is at variance with the Social Services Act. Allowance for care serves exclusively to pay for care provided by a registered provider of social services, social care assistant or related person. The manner of utilisation of allowance for care is inspected by the relevant regional branch of the Labour Office [Section 29 (1) (b) of the Social Services Act] and it may be withdrawn in the above-described situation. This could be another blow for the client's financial standing, further worsening his/her social situation.

VI) Circumvention of mandatory registration

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provision of social services without registration constitutes an offence

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Section 78 (1) of the Social Services Act stipulates that social services may be provided only on the basis of an authorisation for the provision of social services. If the operator wishes to operate the facility as a residential social service, it must obtain an authorisation for the provision of, for example, the “retirement home” service [Section 49 of the Social Services Act] or “special regime home” [Section 50 of the Act]. If the operator provides the social service without registration, it is guilty of the administrative offence of unauthorised provision of social services [Section 107 (1) of the Social Services Act].

All the operators of the visited facilities identically state that they do not violate any law in the provision of their residential services because they provide services on the basis of a trade licence, through social care assistants, or have registration for the social service of personal assistance or care service.

1) Provision of services on the basis of a trade licence

The operators often argued in their statements on the report from the visits that they do not violate the Social Services Act because they operate the services on the basis of a valid trade licence “for accommodation service”, “for the provision of services of personal nature and for personal hygiene”, or “for the provision of services for family and home”.¹ I cannot agree with this argument. Act No. 455/1999 Coll., on business in trade, as amended, stipulates in Section 3 (3)(af) that the provision of social services does not constitute a trade. Analogously, Government Regulation No. 278/2008 Coll., on the contents of individual trades, stipulates that the activity of “provision of services for family and home” does not comprise the provision of social services under the Social Services Act.

This is not a mere formality, as is indeed documented in this report. The Social Services Act requires registration for residential social services, which should guarantee at least a minimum standard of the provided care and protection of the rights of clients. The registration requirement may not be substituted by a trade licence under the Trade Act and the operator may not select a regime of its own choice. The crucial point is whether the service being provided represents a social service according to the characteristic features defined in the Social Services Act.

My predecessor observed that “*what is defined in the Social Services Act as, for example, a retirement home, is sufficiently clear and it is exclusive. Therefore, it cannot be given an additional shape in a different regime, e.g. through accumulation of trade licences.*”² He further concluded that “*the activities of the operators of hotel*

¹ See par. 55, 78 and 79 of Annex No. 4 to the Trade Licensing Act.

² The Public Defender of Rights. Statement of the Public Defender of Rights on the Provision of Social Care on the Basis of a Trade Licence [online]. Brno: © The Office of the Public Defender of Rights [retrieved 12 January 2015]. Available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2013/Stanovisko-soc_sluzby_po_zivnostensku.pdf.

facilities that also offer elderly people meals and comprehensive care (in the sense of the care stipulated by law in relation to a retirement home) are illegal”,³ and may be punishable under criminal law.

2) Use of the social care assistant

In two of the nine facilities visited, clients received care from social care assistants. The concept is laid down in Section 83 of the Social Services Act. Registration for the provision of social services is not required for the care provided by social care assistants; it is sufficient for the assistant to conclude a written contract with the client on the provision of assistance and to satisfy the legal requirements: the assistant must be a natural person over 18 years of age in an appropriate health condition.

The providers of the operators of unregistered residential social services facilities argue that they provide their clients only with accommodation and catering and that they merely arrange care, the latter being provided by a social care assistant, including nursing care. However, my investigation revealed that the operators made shift schedules to be followed by the assistants, and the operators also managed and checked the assistants’ work and provided remuneration for the same. The assistants were unable to specify the particular clients with whom they had concluded the contract on the provision of assistance (the contracts were kept by the operator) and provided care also to clients with whom they had no contract. The clients delivered their allowance for care directly to the operator and the latter redistributed it to the assistants as their salary. Thus, the assistants in fact performed dependent work.

I must stress that the social care assistant is a concept aimed at enabling the provision of assistance and care in the client’s natural social environment (typically at the client at home), rather than substituting the personnel of a residential social services facility. The Ministry of Labour and Social Affairs is of the same opinion.⁴ I am convinced that the facilities have recruited the social care assistants solely with a view to circumventing the requirement for registration of the social service under Section 78 et seq. of the Social Services Act and operating outside the system of social services.



” they abused the assistant function to circumvent the law “

³ Ibid.

⁴ Ministry of Labour and Social Affairs. Asistent sociální péče (Social Care Assistant). In: MPSV.cz [online]. Prague: Ministry of Labour and Social Affairs, last update: 23 November 2012 [retrieved 12 January 2015]. Available at: www.mpsv.cz/cs/13928.

3) Use of registered field social services

The operator of one of the visited facilities had registered for the social service of personal assistance [Section 39 of the Social Services Act] and another one had authorisation for the provision of care service [Section 40 of the Act]. Both services represent field social services and as such they should be provided in the recipients' natural social environment.⁵ My investigation showed that the clients received both care service and personal assistance (only) in the facilities. These, however, are not a natural social environment in the sense of the Act as they have the character of an institution. The clients could not lock their rooms, did not enjoy the freedom to leave the facility as they wished (some were even not allowed to leave their own room) and had to comply with the regime (rules for leaving the facility, peace at night, catering pattern, etc.). In addition, the employees provided nursing care to the clients, thus exceeding the competences of both care service and personal assistance.

My conclusion must be analogous to that regarding the social care assistant function, i.e. that the obvious purpose of provision of registered field social service in the visited facilities was merely to circumvent the requirement for registration of residential social service pursuant to Section 78 et seq. of the Social Services Act and to operate outside the system of residential social services.

For easier orientation, the table below provides a summary of the individual forms of unregistered residential social services facilities.

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Table 2: Forms of care in the visited facilities

form	simple form	more complex form	complex form	most complex form
registered social service	none	none	none	care service or personal assistance
care personnel	operator's employees	employees + social care assistants	social care assistants	care service or personal assistance provided by the operator

I recommend unregistered residential social services facilities

- to immediately create conditions for successful registration of residential social service and to apply for registration. Otherwise, to terminate their activities.

⁵ Care service is to be provided in the recipients' households and in social services facilities [Section 40 (1) of the Social Services Act]. Personal assistance should be provided in the recipients' natural social environment. Natural social environment of recipients means the family and social ties to related persons, the recipient's household and social ties to other persons with whom s/he lives in a common household, as well as places where recipients work, receive education and carry out normal social activities [Section 3 (d) of the Social Services Act].

VII) Penalising the operators of unregistered facilities

In the preceding chapters I described my observations from unregistered residential social services facilities, defined their basic characteristics and pointed out the facts suggesting that the persons accommodated there face ill-treatment. In my opinion, the operation of such facilities has very adverse social impacts. It involves interference with privacy and personal freedom, harming of proprietary and personal rights, endangering of health and life and, generally, degradation of human dignity.

The persons staying in such facilities are unable to defend themselves as they are often elderly people and people with mental disorders. It is therefore necessary that public authorities, in co-operation with other parties (providers of social services, municipalities, families) immediately take all steps to end the practice of provision of residential social services without authorisation.¹



1) Regional Authority

The competence to penalise the administrative offence of provision of social services without authorisation, as laid down in Section 107 (1) of the Social Services Act, is with the Regional Authority competent for the place where the facility is located. In penalising an administrative offence, the Regional Authority follows the Code of Administrative Procedure. Under Section 80 (2) of the Code of Administrative Procedure, the Regional Authority is obliged to initiate proceedings within 30 days of the date when it learns about facts justifying the initiation of proceedings ex officio. The Regional Authority can learn these facts from an instigation [Section 42 of the Code of Administrative Procedure) which may be addressed to it by anyone. I addressed to it my own instigations for the initiation of administrative proceedings against eight of the visited facilities, using the procedure under Section 42 of the Code of Administrative Procedure. The Regional Authority may impose a fine of up to CZK 1,000,000 on an operator of an unregistered residential social services facility. **Anyone who learns about a facility providing social services without authorisation may turn to the Regional Authority with an instigation.**

The administrative offence of unauthorised provision of social services is not the only offence an operator may be guilty of. It may also be possible to penalise the administrative offence of unauthorised provision of health-care services pursuant to Section 115 (1)(a) of the Healthcare Services Act, for which the Regional Authority may impose a fine of up to CZK 1,000,000.

1 In the area of fundamental human rights and basic freedoms, including social rights, the State has taken numerous undertakings consisting in protection of individuals against interference by third parties. In the area of social rights, the State is the guarantor of quality care for elderly people and people with mental diseases and is required to take continued steps towards improvement of that care (including healthcare services, catering, housing, cultural life). See general comments of the Committee on Economic, Social and Cultural Rights Nos. 3, 4, 5, 6, 12 and 14. See: United Nations Human Rights – Committee on economic, social and cultural rights [online]. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

A natural person caring for clients in a facility may be guilty of the infraction of unauthorised provision of health-care services under Section 114 (1)(a) of the Healthcare Services Act. The fine which the Regional Authority may impose for the infraction is again CZK 1,000,000. The people working in the facilities seem to lack awareness of the legal liability they personally bear. I am greatly alarmed by the notion that they would be penalised instead of those who have created this situation in which elderly people are abused.

In the absence of a clear methodology of the Ministry of Labour and Social Affairs, the Regional Authorities would not act uniformly in penalising the administrative offence of unauthorised provision of social services. The competent authority often fails to evaluate the situation correctly and does not initiate administrative proceedings. It is also difficult to bear the onus of proof in proving unauthorised provision of social services by a facility. I therefore requested that the Ministry provide the Regional Authorities with a clear and comprehensible methodology. The Ministry issued the relevant recommendations for Regional Authorities in December 2014.²

I learned in my communication with the Regional Authorities that they often lack personnel and time – in a situation where the relevant agenda will grow due to the spread of unregistered facilities. **The social problem which now arises in connection with the above-mentioned administrative proceedings has existed for a long time and is exceptionally dangerous and systemic. It is unacceptable that it becomes generally non-punishable due to inactivity of the Regional Authorities.**

I recommend Regional Authorities

- to initiate administrative proceedings ex officio on grounds of the administrative offence of provision of social services without authorisation as soon as they learn about facts suggesting that a facility operates residential social services without registration.

2) Prosecuting bodies

The competent unit of the Police can verify whether the operation of a facility constitutes the criminal offence of unauthorised operation of a business pursuant to Section 251 of the Criminal Code. The Criminal Code stipulates that a person who provides services or runs a manufacturing, trading or another type of business to a major extent shall be penalised by imprisonment of up to two years or a ban on his or her



2 Ministry of Labour and Social Affairs. Recommended procedure No. 2/2014 of 15 December 2014, Aspects of unregistered social services facilities and penalisation of the administrative offence of provision of social services without authorisation [Section 107 (1) of Act No. 108/2006 Coll., on social services, as amended) – with a focus on residential social care facilities, intended for Regional Authorities and other co-operating parties [online]. Prague: Ministry of Labour and Social Affairs [retrieved 12 January 2015]. Available at: http://www.mpsv.cz/files/clanky/20037/postup_2_2014.pdf.

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not the employees
but the operator
should be
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activity. According to the established interpretation of the above provision, a person is considered to have committed the criminal offence of unauthorised business also if he exceeds the scope of the trade for which he has a licence. **An operator of an unregistered residential social services facility may face liability for the criminal offence of unauthorised operation of a business.**

However, a person providing care in a facility with so low a quality that it interferes with the clients' rights may also be penalised under criminal law. As mentioned above, unprofessional or careless approach of employees to the care for clients exposed some of the clients to ill-treatment. I am of the opinion that in some cases there is reason to infer bodily harm, which is particularly important in terms of liability under criminal law.

I addressed instigations to the competent prosecuting bodies against four facilities. Together with a description of the established facts, I offered them the legal opinion that a criminal offence could have been committed. Provision of unprofessional care of a poor quality may, depending on the circumstances of the case, correspond to the elements of the criminal offence of cruelty to a person entrusted into care [Section 198), bodily harm caused by negligence [Section 148), restriction of personal freedom [Section 171), harming third-party rights [Section 181), extortion [Section 177) and others. It is dubious whether the criminal offence of torture and other inhuman and cruel treatment [Section 149) is applicable, as shown by the discussion I convened on this topic.³

I have already noted that I am greatly alarmed by the notion that legal liability would be borne solely by the staff in these facilities, who often have little idea concerning the nature of the subject that employs them and that some of the acts of their superiors may not be legal. Similar to clients and family members, they are sometimes misled regarding the nature of the services being provided, notwithstanding the dismal working conditions and workload. **I consider that the conditions for criminal liability of legal entities for the undesirable effects accompanying the phenomenon of provision of social services without the relevant authorisation should be subject to a critical analysis.**

3) Regional branch of the Labour Office

Regional branches of the Labour Office inspect the utilisation of the allowance for care Pursuant to Section 21 (2) (d) of the Social Services Act, allowance for care must be used by the person receiving it for obtaining the required assistance from a related person, social care assistant, registered provider of social services, children's home or a special hospice-type healthcare facility. The authority concerned may withdraw the allowance if the above condition is not complied with. If a client of an unregistered facility provides the allowance for care to some other party (for example, the head of an unregistered facility), the client's situation may become all the more difficult

³ See the Public Defender of Rights. Discussion on definition of torture and other forms of ill-treatment from the viewpoint of criminal law. In: Ochrance.cz [on-line]. Brno: Public Defender of Rights, 29 December 2014 [retrieved 12 January 2015]. Available at: <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2014/diskuse-o-trestnim-vymezeni-muceni-a-jineho-spatneho-zachazeni-1/>.

as s/he is unable to pay after the allowance is withdrawn and becomes indebted, and hence even more dependent on the illegal facility.

A regional branch of the Labour Office can play an important role in detecting and penalising unregistered residential social services facilities. If it ascertains that social services are provided without registration, it is obliged to inform the competent Regional Authority [Section 29 (5) of the Social Services Act] of this fact, which can subsequently initiate administrative proceedings.

As an example of bad practice, a regional branch of the Labour Office was aware of a facility providing residential social services without authorisation but failed to inform the Regional Authority of this fact. In addition, the regional branch informed the facility that it could avoid registration by providing social services through social care assistants; by doing this, the regional branch assisted the facility in evading the Social Services Act. It is impermissible for a regional branch of the Labour Office to act as described above. **A regional branch of the Labour Office may not participate in evading the Social Services Act by tolerating abuse of the function of social care assistant in unregistered residential social services facilities.**



I recommend the regional branches of the Labour Office

- **to inform the competent Regional Authority of their suspicion that a facility provides social services without authorisation as soon as possible after the suspicion arises,**
- **not to tolerate abuse of the concept of social care assistant on the part of unregistered residential social services facilities.**

4) Regional Public-Health Station

Act No. 258/2000 Coll., on protection of public health, as amended, stipulates hygienic requirements for the operation of a “social care facility”. It is stipulated in Section 17 of the cited act that a “facility shall be obliged to comply with the hygienic requirements for admission of natural persons into the care of a provider of healthcare services or institute of social care and treatment thereof, for water supplies, cleaning, carrying out and control of disinfection, sterilisation and a higher degree of disinfection as provided for in an implementing regulation.

The historical term “institute of social care” is no longer used by the Social Services Act and could be replaced by “social services facility”. The cited provision primarily refers to registered residential social services facilities. The nature of the activities carried out in a facility that are relevant in terms of hygienic requirements is the same in unregistered and registered facilities. The interest in the protection of public health is the same. I therefore consider that the term “institute of social care” should be interpreted in accordance with its meaning and, for the purposes of hygienic regulations, an unregistered residential social services facility should be considered to be an institute of social care.

This opinion involves a heavy requirement because the inspection body will first have to apply its administrative discretion to decide, with respect to an unregistered facility, what kind of a facility it actually represents (it may in fact represent an accommodation facility or guest house). Nevertheless, in the light of what is described above in connection with the activities of unregistered residential social services facilities, the inspection body must not restrict itself to the mere public-law entitlement under which the facility is operated (registration or trade licence).

The Regional Public Health Station is authorised to perform state health-care supervision. In inspecting an unregistered residential social services facility, it may – according to the legal opinion detailed above – verify compliance with the hygienic standard set for “institutes of social care”. A fine may be imposed for failure to comply with the obligations stipulated in the Act on Public Health Protection. Anyone can turn to a Regional Public Health Station with an instigation (concerning bad hygienic conditions in a facility).

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I recommend Regional Public Health Stations

- to regard unregistered residential social services facilities as “institutes of social care” in the sense of the Act on Public Health Protection,
- to this end, to apply their administrative discretion and decide on the actual nature of the facility.

5) Trade Licensing Authority

The Trade Licensing Authority is a state authority which comes into contact with many unregistered residential social services facilities and has control powers with respect to them within the scope of its competence under the Trade Act. All the visited facilities were formally operated on the basis of trade licences. Trade Licensing Authorities are not competent to decide, for example, that the activities performed indeed represent a social service and hence the provider, by lacking the authorisation to provide social services, violates the Social Services Act; on the other hand, being generally acquainted with the topic, they may have reason to suspect that such violation has occurred (page 12). Findings made during an inspection under the Trade Act may also be used by the administrative authority (Regional Authority) in proceedings on administrative offence. Hence it is necessary that administrative authorities coordinate their steps.

I recommend Trade Licensing Authorities

- to inform the competent Regional Authority of their suspicion that a facility provides social services without authorisation as soon as the suspicion arises.

VIII) Prevention

It is impossible to prevent with 100 % certainty the establishment of new hotel-type facilities specialised in the provision of social services. However, it is possible to eliminate their further development and terminate the activities of those that already exist. This can be achieved through collaboration between governmental authorities and other parties involved in care for clients. It is imperative that **nobody sends a person dependent on care into an unregistered residential social services facility or give an advice, instruction or help for that purpose.** This applies to family members, guardians, municipalities, providers of healthcare and social services and all governmental authorities. **When selecting a residential social services facility, it is necessary to verify whether the facility is registered. This can be done using the Register of Social Services Providers** available on the web pages of the Ministry of Labour and Social Affairs at <http://iregistr.mpsv.cz>.

1) Guardian

Depending on the extent to which a person's legal capacity is diminished, decisions on the signing of contracts (accommodation contract or contract on the provision of services) and on admission to a residential facility are made with participation of a guardian.

Most importantly, the guardian must be aware of the needs of the person under guardianship and the person's opinions, views, the circumstances in which s/he lives and his/her previous lifestyle. When considering social service, the guardian must take the solution (social service) which is the least limiting and enables the person under guardianship to stay in his/her natural social environment. (If the assessment of the abilities and needs of the person shows that assistance at home is sufficient, the guardian should not decide for a residential social service.) If residential social service is needed due to the person's health, the guardian must verify in the Register that the chosen facility is registered. **The guardian must not entrust the person dependent on care to a provider who lacks authorisation to provide social services.**

If the guardian is unable to find a suitable registered social services facility (for example, due to reaching its full capacity), **s/he can turn for help to the municipal authority of a municipality with extended competence** (which performs tasks pursuant to Section 92 of the Social Services Act).

It is envisaged in the Social Services Act that guardians co-operate with the providers of social services e.g. by participation in the planning and evaluation of the manner in which the social service is provided. This way they also monitor quality, and if dissatisfied with the quality of services,

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always check
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they can lodge a complaint or otherwise defend the rights of the person under guardianship. While the guardian may be mistaken at the beginning, s/he should ultimately become acquainted with the true nature of the facility if s/he performs these tasks properly. It should also not slip the guardian's attention when the service provided represents an unauthorised interference with the client's rights and dignity or is even detrimental to his/her health.

I recommend the guardians

- not to entrust persons under guardianship dependent on care to an unregistered residential social services facility,
- when in doubt as to the suitable social service, to turn for assistance to the municipal authority of a municipality with extended competence,
- to co-operate with providers of social services and consistently monitor the quality of the provided services.

2) Municipal authority of a municipality with extended competence

Section 92 (a) of the Social Services Act allows anyone to turn to the municipal authority of a municipality with extended competence in a situation where non-provision of immediate assistance would put a person's health or life at risk. It is further possible to notify the municipal authority of a municipality with extended competence that there is demand for certain social services within the territory of its jurisdiction because municipal authorities have the duty to coordinate the provision of social services within their respective territorial jurisdictions¹ and deliver social work activities aimed at addressing adverse social circumstances and social inclusion of individuals; they do so in co-operation with the regional branch of the Labour Office and the Regional Authority [Section 92(d) of the Act].

Within the framework of social work, social workers of a municipal authority can:

- search for persons who need assistance or a social service, in their natural environment,
- engage in individual planning of goals for social work clients and steps leading to their attainment,
- perform direct social work with clients aimed e.g. at adapting the circumstances in which they live so that they can stay in their natural environment.

1 On the topic of arrangement and coordination of the provision of social services by municipalities of all types, see KALVACH, Zdeněk, et al. Podpora rozvoje komunitního systému integrovaných podpůrných služeb (Support for the Development of the Community System of Integrated Support Services). Prague: Deaconess of the Evangelical Church of Czech Brethren, 2014, 100 p. ISBN 978-80-87953-08-2. Also [online, retrieved 12 January 2015]. Available at: <http://www.dustojnestarnuti.cz/res/data/002/000328.pdf>.

It is also possible to request provision of basic social consultancy.² Territorial competence in the performance of social work is determined by the place where the client is present at the given time.

I recommend the municipal authorities of municipalities with extended competence

- in the event of suspected absence of authorisation to provide residential social services, to notify the competent Regional Authority of this fact,
- not to refer clients, their families and guardians to unregistered residential social services facilities.

3) Provider of healthcare services

The systematic visits revealed that a large part of clients of unregistered facilities had been sent there from in-patient healthcare facilities (most often from treatment facilities for long-term patients). Two problem areas arise in this respect.

a) Absence of follow-up care

As mentioned above, employees of unregistered residential social services facilities care for clients on a completely unprofessional basis and are unable (and lack authorisation) to provide appropriate social, nursing and rehabilitation care. This is all the more serious if the clients were released from a healthcare facility and prescribed essential follow-up care (for example, post-operative wound management, positioning, hydration, rehabilitation, activation). One such example was the above-mentioned client who was released from hospital after being operated for a femoral neck fracture and her physician recommended her rehabilitation; however, there was nobody to provide this in the facility. It is a question whether treatment is effective and economic when it is suddenly terminated after releasing the patient from hospital instead of continuing as required. **If a provider of healthcare services releases a patient with a set therapeutic regime (for example, the above-mentioned rehabilitation) to an unregistered residential social services facility, it cannot expect that facility to follow the regime.**

There were even cases when hospital employees (as a rule, medical personnel/social workers) took an active approach in arranging contact between a patient and an unregistered social services facility. All formalities were administered independent of the patient's will. This is unacceptable from the viewpoint of social work with persons dependent on care. **A provider of social services and the provider's employees (for example, medical personnel/social workers) should not participate in a situation where a patient is entrusted to an unregistered residential social services facilities.**

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physicians were unaware that the facility was not authorised to provide care

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² Ministry of Labour and Social Affairs. Recommended procedure No. 1/2012 of 4 July 2012 for the implementation of social work activities at type II and III municipal authorities, domain authorities and Regional Authorities.

b) Provision of information on a patient's health

I have repeatedly encountered a practice where a healthcare services provider disclosed information on the health of its patient to an unregistered residential social services facility. Release reports from hospitals and other parts of medical records of the healthcare services provider (copies) were often available in the facility. I venture to claim that this represented unauthorised disclosure of sensitive data and violation of the confidentiality duty of medical personnel.

The Healthcare Services Act [Section 45 (2)(g)] imposes the duty on healthcare services providers to hand over to other healthcare services providers and social services providers information on the health of patients which is essential for ensuring follow-up healthcare and social services. However, the provision in question applies solely to registered providers of social and healthcare services.

This leaves only the most general regime established through the authorisation pursuant to Section 31 (6) of the Healthcare Services Act: *"If required by the state of health or nature of a patient's disease, the provider is authorised to disclose information required to ensure care or to protect the patient's health to the persons who will care for the patient in person."* The scope of information is delimited by the aforementioned provision and the Act refers expressly to persons who care for the patient in person.

It is not admissible to provide an unregistered facility with comprehensive information on patients' health and to hand over medical records without further considerations. A social services provider may not treat an accommodation facility in the same way as a registered social services provider. In the same way as a healthcare services provider may not disclose information to the receptionist of a hotel on the state of health of the accommodated persons, it is not admissible to provide sensitive data on patients to employees of unregistered facilities. The duty to maintain confidentiality requires healthcare services providers to consider the nature of the facility they communicate with and always to verify whether the facility is registered.

Otherwise, the healthcare services provider exposes itself to penalisation for violation of the confidentiality obligation in the form of administrative offence pursuant to Section 117 (3)(d) of the Healthcare Services Act.

A healthcare services provider can notify the competent Regional Authority of the suspected absence of authorisation to provide residential social services. For some clients, their physician was the only outside person they were in contact with and hence the only person who could provide notification to the Regional Authority.

I recommend healthcare services providers

- to verify the nature of the residential facility they communicate with,
- if the facility is unregistered, not to provide any information on the patient's health in excess of Section 31 (6) of the Healthcare Services Act,
- not to entrust persons dependent on care to an unregistered residential social services facility.

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of healthcare
services violated
the confidentiality
duty

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IX) Summary of recommendations

Recommendation to unregistered residential social services facilities

- to immediately create conditions for successful registration of residential social service and to apply for registration. Otherwise, to terminate their activities.

Recommendation to the Regional Authorities

- to initiate administrative proceedings ex officio on grounds of the administrative offence of provision of social services without authorisation as soon as they learn about facts suggesting that a facility operates residential social services without registration.



Recommendation to the regional branches of the Labour Office

- to inform the competent Regional Authority of their suspicion that a facility provides social services without authorisation as soon as possible after the suspicion arises,
- not to tolerate abuse of the concept of social care assistant on the part of unregistered residential social services facilities.

Recommendation to Regional Public Health Stations

- to regard unregistered residential social services facilities as “institutes of social care” in the sense of the Act on Public Health Protection,
- to this end, to apply their administrative discretion and decide on the actual nature of the facility.

I recommend Trade Licensing Authorities

- to inform the competent Regional Authority of their suspicion that a facility provides social services without authorisation as soon as the suspicion arises.

Recommendations to guardians

- not to entrust persons under guardianship dependent on care to an unregistered residential social services facility,
- when in doubt as to the suitable social service, to turn for assistance to the municipal authority of a municipality with extended competence,
- to co-operate with providers of social services and consistently monitor the quality of the provided services.

I recommend the municipal authorities of municipalities with extended competence

- in the event of suspicion that a facility lacks authorisation to provide residential social services, to notify the competent Regional Authority of this fact without undue delay,
- not to refer clients, their families and guardians to unregistered residential social services facilities.

I recommend healthcare services providers

- to verify the nature of the residential facility they communicate with, and
- if the facility is unregistered, not to provide any information on the patient's health in excess of Section 31 (6) of the Healthcare Services Act,
- not to entrust persons dependent on care to an unregistered residential social services facility.