Veřejný ochránce práv
OMBUDSMAN

Information on activities submitted by the Public Defender of Rights

pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended,

for the third quarter of 2014

A - Number of complaints, investigations

A total of **2140** complaints were received in the third quarter of 2014, which is **333** more than in the same period last year. The number of complaints in the area of public administration has increased– the **1261** complaints received represent an increase of **233** compared to the third quarter of 2013. The percentage of complaints about matters outside the Defender's mandate delimited by the Public Defender of Rights Act has not changed significantly (879, i.e. 41%, in Q3 2014 as compared to 779, i.e. 43%, in Q3 2013).

Of these, a total of **81** complaints claimed unequal treatment by public administration and private entities. The number of complaints directed against discrimination in the sense of the Anti-discrimination Act reached **49**. In the area of protection against discrimination, co-operation was provided to international entities and national authorities in a total of **5** cases.

Moreover, **1** systematic visit was made in the framework of the agenda of supervision over restrictions of personal freedom. In connection with the Defender's activities in the field of monitoring of the detention of foreigners and administrative expulsion, **704** decisions to monitor were submitted. Furthermore, **1** accompaniment was carried out to monitor the expulsion of a foreigner.

In the public administration agenda, most complaints received, 329 in total, related to social security again, followed by complaints relating to construction proceedings and land-use planning (137), and by complaints relating to the prison system, the police and the army (97).

B - Activities of the Defender

B.1 Public administration

In relation to public administration, in particular the following recommendations and statements were issued during the third quarter of 2014:

B.1.1 Neglected advice on social benefits in material need

I was approached by a complainant who visited the Labour Office of the Czech Republic, the regional branch in Brno, Brno-city contact office (hereinafter the "Labour Office") in October 2013 in order to apply for subsistence support. The officer responsible for benefits at the Labour Office did not accept the application because she had a large number of clients on that day. The complainant appeared at the Labour Office again in November 2013 with completed forms that the **officer responsible for benefits did not accept again because they were incomplete** and requested that the complainant present herself at the Labour Office again in December 2013. The officer responsible for benefits **accepted** the application for subsistence support **only on the complainant's fourth visit** at the end of December 2013. It was only in December that she informed the complainant about the possibility to apply for the housing allowance.

I found maladministration in the procedure of the Labour Office in that the employees of the Labour Office **failed to inform the complainant during her first visit that it was possible to address her material need through social benefits** (housing allowance, contribution for housing) and **how she could obtain these social benefits**. The employee of the Labour Office also erred when she failed to provide the client with assistance in completing the application for subsistence support, failed to accept the application, even if incomplete, and did not record the procedure in dealing with the client in writing.

Employees of the Labour Office are **obliged to accept even an incomplete application** for a social benefit and **provide** the person appearing at the Labour Office with **basic social advice** in excess of the general obligation to provide information in order to address the person's material need, i.e. including information about the existence of other social benefits responding to the client's social emergency and the conditions under which such benefits may be granted. To comply with the principles of good governance, an employee of the Labour Office should draw up a brief written record of the provided advice together with the client even before the proceedings on benefits of assistance in material need actually commence.

The Labour Office retrained its employees on the basis of the results of the investigation and prepared a written basic advice, which is provided to clients on their initial visit. **The Ministry of Labour and Social Affairs granted indemnification to the complainant.**

B.1.2 Violence among convicts

Approx. twenty convicts serving prison sentences in the Prague-Pankrác Remand Prison submitted a complaint. The convicts complained about **psychological and physical abuse, degradation of human dignity and racist insults** at a specialised department for permanently unemployable convicts. It was stated in the complaint that an assistant warder, i.e. one of two convicts employed in the prison as orderlies providing care to the prisoners, was especially responsible for this conduct. The assistant warder allegedly also abused his position. According to the complaint, the personnel of the prison failed to take action despite the fact that the prosecuting bodies had allegedly acquainted them with numerous facts

suggesting maltreatment of prisoners. The assistant warder was subject to investigation into suspected rape and bodily harm against other convicts.

I found maladministration in that the **prison failed to address the critical situation in the department**. Although the complaint was dealt with by the department of prevention and complaints, the atmosphere in the prison continued to be tense as evidenced by the individual convicts' testimonies and also placement of one convict at the crisis department because he feared the assistant warder. This was an incident of an unusual scale and yet the **prison took almost no steps to prevent future maltreatment**. After issuing my report on the investigation, I assumed that the Prague-Pankrác Remand Prison received sufficient guidance for immediate action, i.e. transferring the assistant warder to some other department within the prison or initiating his transfer to another prison plus taking additional measures to calm down the situation at the department. It appeared equally important to objectively define the rights and obligations of assistant warders in order to avoid any doubts regarding the tasks they were actually paid for and their duties.

The prison refused to transfer the problematic convict and defended his existing placement in its statement. One of the objections of the convicts who complained about threats and violence was that the assistant warder was apparently a relative of the head of the department of imprisonment in the prison or perhaps protected him for some other reason. It was this particular senior employee who tried to keep the assistant warder in his position by all arguments possible. In the end, **after the final statement was delivered, the prison accepted my arguments** about the necessity to adopt suitable preventive measures based on a justified suspicion of violence in the prison alone. At the same time, the obligations of assistant warders serving as orderlies were defined by the prison.

B.1.3 Car park at the airport

My deputy investigated a complaint by a civic association concerning the construction of a large-scale car park for the vehicles of the clients of the Václav Havel Airport Prague.

In the report on the investigation, my deputy criticised the Municipal Authority of the City of Kladno and also the Regional Authority of the Central Bohemian Region due to **incorrect evaluation of the plan to operate a parking lot for motor vehicles** because the planned project should be subject to a decision on a change in utilisation of land in the sense of the Construction Code (Act No. 183/2006 Coll., as amended), and such a decision must be preceded by the "fact-finding procedure" pursuant to Act No. 100/2001 Coll., on environmental impact assessment, as amended.

Planned projects involving a functional area intended for parking road motor vehicles with over 100 parking places are subject to the fact-finding procedure (Annex No. 1, category II of the Environmental Impact Assessment Act). Information on public accessibility, frequency of parking and purpose of parking is irrelevant for deciding whether a specific functional area falls within the wording of par. 10.6 of the cited Annex.

The Municipal Authority of the City of Kladno reviewed its attitude to the project on the basis of the report on the investigation and stated that a **hearing on infraction**, consisting in use of land without the relevant planning permit, **would be held** with the owners of the properties. The operator of the car park will be advised that for a **plan to operate a regular car park** on an area exceeding the area permitted by the occupancy permit and planning permit, **it is necessary to conduct the land-use permit proceedings on a change in the utilisation of land and to perform the EIA fact-finding procedure**. The Municipal Authority of the City of Kladno further stated that the construction authority would continue its inspection activities and establish tort liability where this is found justified.

B.1.4 Legal grounds for the use of a place of business (registered office)

A complainant requested investigation into the procedure of the Brandýs nad Labem - Stará Boleslav Municipal Authority (hereinafter the "Municipal Authority") and the Regional Authority of the Central Bohemian Region in assessment of the legal grounds for the use of **premises in which a legal entity located its registered office without being a co-owner of the premises**. The complainant argued that the legal entity failed to prove legal grounds for using the premises. The company submitted an agreement on lease of the premises between the company and a married couple as a document proving the legal grounds, where the spouses were co-owners of the premises and, simultaneously, shareholders of the company, plus declarations of consent to the location of the registered office given by only some co-owners of the premises. A civil court decided that the case in question was a case of management of an undivided thing where a majority of co-owners did not give their consent. Despite this, the authorities considered that the legal grounds for the use of the premises were proven because they did not consider themselves to be bound by the provisions of private law on management of an undivided thing. The Municipal Authority added that the company's grounds for use followed from the co-ownership title of the company's shareholders. It relied in its opinion on a methodical instruction of the Ministry of Industry and Trade.

My deputy **found the procedure of the authorities unlawful**. **The authorities should have assessed compliance of the submitted document** proving legal grounds for the use of the premises in which the entrepreneur had located its place of business (registered office) **with private law**. Where an entrepreneur is not simultaneously a co-owner of the real estate in question, he must submit the consent of a majority of co-owners (Section 139 (2) of the 1964 Civil Code) in order to locate his registered office (Section 46 (1) (f) of Act No. 455/1991 Coll., on business in trade, as amended) in the real estate; this applies also where the co-owner of the premises is simultaneously e.g. the governing body of the legal entity whose registered office is to be located in the premises. Proof of ownership title to, or right of use of, the premises of the establishment (Section 17 (3) of the Trade Act) must be interpreted analogously.

After the report on the investigation was issued, the **Ministry of Industry and Trade issued a new methodical instruction which is in accordance with the opinion of my deputy**. The case was assessed in accordance with the old Civil Code without taking into consideration any interpretation of the present regulation.

B.2 Supervision over restrictions of personal freedom

Within supervision over restrictions of personal freedom, my co-workers made **one systematic visit** in the third quarter of 2014. Specifically, a visit was made to the Příbram Prison. It is the third prison visited this year in accordance with the schedule of visits. Other visits will continue this year and in the course of next year.

In the performance of the **obligations following from the directive on returns**, a surrender from the Zastávka u Brna reception centre to the Václav Havel Airport in Prague was monitored (under the Dublin Regulation).

The public was acquainted with the contents of my **summary report from alcohol detention centres** at a press conference held on 7 September 2014**.** In the report, **I recommended that the Ministry of Health** determine through a legal regulation the minimum requirements for personnel, material and technical equipment of alcohol detention centres; initiate an amendment to the Act on Measures for Protection Against Harm Caused by Tobacco Products, Alcohol and Other Dependency Producing Substances[1] in the sense that the mere "causing of public nuisance" would no longer constitute grounds for the placement of a person in an alcohol detention centre; initiate an amendment to the legislation on the placement of persons in detention centres so that the text of the law stipulates the principle that placement in a detention centre is an extreme measure which should only take place after other, less coercive alternatives have been exhausted; initiate an amendment to the legislation so as to explicitly stipulate that the doctor who makes the decision on the placement in the centre has the obligation to make a record on the patient's behaviour at the time when he is received in order to make clear why he was placed there; initiate an amendment to the legislation so that a person who requests treatment in the detention centre under Section 16 of the cited Act has the obligation to assist the doctor in the centre in deciding on the person's placement, in the form of a substantiated written record of the situation that led to the request for examination at the detention centre and reasons why less coercive alternatives are not sufficient in the situation; consider and initiate an amendment to the legislation on the notification obligation by stipulating the obligation to notify the provider of medical services in the field of general medicine with which the centre is registered; initiate a legislative amendment stipulating the obligation of the medical personnel in the centres (and other medical facilities where the use of restrictive measures can be expected) to be trained in the use of restrictive measures and the applicable legal conditions; provide for a training programme to this end and guarantee the contents of that programme; initiate a legislative amendment ensuring that the principle of subsidiarity of the use of restrictive measures is embodied in Act No. 372/2011 Coll., on medical services, as amended; initiate a legislative amendment stipulating the obligation of alcohol detention centres (and other medical facilities) to keep and evaluate central records on the use of restrictive measures; initiate a legislative amendment ensuring that standard healthcare operations (examination and treatment of a person in the station) are not paid directly; initiate a legislative amendment clearly stipulating the amount to be paid for a stay in a

[1] Act No. 379/2005 Coll., on measures for protection against harm caused by tobacco products, alcohol and other dependency producing substances

detention centre, or at least the method of calculation of the amount. **The Ministry of Health agreed to implement these recommendations**.

B.3 Protection against discrimination

B.3.1 Denial of spa treatment due to pregnancy

A complainant pointed out discrimination by a spa company where she ordered a week-long therapeutic stay as a paying patient. The stay was to consist of procedures determined by the spa doctor after the client's arrival to the site and the client therefore assumed that the doctor would recommend procedures which are suitable also during pregnancy. **The doctor informed the patient** after her arrival **that it was impossible for her to take any procedures (including wellness procedures) because of her pregnancy.** Therefore, she left the facility on the very next day and **had to pay the full costs of the hotel services** also for the day of her departure, **in addition to travel expenses**. She subsequently received treatment in another spa.

Objective substantiation is necessary for excluding a person from spa treatment, rather than just reference to general contraindications of spa treatment. If there is an obstacle preventing the provision of a service to a pregnant woman, the provider of the service must provide information of this fact in advance. A pregnant woman may be denied a service only if there is legitimate justification for such a step. This exists only if a specific service (for example, a spa procedure) could endanger the health or pregnancy of the woman. Where pregnant women are excluded from the provision of spa treatment at large on grounds of potential risk for existing pregnancy, this does not satisfy the requirement for appropriateness and necessity of measures applied for the protection of pregnant women.

Considering that the possibility of providing spa care was not assessed individually, based on the state of the complainant's health, and the complainant was denied the service only due to pregnancy, **discrimination on grounds of gender occurred in this case**. The complainant with her legal counsel (arranged for by Probono aliance) entered into negotiations with the spa company. Finally, she received an apology and proposal for amicable resolution of the dispute, including payment of the expended costs of accommodation and travelling. The complainant accepted this offer.

B.3.2 Sexual harassment at work

A complainant pointed out failure of the labour inspection bodies in assessment of discrimination on grounds of gender in the form of sexual harassment. The complainant first submitted a complaint to the regional Labour Inspectorate, where she *inter alia* claimed that she had been a victim of **sexual harassment in 2011, committed by the director of a social-care facility where the complainant had worked**. The sexual harassment consisted in the director's suggested interest in the complainant, which escalated into open sexual offers. The complainant rejected the offers and, consequently, the director **terminated the complainant's employment contract by notice during her trial period** in May 2011. The complainant subsequently told her husband about the director's conduct and her husband lodged a complaint to the founder of the facility. Subsequently, the director

of the facility offered to apologise to the complainant in writing, to pay a monetary compensation for intangible damage and to conclude a new employment contract for the same job, but with the place of work at different premises of the facility. The complainant agreed with everything except for the financial compensation. **The director of the facility apologised to the complainant both in writing and orally and refrained from further sexual behaviour**; therefore, she and her husband performed no further steps against the founder. The director of the facility was subsequently removed by the Regional Council in January 2012. In support of the above-mentioned facts of the case, the complainant accompanied her complaint to the regional Labour Inspectorate with a copy of the written apology, where the director admitted that he had terminated her employment contract during the trial period because she had refused his sexual advances.

The Labour Inspectorate conducted two inspection visits, where the second visit was aimed exclusively at the issue of sexual harassment at work. Based on review of the submitted documents, the Inspectorate found no violation of the principle of equal treatment and non-discrimination. The State Labour Inspectorate agreed with the procedure of the (regional) Inspectorate. The complainant and her husband **claimed that the Labour Inspectorate impose public-law sanctions on the employer for the conduct of the former director** since the former director has voluntarily satisfied all private-law claims.

After investigating the complaint, I concluded that while the regional Labour Inspectorate made certain particular errors, **initiating proceedings for an administrative offence in the case at hand, as claimed by the complainant, would violate the principle of subsidiarity of criminal repression**, which the office was obliged to apply. In his response to my final report, the head of the Labour Inspectorate stated that he agreed with my findings and would notify all the employees of the findings to be used in their future practice. I closed the case.

B.3.3 Muslim headscarves at a secondary medical school

I investigated a complaint by an asylum seeker from Somalia. She began to study a secondary medical school in the Nurse study field. **However, the school regulations banned the wearing of any head-dress.** The complainant withdrew from the studies because she is a **Muslim and wears hijab** (a headscarf not covering the face). She argued that the general rule banning the wearing of any head-dress was indirectly discriminatory; it placed her at a disadvantage in comparison with others because the wearing of the Muslim headscarf is a manifestation of her religious belief in relation to other people. The complainant lodged a **complaint with the Czech School Inspectorate which found it unjustified in terms of violation of the principle of equal opportunities.**

I concluded after my investigation that the **secondary medical school had indirectly discriminated against the complainant** when it banned her, on the basis of a neutrally formulated provision of the school regulations, from wearing a Muslim headscarf which is a manifestation of her religious belief in relation to other people. **The provision of the school regulations which bans the wearing of any head-dress** including the Muslim headscarf, hijab, **during theoretical education** at the secondary medical school, **constitutes indirect discrimination on grounds of religion** (Section 3 (1) of the Anti-discrimination Act [Act No. 198/2009 Coll., as

amended]). Such a measure **cannot be justified by the requirement for maintaining good manners** because observance of social standards is not a legitimate objective in the sense of Art. 9 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 16 (4) of the Charter of Fundamental Rights and Freedoms.

Czech legislation does not contain any statutory limitation of religious symbols in the education system and in the public sphere in general. These issues are regulated in general terms by the Anti-discrimination Act which permits difference in treatment on grounds of religious belief and faith in Section 7 provided that it is justified by a legitimate aim and the means of its achievement are appropriate and necessary. Where the condition of legitimate aim is not satisfied, the **headmaster/mistress of a school cannot limit the use of religious symbols through school regulations. Nor can s/he decide whether or not a religious symbol can be permitted because s/he lacks statutory authorisation to do so.**

In relation to the physical education and the teaching of practical skills, safety and protection of health could be considered a legitimate aim of restrictions; nevertheless, I believe that even in this case a sweeping ban on wearing head-dress is not an appropriate and necessary means of achieving it. It is possible to adopt other, less strict measures such as wearing the "sports version" of Muslim headscarves.

Only in the case of **nursing and medical practice**, the Decree of the Ministry of Health (No. 306/2012 Coll., on requirements for prevention of the development and spread of infectious diseases and hygienic requirements for operation of health-care and social care facilities) does not allow the wearing of hijab. However, considering the fact that the Decree specifies a requirement to cover one's hair with a cap, it is reasonable to believe that the student would have little trouble adjusting to this requirement.

I further found that the **Office of the Czech School Inspectorate erred by its unbalanced conduct**. It based its findings mainly on the information provided by the secondary medical school and did not deal with the contradictions between the individual statements. The Inspectorate accepted the state of affairs as it was described by the school representatives without verifying the information with the student or her legal counsel. In reality, however, it follows from the documents in the file that the headmistress of the school invited the complainant to put aside the Muslim headscarf and the complainant responded by signing the notification of withdrawal from her studies. The Office of the Czech School Inspectorate recognised that the school regulations did not offer the possibility to apply for an exemption from a general provision in the school regulations, but concluded that such an exemption was possible. It incorrectly concluded its investigation of the case with the verdict that the student's complaint was unsubstantiated and that the headmistress' conduct had not violated the principle of equal access to education.

Following the Czech Schools Inspectorate investigation, the school council has approved a new wording of the school regulations. Although it still contains the requirement not to wear head-dress at school, it now adds the possibility of granting an exemption also on religious grounds. While appreciating this step, I reminded the headmistress of the school that the school regulations were at variance with the legal

regulations even in the new wording, because the **headmistress is not authorised by law to decide in the matter of granting exemptions to allow students to wear clothes according to their religious beliefs**. **In cases where the head-dress is an outward expression of religious belief, the granting of exemption from such a rule must be completely automatic.** Therefore, my recommendation to the headmistress of the school was that it would be preferable if the school regulations expressly stated that the ban on wearing head-dress does not apply to religious symbols.

The headmistress of the school did not respond to repeated requests for information whether she had submitted to the school council a proposal for amendment of the school regulations which would take my recommendation into account. The media statements of the headmistress of the school and her legal counsel suggested that there was no intention to submit the proposal. In this situation, **I will further address the matter with the Czech Schools Inspectorate**. According to the information available to me, the complainant has not brought the case to the courts.

C - Legislative recommendations and special powers of the Defender

C.1.1 Proceedings concerning cancellation of Art. LII (2) of Act No. 303/2013 Coll., amending certain laws in connection with the adoption of recodification of private law.

As an enjoined party in the proceedings before the Constitutional court, I **did not support the proposal for cancellation of the following transitory provision of the amendment to the Rules of Distraint**[2] effective from 1 January 2014: *"A distraint order issued after the effective date of Act No. 396/2012 Coll. in proceedings commenced before the effective date of Act No 396/2012 Coll. shall be governed by Act No. 120/2011 in the wording effective after the effective date of Act No. 396/2012 Coll."* In the applicant's opinion, the contested transitory provision constitutes inadmissible retroactivity.

I concluded that the contested provision in fact results from endeavours to resolve the **dispute concerning the interpretation of the former transitory provision enshrined in the Code of Civil Procedure through the extensive distraint amendment:**[3] *"Proceedings commenced before the date of legal force of this Act shall be completed pursuant to the current regulations."*

I am of the opinion that distraint proceedings represent a set of individual "judicial enforcements of decisions", and I therefore consider that distraint proceedings as a whole do not represent "proceedings" under the former transitory provision of the extensive distraint amendment. A court distrainer would

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2 Article LII (2) of Act No. 303/2013 Coll., amending certain laws in relation to adoption of recodification of private law:

3 Article II (1) of Act No. 396/2012 Coll., amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, and other related laws

then be obliged to apply the Code of Civil Procedure in the wording of the extensive distraint amendment also in distraint proceedings commenced prior to the amendment. Should this interpretation apply, the **contested (later) transitory provision would be merely redundant and could not be retroactive**.

Considerations regarding retroactivity of the contested transitory provision are appropriate only if the Constitutional Court concludes that distraint proceedings are indivisible. In that case, the legislator indeed changed the "rules of the game" with an impact also on distraint proceedings in progress, as late as one year after the extensive distraint amendment entered into effect.

I admit that it is unusual to lay down a transitional provision on an amendment as late as one year after it enters into effect. On the other hand, I understand that this is a solution to the dispute regarding interpretation of previous transitory provisions. Through the contested transitory provision, the legislator clearly showed its intention that, in issuing distraint orders after 1 January 2013, distrainers should follow the new legislation (the Rules of Distraint and the Code of Civil Procedure in the wording of the extensive distraint amendment) even in distraint proceedings commenced before the above date.

Even if this was a new rule (which I believe is not the case), the provision would need to be interpreted primarily in a manner conforming to the Constitution and be cancelled as unconstitutional only in case that the above interpretation proves impossible. **I am convinced that the contested transitory provision can be interpreted in a manner conforming to the Constitution** as not applicable to distraint orders issued before its effective date. Thus, it cannot be interpreted as a way of remedying distraint orders issued earlier. **The provision is only effective *pro futuro*,** although in relation to distraint proceedings which commenced earlier (insofar as we understand distraint proceedings indivisible). From this point of view, **it does not go beyond "non-genuine retroactivity"**.

Therefore, the contested transitory provision in itself does not have inadmissible genuine retroactive effects. **The risk of incorrect interpretation** of the provision (remedy of distraint orders which have already been issued – genuine retroactivity) does not represent a defect justifying cancellation; rather, it represents **grounds for potential application of a remedy** or constitutional complaint in a specific case.

I also acquainted the Constitutional Court with the **practical impacts** of the extensive distraint amendment. While it has generally contributed to the protection of interests of all parties to proceedings (obliged parties and entitled parties), it has also brought some fundamental risks, particularly in the application of Section 262a (2) (formerly 3) of the Code of Civil Procedure (curtailing the exclusive property of a spouse of the liable person on grounds of joint debt). **Although the existing legal regulation provides the other spouse with sufficient protection, an average person is unable to make use of the protective mechanisms on his/her own. In fact they do not even think of the possibility that they could legitimately resist** the conduct of a distrainer (court) (by seeking the curtailing of only a share in the enforcement of the exclusive debt of the husband/wife by curtailing the community

property of spouses under Section 262a (1) of the Code of Civil Procedure[4] or by arguing that the debt is not a joint debt where a salary or receivable from a person's bank account is directly curtailed under Section 262a (2) of the Code of Civil Procedure). In fact, the underlying practical reason for the submitted proposal was perhaps based on the dispute regarding Section 262a (2) of the Code of Civil Procedure.

C.1.2 Comments on the draft law on private health insurance of foreigners during stays in the territory of the Czech Republic and amendment to the Act on Stay of Foreigners

I expressed my opinion during the commentary procedure that the submitted **draft law** should not be adopted at all because it is inherently **at variance with the necessary systematic solution of the issues of healthcare insurance of foreigners**, consisting in integration of a large part of foreigners who stay in the Czech Republic in the long term into the system of public health insurance. Even a comprehensive recasting of the proposed amendment could not remedy this fundamental gap in the contents **because the only possible solution is an amendment of Act No. 48/1997 Coll.**, on public health insurance, as amended, namely by extension of the range of persons to which the Act applies.

The system of public health insurance alone is capable of guaranteeing the required scope of insurance coverage for healthcare provided to foreigners as well as the certainty of problem-free reimbursement of care provided by a medical facility. Thus, the draft law **perpetuates the existing inadequate system of commercial health insurance** which is non-functional, causes practical problems to both foreigners and healthcare providers and has therefore been repeatedly criticised. Instead of remedying the existing shortcomings, the proposed legislation worsens the situation of foreigners who depend on commercial health insurance. It **supports the existing problematic practices of insurance companies** by elevating to the rank of a law many of the problematic elements of commercial health insurance for foreigners that are not yet expressly regulated by law (for example, numerous exclusions from insurance coverage, determination of "waiting times" for receiving insurance indemnity, inadequate guarantee of refund of unused premiums, etc.). Commercial health insurance of foreigners can play only a complementary role, and exclusively in relation to foreigners whose non-inclusion in the system of public health insurance is systemically more advantageous (for example, they stay in the Czech Republic for a very short time).

In my opinion, the argument of burdened public budgets, according to which incoming foreigners "often receive healthcare soon" and their transfer to the public health insurance would result in "increased costs in the order of billions of crowns per year", is untrue and entirely unfounded. **Experts have long pointed out that**

[4] Before 1 January 2014, it was impossible to curtail the community property of spouses on grounds of exclusive debt of one of the spouses incurred before the marriage was concluded. This was remedied by a subsequent amendment (enabling the curtailing by amending Section 262a (1) of the Code of Civil Procedure), understanding the possibility of the other spouse to claim satisfaction of such a debt only from the part of the community property which would be represented by the share of the liable spouse if the community property is cancelled and settled. The same option is available to the other spouse in the enforcement of exclusive debts incurred against their will, the claiming of alimony or debts incurred from illegal acts of one of the spouses (Section 732 of the Civil Code).

inclusion of the thus-far excluded groups of foreigners with a long-term stay in public health insurance would not increase the costs of the system of public health insurance, but rather the opposite, would be economically advantageous for the system.

This follows from the specific age structure of foreigners during the initial years of their stay in the territory of the country (within a long-term or temporary stay in the country). In comparison with the composition of standard Czech population, there is a higher proportion of young men in productive age among these foreigners while the share of elderly persons is significantly lower. I also refer to the "**healthy migrant effect"** – individuals who decide to migrate tend to be healthier and more resilient than the average majority population in the country of origin and the target country. This suggests that foreigners staying in the territory of the Czech Republic in the long term who are now excluded from public health insurance receive by average less healthcare with lower costs than an average person insured under public health insurance. Thus, from the viewpoint of public health insurance, they represent a **lucrative group of insured persons whose integration would not increase costs for the system.**

D - Other activities

D.1.1 Meetings with Ministers and their Deputies

On 3 July, I met with **Police President** plk. Mgr. Bc. Tomáš Tuhý. The meeting was concerned with the **agenda** of the Police of the Czech Republic **in relation to the restriction of persons in police cells**. The Public Defender of Rights has been carrying out systematic visits to police cells since 2006. The meeting was based on the findings from recent years. While the Police of the Czech Republic and the Public Defender of Rights each primarily follow different aims using different means, both parties expressed their will to use the opportunity for co-operation and direct communication in order to ensure that persons restricted in their freedom are protected at the level required by constitutional and legal regulations.

On 13 August, I met with **Supreme State Attorney** JUDr. Pavel Zeman on **collaboration in the protection of the rights of persons restricted in their freedom**. Amongst other things, we agreed that, within the framework of its competence, the Supreme State Attorney's Office would adopt measures to ensure that state attorney's offices submit to the Defender their findings made in the exercise of supervision over places where personal freedom is restricted and, within the exercise of competence in criminal proceedings, any information suggesting maltreatment of persons kept in places where personal freedom is restricted. The Defender will provide the State Attorney's Office having substantive and local competence with information from her investigations at places where personal freedom is restricted which suggests that a crime has been committed or a legal regulation violated.

On 28 August, I met with **the Minister of the Interior** Milan Chovanec to discuss a **change in the rules of participation of EU citizens in municipal elections.** The Treaty on the Functioning of the European Union grants the citizens of the EU the right to participate in regional and municipal elections in the country of

their residence. However, the existing electoral law, i.e. Act No. 491/2001 Coll., on elections to municipal assemblies, as amended, grants the right to participate in municipal elections in the Czech Republic only to those citizens who are registered in the relevant municipality for permanent residence on the election day. In relation to citizens of the Czech Republic, this represents merely a permanent residence for registration purposes under the Act on Population Records[5]. For foreigners, on the other hand, permanent residence corresponds to the permission to stay in the territory of the Czech Republic which can only be obtained after several (usually five) years of uninterrupted stay in the territory of the Czech Republic. This condition is directly at variance with the law of the European Union which uses the term "residence". **The originally negative attitude of the Ministry of the Interior changed with the decision** of the Regional Court in Brno on a Slovak citizen living in the Czech Republic in the long term. **In accordance with my legal arguments, the court confirmed the right of EU citizens** with temporary residence in the Czech Republic **to vote** in municipal elections. The Regional Court in Prague later delivered a similar ruling.

On 29 August, I met with the **Minister of Labour and Social Affairs**, Mgr. Michaela Marksová. We discussed the issues of **discontinued payment of benefits for foster parents** caring for a child depending on care where expired validity of the expert opinion relating to dependence of the child on care does not mean that the foster parent's remuneration will cease to be paid or will be paid in the basic rate. We discussed the possibility of **providing** a benefit of **extraordinary immediate assistance for out-of-pocket payments of medicines** in narrowly defined cases during the temporary period when a citizen must pay increased costs of medicines. I drew the Minister's attention to the need to adapt the normative instruction concerning **housing benefits** to the new Civil Code. The instruction should be amended so that housing allowances can already now be provided e.g. for a single room in a flat to avoid the situation where persons using a single room in a flat are forced to leave for a lodging house.

On 1 September, I met with the **1st Deputy of the Minister for Regional Development**, Ing. Klára Dostálová, and Deputy Minister for Regional and Housing Policy, Ing. Petr Smrček. The meeting was concerned with the procedure of the Ministry in **indemnification under the Act on Liability for Damage Caused in the Exercise of Public Authority** through a decision or incorrect official procedure[6]. Both I and my predecessors have found in the past that the **procedure of the Ministry did not correspond to the sense of the Act** on Liability for Damage Caused in the Exercise of Public Authority. By adopting the Charter of Fundamental Rights and Freedoms, the State expressly granted citizens the right to indemnification for damage caused by an illegal decision of a court, state authority or public administrative authority or through an incorrect official procedure. In several cases, the Ministry for Regional Development **refused to provide satisfaction for intangible damage**, expressing unwillingness to change this practice. I attempted to persuade the representatives of the Ministry that the Ministry does not purely defend

[5] Act No. 133/2000 Coll., on population records and birth identification numbers, as amended

[6] Act No. 82/1998 Coll., on liability for damage caused in the exercise of public authority through a decision or incorrect official procedure and on amendment to Act of the Czech National Council No. 358/1992 Coll., on notaries and their activities (Notarial Code), as amended.

the State in matters of indemnification but it **also acts as an executive body of public administration** (i.e. acts in accordance with the law, objectively, convincingly, efficiently, openly, in a forthcoming and timely manner and responsibly).

On 30 September, within the **round table** organised at the Office of the Public Defender of Rights, I discussed with the representatives of the Ministry for Regional Development, Ministry of Finance, Association of Regions of the Czech Republic and Association of Cities and Municipalities of the Czech Republic the **possibilities of financing the enforcement of decisions issued by general construction authorities in public interest** where a decision in public interest cannot be enforced without financial assistance from the State. **A sociological research was presented** in this respect – collection of data from all regional authorities and the Municipal Authority of the Capital City of Prague, conducted by my colleagues. The data were collected for 2012 and 2013. All the regional authorities and the Municipal Authority of the Capital City of Prague were of the opinion that **the main reason why decisions of construction authorities are not enforced lies in the financing of the enforcement of decisions.** I assume that a similar problem exists in the enforcement of decisions made by special construction authorities. The parties present agreed on the necessity and urgency of resolution of the issue of financing the enforcement of decisions issued by general construction authorities in public interest. They further stated that **financial participation of the State is appropriate in extreme situations** where the construction authority as the competent state authority takes all acts in accordance with the applicable legal regulations to ensure fulfilment of a decision issued by it in public interest but the measures ordered by it are not fulfilled. **The Ministry of Finance promised to dedicate a financial amount** from the State budget for covering the costs of enforcement of decisions issued by construction authorities in public interest. **The Ministry for Regional Development will prepare a specification of the types of decisions** that would be preferably subject to this type of financing. The financial means should be provided from the state budget in the form of “allocation” rather than “subsidy”.

D.1.2 Together for Good Governance Project

Since 1 January 2014, the Office of the Public Defender of Rights has been implementing the Together for Good Governance project (reg. No. CZ.1.04/5.1.00/81.00007). The project is financed from the European Social Fund through operational programme Human Resources and Employment and the State budget of the Czech Republic.

The main objective of the project is to identify opportunities for **increasing effectiveness of the work of the Office of the Public Defender of Rights** with the use of international co-operation.

In particular **the following activities took place** during the third quarter of 2014 within the above project:

1) One workshop for non-profit organisations in Brno

Topic: How to compile an action against a decision of an administrative authority in matters concerning the social sphere.

Total number of participants: 32.

2) One round table for non-profit organisations in Prague

Topic: Discrimination at the workplace

Total number of participants: 13.

The past period was marked especially by evaluation of the existing progress in implementation of the key activities of the project and preparation for upcoming education events, information/enlightenment meetings and individual visits with the foreign partners of the project and co-operating organisations.

Brno, 29 October 2014

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