Public Defender of Rights
OMBUDSMAN

Annual Report on the Activities of the Public Defender of Rights 2013

ANNUAL REPORT ON THE ACTIVITIES OF THE PUBLIC DEFENDER OF RIGHTS

2013

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Contents

Introduction

The presented Report sums up the control activities of the Public Defender of Rights (hereinafter also as the "Defender") in the area of public administration, detention agenda, discrimination agenda and supervision over the expulsion of foreigners in 2013.

The Report continues in the direction established in previous years and places emphasis particularly on the general observations following from the Defender´s activities. The Report is therefore more detailed especially in the parts dedicated to the Defender's legislative recommendations to the Chamber of Deputies of the Parliament of the Czech Republic (hereinafter as the "Chamber of Deputies"), or in commenting on legal regulations, while a more concise and illustrative approach was adopted in the part dealing with inquiries into specific cases, whether in the area of control of public administrative authorities, systematic visits to facilities where persons restricted in their freedom are held, or in the area of non-discrimination law.

The Report is divided into eight parts.

The first part draws general conclusions on the most severe problems and, at the same time, outlines options for their resolution in the form of recommendations to the Chamber of Deputies.

The second part of the Report is dedicated to the Defender's special powers and his participation in proceedings before the Constitutional Court. It further sums up the Defender´s activities in comment procedures, the agenda of administrative actions to protect public interest and the agenda of disciplinary actions.

The third part comprises statistical data and presents observations made in individual areas of governmental authority. In accordance with the provision of Section 2 (4) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), the Defender may entrust his or her deputy with the exercise of a part of his mandate. Thus, the Defender´s conclusions and standpoints in this Annual Report mean not only the conclusions and standpoints of the former Public Defender of Rights **JUDr. Pavel Varvařovský**, but also of **RNDr. Jitka Seitlová**, the Deputy of the Public Defender of Rights whose term of office expired on 4 April 2013, and of **JUDr. Stanislav Křeček**, the Deputy of the Public Defender of Rights who took office on 5 April 2013.

The fourth part sums up information on the results of systematic visits to facilities where persons restricted in their freedom are held (the so-called detention facilities).

The fifth part focuses on the matter of protection against discrimination under the Antidiscrimination Act, as it is called, (Act No. 198/2009 Coll., as amended).

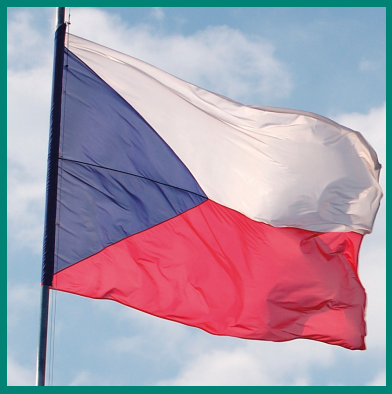
The sixth part presents the mandate entrusted in the area of the Returns Directive, as it is called, which consists in monitoring the detention of foreigners and exercise of administrative expulsion, surrender or transit of detained foreigners and the penalty of expulsion of foreigners who were placed in pre-expulsion custody or are serving their sentence in prison.

The seventh part comprises general information on the management of funds by the Office of the Public Defender of Rights and on the Defender's international activities.

The eighth part is the closing summary.

The Annual Report contains observations from all areas of the Defender's mandate (control of public administration, detention agenda, discrimination agenda) and, as such, it includes, among other things:

- a report under Art. 23 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- a summary report within the meaning of Article 13(2) of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- a summary report within the meaning of Art. 8a(2) of Directive 2002/73/EC of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- a summary report within the meaning of Art. 20(2) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.



1 General Observations – Recommendations to the Chamber of Deputies

The general observations made by the Defender in the previous year, taking the form of his recommendations to the Chamber of Deputies of the Parliament of the Czech Republic (hereinafter also the "Chamber of Deputies"), are provided in the first part of the Annual Report. In relation to the Chamber of Deputies, the Defender regards these general observations as the most important part of his annual information for the Chamber of Deputies, to which he is accountable for the discharge of his office. By virtue of providing this information, the Defender also fulfils his duty pursuant to Section 24 (1) (c) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended) to submit recommendations for amendments to legal regulations to the Chamber of Deputies.

The Defender first briefly evaluates the fulfilment of his 2011 and 2012 recommendations addressed to the Chamber of Deputies.

The Defender then attaches new recommendations that followed from his activities in 2013. **He again concentrates only on those recommendations that he considers absolutely essential**. The Defender would welcome it if the Chamber of Deputies itself ensured that the recommendations are reflected in the applicable legal regulations in the form of an MPs' initiative and, to this end, the Defender will yet again strive to make sure that the individual recommendations are examined by the relevant committees of the Chamber of Deputies. In those cases where a legislative recommendation requires a substantial intervention in the legal system, the Defender would welcome it if the Chamber of Deputies adopted a resolution (as common in the past years) requesting that the Government address the recommendations in question.

1 / Evaluation of the Recommendations for 2011

The Public Defender of Rights is pleased to note that two out of the five unheeded recommendations to the Chamber of Deputies from 2011 have been fulfilled. One concerned the matter of the **exclusion from the job seekers register for failure to appear at the contact point of public administration (DONEZ**); this project was terminated during 2013. See also chapter "Employment administration", page 42. The other one concerned the **repeal of the transitional provision (Article II (4) of Act No. 300/2011 Coll.) of the amended Lotteries Act** (Act No. 202/1990 Coll., as amended). In the end, the transitional provision in question was repealed by the Constitutional Court in its judgement of 2 April 2013, File Ref. Pl. ÚS 6/13.

However, the Defender's recommendation to **stipulate the duty of administrative authorities to advise the parties to proceedings of their right to file an administrative action against an administrative decision** remain unheeded. Another unheeded recommendation concerned the **modification of health insurance of specified categories of foreigners** (this applies particularly to minor children and husbands/wives of foreigners from third countries staying in the Czech Republic on the basis of a visa/long-term residence permit to unite the family). The last unheeded recommendation is the remedy of the unfavourable situation consisting in the lack of an effective **legal regulation that would govern the status of employees exercising governmental authority.**

2 / Evaluation of the Recommendations for 2012

With regret, the Defender notes that his recommendations to the Chamber of Deputies from **2012 were not implemented at all, with only one exception.** It should be noted that this was caused, to a certain extent, by the fact that in June 2013 the Government resigned, and two months later, the Chamber of Deputies, which was to examine the Annual Report on the activities of the Public Defender of Rights for 2012, was dissolved as well.

The only recommendation that was heeded indirectly concerns an amendment to the legal regulation governing the so-called **social systems card (sKarta).** Although the Defender requested mainly the elimination of the shortcomings of the legal regulation in terms of the protection of privacy and personal data of benefit recipients and the clear definition of conditions for the exercise of public authority, the Act on the Abolition of the Social Systems Card (Act No. 306/2013 Coll.) was adopted on 12 September 2013, abolishing the social systems card as of 30 April 2014.

Thus, the following recommendations of the Public Defender of Rights for 2012, which are detailed in the Annual Report on the Activities of the Public Defender of Rights for 2012, remain unheeded (and unexamined by the Chamber of Deputies):

2 / 1 / Provision of free legal aid

The Defender recommends that the Chamber of Deputies request that the Government regulate the provision of free legal aid.

2 / 2 / Housing for people threatened by social exclusion (social housing)

The Defender recommends that the Chamber of Deputies request that the Government prepare and submit a draft substantive intent of a law or other legislative solution regulating social housing.

2 / 3 / The absence of express prioritisation of integration in the Education Act

The Defender recommends that the Chamber of Deputies request that the Government amend the Education Act so that it expressly stipulates the priority of individual integration of pupils with special educational needs in mainstream elementary schools.

2 / 4 / Modification of the amount of court fee for filing a discrimination complaint

The Defender recommends that the Chamber of Deputies modify the amount of court fee for filing a discrimination complaint so that it no longer includes a percentage amount of the monetary compensation claimed for immaterial harm, and reduce the flat court fee to CZK 1,000.

2 / 5 / Exemption from court fees for administrative actions concerning employment and foster care allowance

The Defender recommends that the Chamber of Deputies:

- amend the provision of Sec. 11 (1) (b) of the Court Fees Act (Act No. 549/1991 Coll., as amended) by inserting the words: "unemployment benefits and foster care allowances";
- and, at the same time, amend the provision of Sec. 7 (3) of the Administrative Procedure Code (Act No. 150/2002 Coll., as amended) regarding territorial jurisdiction.

2 / 6 / Entitlement to unemployment benefits following long-term sick-leave

The Defender recommends that the Chamber of Deputies remove the undesirable consequence of a shorter reference period for assessing the entitlement to unemployment benefits of people on long-term sickness insurance benefits, either by including an additional period counting as a "substitute" period of employment within the provision of Sec. 41 (3) of the Employment Act (Act No. 435/2004 Coll., as amended) or in another suitable manner (e.g. by introducing the institute of mitigation of the harshness).

2 / 7 / Methodological direction and guidance in the exercise of governmental authority

The Defender recommends that the Chamber of Deputies expressly stipulate in the Act on Establishment of Ministries and other Institutions of Central Government of the Czech Republic (Act No. 2/1969 Coll., as amended) a duty of the Ministries and other bodies of central administration to provide methodological guidance and to direct with a binding effect the exercise of governmental authority in the sections for which they are responsible.

2 / 8 / Transparent economic management of business entities

The Defender recommends that the Chamber of Deputies eliminate the obligation to file financial statements twice with two different entities and provide for a more effective penalty mechanism in cases of a failure to file financial statements with the Commercial Court.

2 / 9 / Continuity of game management

The Defender recommends that the Chamber of Deputies amend the provision of Section 69 of the Game Management Act (Act No. 449/2001 Coll., as amended) by inserting Paragraph 7: "In hunting areas belonging to the hunting grounds or game preserves approved under existing regulations and in respect of which it is not apparent whether they have been brought into compliance with this Act or whether they have ceased to exist, game management rights shall be exercised by the existing user until the issue has been resolved."

2 / 10 Waste management records

The Defender recommends that the Chamber of Deputies request that the Government submit a new law on waste (or alternatively an entirely new legal regulation) which would regulate the issue of monitoring the movement and handling of waste in real time.

3 / New Recommendations of the Defender for 2013

3 / 1 / Protection of privacy of employees

The Labour Inspection Act (Act No. 251/2005 Coll., as amended) does not incorporate misdemeanours and administrative offences related to the breach of privacy of employees, which often leads to quite absurd situations. Labour inspection bodies are entitled to inspect the observance of labour regulations, including the provision of Sec. 316 of the Labour Code (Act No. 262/2006 Coll., as amended), which, among other things, impose on the employer a duty to refrain from impermissible interference in privacy of employees at workplace (in particular unlawful monitoring). Inspection bodies are also entitled to request remedy. Nevertheless, they cannot impose a penalty for breaching the provision in question.

Labour inspection bodies deal with the situation by referring the findings ascertained during inspection to the Office for Personal Data Protection. However, the Office imposes fines for misdemeanours and administrative offences

according to the Personal Data Protection Act (Act No. 101/2000 Coll., as amended) solely for acts connected with personal data processing. Unlawful monitoring of employees belongs to the processing of personal data, according to an opinion of the Office for Personal Data Protection, only if employees are monitored by means of surveillance equipment with recording. If an employer interferes in privacy of employees by other means (e.g. in "on-line" mode), such unlawful behaviour is not penalised by the Office for Personal Data Protection or by a labour inspection body.

The Defender recommends that the Chamber of Deputies request that the Government amend the Labour Inspection Act to the extent that the amendment incorporates a new administrative offence and misdemeanour in the area of protection of employees' privacy.

3 / 2 / Persons operating small photovoltaic plants

Small producers of electricity (operators of rooftop photovoltaic power stations with capacity of several kW connected to the grid) are considered, according to the provision of Sec. 9 (3) (e) of the Pension Insurance Act (Act on 155/1995 Coll., as amended), self-employed persons. A photovoltaic power plant is operated on the basis of a licence for electricity generation issued by the Energy Regulatory Office. Income from electricity generation (including green bonuses in case of own consumption) is considered income from self-employment according to the provision of Sec. 7 (1) (c) on Income Taxes (Act No. 586/1992 Coll., as amended).

Income from the operation of the mentioned power plant generally cannot cover the essentials of living of its operators. The operators therefore find themselves in an unsolvable situation if they lose employment. Electricity generation becomes their main source of income and thus they are not entitled to unemployment benefits. As self-employed persons, they cannot be job seekers according to the provision of Sec. 25 (1) (b) of the Employment Act (Act No. 435/2004 Coll., as amended). Small producers of electricity, moreover, cannot take advantage of a procedure that is standard for self-employed persons – suspension of trade. Furthermore, operators of even very small photovoltaic power plants (including those unemployed) are not entitled to benefits of assistance in material need.

The Defender recommends that the House of Deputies request that the Government amend laws to allow operators of small power plants to be job seekers and be entitled to unemployment benefits and to enable the assessment of only their real income from the operation of the plant for the purpose of an entitlement to benefits.

3 / 3 / Hydrogeological exploration boreholes

The Defender repeatedly encounters problems related to the drilling of hydrogeological exploration boreholes within the Geological Works Act (Act No. 62/1988 Coll., as amended). Complainants often state that as a result of a hydrogeological exploration borehole in the vicinity of their well (without being notified of it in advance), their well stopped producing water (or the water level declined). A satisfactory solution to potential disputes is difficult to find in real life. The subsequent hydrogeological exploration, which is costly, does not have to determine reliably the causal link between the exploration borehole drilled and the loss of water in a nearby well. The Defender has pursued the subject since 2010. To address the given issue, a working group comprising the representatives of the Ministry of Environment, the Ministry of Agriculture and the Ministry of Regional Development had been formed. However, the operation of the group was interrupted at the beginning of 2012 and the Defender did not register major progress. The proposed legislative recommendation should help to protect the rights of owners of existing wells by means of several preventive measures.

The Defender recommends that the Chamber of Deputies request that the Government amend the Geological Works Act (or its implementing decrees) so that it stipulates:

- **duty of municipalities to notify the owners in a suitable form (e.g. posting on the official board) of the planned geological exploration works, of which municipalities are notified according to the legal regulation in force;**

- **duty of the contract owner to ensure that a project is drawn up for exploration geological works connected with the encroachment on land every time and not only when the price of the assignment exceeds CZK 50,000;**

- **duty of the author of the project to secure an opinion of the water-administration authority according to Sec. 18 of the Water Act (Act No. 254/2001 Coll., as amended) and planning information according to Sec. 21 of the Building Act (Act No. 183/2006 Coll., as amended) prior to the execution of exploration geological works connected with the encroachment on land.**

3 / 4 / Applications for benefits of assistance in material need

The provision of Sec. 75 (a) of the Act on Assistance in Material Need (Act No. 111/2006 Coll., as amended) anticipates that the Labour Office of the Czech Republic (hereinafter the "Labour Office of CR") issues a written decision only in cases when an application for benefits of assistance in material need is rejected to the full extent. Where the Labour Office of CR partially satisfies the application, the applicant is notified of the decision issued only by an informal notification without any justification. Therefore the applicant cannot learn on the basis of what legal consideration the Labour Office of the Czech Republic assessed his or her application and determined the amount of benefit. The applicant may file objections to such procedure with the Labour Office of CR and on the basis of the objections a decision containing substantiation and other elements stipulated in the Administrative Procedure Code (Act No. 500/2004 Coll., as amended) should be issued. However, the 15-day time limit to file objections does not start running on the day the notification is delivered to the applicant but on the day the benefit is paid to the applicant. In addition, the notification is not delivered by means of delivery "to the addressee only". The Defender also encountered a case where the notification had been delivered to the applicant only following the payment of benefit and the right of the applicant to file objections to the notification had been prejudiced. The Defender is of the opinion that the Labour Office of CR should issue a decision on granting benefits also in cases when the application is satisfied only partially. A similar procedure method is already set in decision-making regarding State social support benefits.

The Defender recommends that the Chamber of Deputies amend the provision of Sec. 75 (a) of the Act on Assistance in Material Need by inserting the words "in the required extent" after "benefit was not granted".

3 / 5 / Inspecting administrative files by a guardian ad litem

According to the provision of Sec. 55 (5) of the Act on Social and Legal Protection of Children (Act No. 359/1999 Coll., as amended), files maintained by a body of social and legal protection of children may be inspected upon a written request only by a child's parent having parental responsibility, other persons responsible for the child's upbringing or the child's representatives, on the basis of a written power of attorney. The list of the entitled entities is enumerative.

This regulation unfavourably impacts legal counsels or other third persons (e.g. employees of non-profit organisations) appointed guardians by a court in proceedings regarding the care of court for minors. This includes cases when in order to prevent a clash of interests, the person appointed the guardian of a minor is a person other than the body of social and legal protection that initiated or filed an application for the commencement of proceedings. The purpose of this measure is to secure for a minor child effective and qualified protection of its rights in ongoing court proceedings.

With respect to the existing legal regulation, bodies of social and legal protection of children do not allow guardians ad litem for minors (unless they are bodies of social and legal protection of children) to inspect the files maintained. The Defender believes that if the purpose of the given measure is to be fulfilled and the procedural rights of minors strengthened, conditions must be created for a guardian ad litem to protect effectively the rights of the person represented, which includes the possibility to inspect the relevant files maintained by bodies of social and legal protection. In the opposite case, the guardian ad litem de facto finds himself or herself in an unequal position compared to other participants in judicial proceedings.

The Defender recommends that the Chamber of Deputies amend:

- **the provision of the first sentence of Sec. 55 (5) of the Act on Social and Legal Protection of Children by inserting „or a guardian ad litem for the child" after the words „other persons responsible for the care of the child"**

- **the provision of the third sentence of Sec. 55 (5) of the Act on Social and Legal Protection of Children by inserting „or a guardian ad litem for the child" after the words „other persons responsible for the care of the child"**

3 / 6 / Shortcomings in the legal regulation of the enforcement of a decision (distrainments)

A long-service allowance is not included in income subject to salary deductions. Therefore, it is subject to potential distrainment to the full extent, i.e. by means of attachment for other receivables (other than wage garnishment). **If recipients of a long-service allowance do not have another income, they are left without means**. If they lose employment, they are not entitled, to the extent of the long-service allowance, to an unemployment benefit. For the purpose of benefits, a long-service allowance is assessed as income to the full extent (even if the liable party does not have income), which means that the liable party is mostly not entitled to the benefit at all or not in the amount needed (with the exception of an extraordinary instant assistance benefit). Possible defence in the form of a motion to partially discontinue the enforcement of a decision (distrainment) and an application for suspension is theoretically possible but very difficult to carry out (and slow) in practice. Moreover, it is not only the recipient that is affected but especially entitled persons with priority claims (in particular maintenance and support) since in case of **attachment for other receivables, the priority of claims cannot be ensured** (they cannot be satisfied) and it depends only on the order in which the long-service allowance is subjected to distrainment. Therefore, the Defender recommends including a long-service allowance in other income subject to salary/wage deductions (in the provision of Sec. 299 of the Code of Civil Procedure [Act No. 99/1963 Coll., as amended]).

Former employees entitled to a **severance pay** in case of erroneous (but regular) procedure of an employer find themselves in a similar situation. A severance pay is subject only to deduction but if an employer makes one-time deduction from the sum of the last salary and a several-month severance pay, virtually nothing is left from the severance pay. A former employee is then not entitled to an unemployment benefit (he or she receives it after the lapse of the period calculated as the number of multiples of average salary from which the minimum amount of severance pay was derived) or to benefits (severance pay is assessed as income). The Defender therefore recommends amending, for example, the provision of Sec. 286 of the Code of Civil Procedure.

The standard regulation of deductions from other income (most frequently pensions) also impacts income of persons **serving a term of imprisonment**, persons in custody or in security detention, or income of inmates in facilities for the exercise of institutional and protective education although with respect to such persons there is no reason to maintain in case of deductions an amount not liable to attachment. Therefore the income cannot be directly subjected to distrainment and the demanded claims satisfied. If, however, the convicted person has his pension sent to the prison, he or she loses it entirely if the court (distrainor) orders attachment for other receivables from the prison. As in the previous case, this manner of distrainment does not enable the due enforcement of priority claims.

Attention needs to be paid also to **the continuing practice of subjecting income to full distrainment when such funds are credited to a bank account, while the legal regulation exempts such income from distrainment or allows mere deduction**. Beneficiaries of pensions in particular cannot fully resolve the situation by a one-time withdrawal of twice the minimum living standard or by a change of the manner of payment of pensions. Most liable persons (recipients of pensions or benefits) are not able to resolve the situation through partial suspension of distrainment and when they file the motion, they face non-uniform decision-making.

The Defender recommends that the Chamber of Deputies request that the Government submit an amendment to the Code of Civil Procedure containing:

- **the inclusion of long-service allowance in income subject to salary deduction;**
- **subjecting a several-month severance pay to deductions for the relevant number of months;**
- **modification of subjecting other income of persons serving a term of imprisonment to distrainment;**
- **effective protection of income not subject to distrainment.**

3 / 7 / Including disability as a ground of discrimination in the Service Act and the Career Soldiers Act

According to the provision of Sec. 42 (1) (h) of the Act on the Service of Members of Security Corps (Act No. 361/2003 Coll., as amended), a member of security corps must be dismissed if according to a medical assessment of the provider of occupational medicine services he or she ceased to be medically fit to perform service, with the exception of health reasons related to pregnancy. Medical fitness of a member of security corps is assessed according to the Decree on Medical Fitness (Decree No. 393/2006 Coll., on Medical Fitness, as amended), which does not often allow a physician to take into account in a specific case the real impacts of a specific illness on the performance of service. If it follows from the Decree that an illness in a given category constitutes medical unfitness without anything further, the termination of service is almost an automatic consequence of such assessment; nevertheless, the provability of the causal link between disability and medical unfitness to perform service, which results in the termination of service, is missing in the outlined procedure. Similar rules apply to the admission of a person with disability to service.

According to the legal regulation contained in the Service Act, certain persons are prevented from performing service in security corps only because of their disability while it is not taken into account whether the differential treatment in comparison to persons in a similar situation was justified by reasonable and objective reasons.

The Act on the Service of Members of Security Corps contains in relation to the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act no 89/2012 Coll.) a special antidiscrimination provision, which does not contain "disability" in the list of grounds of discrimination.

The Defender concluded that the mentioned legal regulation stipulating strict restrictions in access to certain professions are, in the light of the case-law of the European Court of Human Rights (and also in the light of the decision of Polish Constitutional Court in an analogical case), in violation of international conventions on human rights and fundamental freedoms and of the Charter of Fundamental Rights and Freedoms, i.e. of the constitutional order of the Czech Republic. The Defender considers the legal regulation of medical fitness of members of security corps problematic also with respect to Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

For that reason, the Defender recommends that disability be added to the list of grounds of discrimination in Sec. 77 (2) (and likewise in Sec. 16 (4)) of the Act on the Service of Members of Security Corps. At the same time, Sec. 77 (7) of the Act on the Service of Members of Security Corps would stipulate that certain procedure cannot be considered discrimination where *"the security corps provides an objective reason consisting in the prerequisites or requirements for the performance of service that are necessary for the performance of the service or in the special character of the service that the member is to perform; the aim pursued by such exception must be justified and the requirement proportionate".*

With respect to the fact that a similar shortcoming is present in legal provisions of the Act on Career Soldiers (Act No. 221/1999 Coll., as amended), the Defender proposes supplementing the list of grounds of discrimination contained in Sec. 2 (3) of the quoted act.

The Defender recommends that the Chamber of Deputies amend:

the provision of the first sentence of Sec. 77 (2) of the Act on the Service of Members of Security Corps by inserting the word "disability" after the word "age";

the provision of the first sentence of Sec. 16 (4) of the Act on the Service of Members of Security Corps by inserting the word "disability" after the words "sexual orientation";

the provision of the third sentence of Sec. 2 (3) of the Act on Career Soldiers by inserting the word "disability" after the words "sexual orientation".

3 / 8 / Shift of the burden of proof in discrimination disputes

The Defender believes that all victims of discrimination should have the same procedural rights before court. Although the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.) prohibits differentiation on the basis of enumerated grounds (e.g. race, disability, sex) in selected areas of life (e.g. employment, housing, health care), the provision of Sec. 133a of the Code of Civil Procedure (Act No. 99/1963 Coll., as amended) stipulates a rebuttable assumption of discrimination only for a limited range of things. If, for example, a member of an ethnic group is denied service, education or health care, it is sufficient if he or she proves before court that unfavourable treatment occurred and claims that it was due to his ethnic origin. The burden of proof then shifts to the defendant – it is the defendant's responsibility to prove that his or her behaviour was not motivated by the ethnic origin of the petitioner. If, however, an elderly person, a disabled person or a member of sexual minority finds himself or herself in the same situation, the burden of proof does not shift. Therefore, the situation of these victims of discrimination is more complicated with respect to evidence. In the Defender's opinion, this is one of the reasons people are not filing complaints according to the Antidiscrimination Act. The Defender is convinced that victims of discrimination should enjoy the same level of procedural protection regardless of the ground of discrimination and the protected area of life anticipated by the law. Moreover, it seems necessary to stipulate the shift of the burden of proof not only in case of suspected direct or indirect discrimination but also in case of harassment, sexual harassment, incitement to discriminate, instruction to discriminate and victimisation.

The Defender recommends that the Chamber of Deputies amend the provision of Sec. 133a of the Code of Civil Procedure as follows:

"If the petitioner states before court facts on the basis of which it can be inferred that he or she was discriminated against by the defendant on grounds of sex, race, ethnic origin, nationality, religion, belief or opinion, disability, age or sexual orientation with respect to:

a) the right to employment and access to employment,

b) access to occupation, entrepreneurship and other self-employment,

c) employment and service relationships and other dependent activity, including remuneration,

d) membership and activities in trade unions, employees' committees or employers' organisations, including benefits afforded by such organisations to their members,

e) membership and activities in professional chambers, including benefits afforded by such public corporations to their members,

f) social security,

g) the granting and providing of social advantages,

h) access to health care and its provision,

i) access to education, special training and provision thereof,

j) access to goods and services, including housing, if offered to the public or during provision thereof, or

k) access to public contracts,

the defendant is obliged to prove that the principle of equal treatment was not breached".

3 / 9 / Stipulation of *actio popularis* in the Antidiscrimination Act

Actio popularis in discrimination disputes is part of the legal order in 16 European countries (e.g. Austria, France, Germany, Hungary, Netherlands, Norway or Slovakia). It is an effective legal instrument reflecting the fact that discrimination is not only an individual but also structural and society-wide problem. In practice there are cases where an individual resolution of a case through court does not lead to the desired effect, i.e. termination of discrimination conduct across specific areas (particularly in the area of providing services, health care, education or housing). Therefore, the Defender believes, on the basis of his experience from inquiring into specific complaints and communication with European partners, that *actio popularis* should be stipulated in the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.). As in other countries, the right to bring an action should also belong to non-profit organisations founded to protect the rights of victims of discrimination and to the Public Defender of Rights. Moreover, this power would suitably complement the Defender's power to bring an action to protect public interest in the field of the exercise of governmental authority, granted to the Defender effective from 1 January 2012.

The Defender recommends that the Chamber of Deputies stipulate in the Antidiscrimination Act the provision of Sec. 10a of the following wording: "Sec. 10a

1. **Should the violation of the principle of equal treatment affect the rights, the interests and freedoms protected by law of a larger or an indefinite number of persons or should such violation pose a serious threat to public interest, the right to seek the protection of the right to equal treatment belongs also to a legal person according to sec. 11 (1) of this Act and to the Public Defender of Rights.**

2. **Persons stated in paragraph 1 may require that the person violating the principle of equal treatment terminate his conduct and, if possible, remedy the unlawful state".**

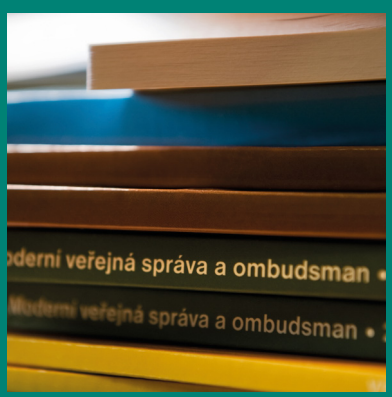
3 / 10 / Reclassification of convicted persons

A Government bill amending the Criminal Code (Act No. 40/2009 Coll., as amended) and the Act on the Service of Imprisonment (Act No. 169/1/999 Coll., as amended) anticipate the reduction of the existing four types of prisons (with minimum, medium, high and maximum security) to two types (prison, prison with maximum security). The new category of prison called "prison" will include convicts from the existing types of prisons – with minimum, medium and high security, with the effect of the amendment. This type will be subdivided into three units, namely a) low-security unit, b) medium-security unit, c) and high-security unit.

The court will decide on the classification of convicts into one of the two types and it will continue to decide on the transfer between the two types. The decision on the placement of convicts into specific units within the type of the prison will be made only by the Prison Service of the Czech Republic according to the SARPO system (the Overall Analysis of Risks and Needs of Convicts). The differences among the three units in effect copy the differences among the existing types of prisons – minimum, medium, high security.

The Defender supports the idea of reducing the types of prisons; however, only provided it is stipulated that the placement into the given unit may be reviewed by a body with an independent element. Such major action (classification), which will in effect impact the conditions during the convict's imprisonment (the level of guarding, exterior security and so on), should be subject to a review with respect to usual standards. A parole board, already operating in nine prisons, could be such a review body. The amendment should also regulate the procedural aspect of reclassification of convicts by the Prison Service of the Czech Republic.

The Defender recommends that the Chamber of Deputies request that the Government, if the intended Government bill is submitted (amendment to the Criminal Code and the Act on the Service of Imprisonment), also modify the procedure in classifying and reclassifying convicted persons by the Prison Service of the Czech Republic within the type of the prison, including the possibility of a remedial measure whereby such classification could be contested.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2 Relations with Constitutional Authorities and Special Powers of the Defender

1 / The Defender and the Chamber of Deputies

In 2012, the Defender continued to cooperate and communicate with the Chamber of Deputies of the Parliament of the Czech Republic (hereinafter the "Chamber of Deputies"), mainly through its committees. In addition to personal appearances, he sent his written standpoints to the chairpersons of the committees (or specific MPs – rapporteurs on the relevant bills) with a request that they be taken into account when laws and bills are discussed.

The Defender was regularly appearing before the Petition Committee, under whose agenda the Defender's activities fall. Since 2012, Annual Reports on activities, regular quarterly reports and special information on systemic failures of authorities have been examined also by the subcommittee of the Committee on Constitutional and Legal Affairs for Human Rights.

In 2013, however, the contact between the Defender and the Chamber of Deputies was reduced, in particular as the electoral term of the Chamber of Deputies expired early in August 2013, which was to a certain extent the cause of its failure to examine the Annual Report on the activities of the Public Defender of Rights for 2012 (see also "Evaluation of the Recommendations for 2012", page 12).

1 / 1 / Petition Committee

The Public Defender of Rights has traditionally been a regular participant in the meetings of the Petition Committee of the Chamber of Deputies, which examines his **quarterly reports** (Section 24 (1) (a) of the Public Defender of Rights Act – Act No. 349/1999 Coll., as amended).

The Defender also submits to the Petition Committee **his reports on individual matters where remedy has not been achieved** even after exhausting all means envisaged by law (Section 24 (1) (b) of the same Act).

In 2013, the Defender informed the Petition Committee **of a shortcoming of the Czech Social Security Administration** in assessing entitlement to disability pension with respect to determining the first day of disability. Another case he reported on was a shortcoming of **the Ministry of Labour and Social Affairs and the Labour Office of the Czech Republic** in applying an amendment to the Employment Act (Act No. 435/2004 Coll., as amended) before its effective date. Another case concerned **incorrect procedure of the Ministry of Environment and the State Environmental Fund** in providing subsidies from the Green Savings Programme (Zelená úsporám). The Defender also reported on the **procedure of the Ministry of Justice and the Prison Service of the Czech Republic** in conducting general body searches in prisons. Further, he noted a **shortcoming of the Municipal Authority of Hostivice and the Regional Authority of the Central Bohemian Region** consisting in continuing inactivity concerning the filling in of a waste disposal site at Chýně. The Defender also pointed out the **procedure of the Ministry of Regional Development** in providing satisfaction in cases of immaterial harm. The last matter he reported on was a shortcoming **of the Municipal Authority of Těrlicko** in handling applications pursuant to the Act on Free Access to Information (Act No. 106/1999 Coll., as amended).

Assessment of entitlement to disability pension

When dealing with complaints in the area of social security, the Defender inquired into a complaint of a person who had repeatedly applied for disability pension to the Czech Social Security Administration (hereinafter the "CSSA"). His applications had been rejected due to his failure to have accumulated the required period of pension insurance, i.e. five years of insurance in the last ten years prior to the onset of disability. CSSA had proceeded in this way although the applicant had met a newly introduced alternative condition concerning the insurance period for insured persons aged over 38 years, namely to demonstrate ten years of insurance period in the last twenty years prior to the onset of disability. However, CSSA had not recognized the period of insurance since it had applied a different interpretation of the transitional provision of Art. II (1) of a law amending the Pension Insurance Act (Act No. 306/2008 Coll.) than the Defender. See also "Disability pensions", page 39.

Application of an amendment to the Employment Act

The Defender informed the Chamber of Deputies that the Ministry of Labour and Social Affairs and the Labour Office of the Czech Republic had proceeded incorrectly by granting a complainant who had terminated his employment relationship by agreement a reduced amount of unemployment benefit since the complainant had requested the procurement of employment only after the amended legal regulation had become effective.

The mentioned bodies had proceeded at variance with the principle of legal certainty, and citizens' trust in law and the prohibition of retroactivity of legal regulations were violated. **Where the lawmaker failed to stipulate a transitional provision regulating the application of such provision, administrative bodies should have adopted an interpretation that would maintain the essence of the right of the applicant to legitimate expectations**, although the benefit entitlement formally arose only as at the day of filing the application (i.e. when the new legal regulation was already effective).

Awarding subsidies from the Green Savings Programme

Within inquires opened on his own initiative, the Defender concluded that the Ministry of Environment had erred by failing to apply the Administrative Procedure Code (Act No. 500/2004 Coll., as amended) to decision-making on the award of a subsidy from the Green Savings Programme. The State Environmental Fund had decided on objections of rejected applicants in violation of the law and the principles of good governance because it had sent only notifications of the Minister's decision without proper justification to the applicants. See also "The Green Savings Programme", page 56.

Across-the-board body searches in prisons

Body searches in general represent violation of human dignity of imprisoned persons. In facilities where a term of imprisonment is served, it is legitimate to perform body searches to ensure internal security (to prevent the conveying of prohibited items into prisons), but only when they are performed in an appropriate manner and in a way respectful of human dignity to the maximum extent. It cannot be considered appropriate if convinced persons are forced, across the board, to do squats or raise the scrotum and the penis during a thorough body search without the existence of a real threat justifying such procedure.

As part of his inquiry, the Defender had already pointed out earlier to the Prison Service of the Czech Republic (hereinafter only the "Prison Service") and the Ministry of Justice in a specific case that subjecting imprisoned persons to such body searches as standard practice without the existence of any suspicion justifying such searches constituted an unreasonable violation of human dignity.

Although General Directorate of the Prison Service of the Czech Republic agreed with this opinion, it did not take remedial measures, mentioning possible deterioration of the security situation in prisons. The shortage of funds does not make it possible for the Prison Service to acquire technologies that would enable it to conduct checks of imprisoned persons in a manner not violating human dignity, instead of the existing body searches. See also "Prison system", page 60.

Inactivity regarding the filling in of Chýně waste disposal site

The Municipal Authority in Hostivice and the Regional Authority of the Central Bohemian Region has failed to adopt remedial measures proposed by the Defender; on the contrary, by their procedures (approval of the project "Chýně – Chrášťany forest park for recreational and sports use"), they in fact continue to tolerate the unauthorised filling in of the Chýně waste disposal site. The Defender has repeatedly dealt with the case since 2006.

The decision-making of the mentioned administrative bodies in the matter will now be subject to a judicial review on the basis of legal actions filed by the so-far ignored owners of plots under the waste disposal site.

Providing satisfaction in cases of immaterial harm

While inquiring into specific complaints, the Defender found a shortcoming in the activity of the Ministry of Regional Development and its failure to respect "***Ten Rules of Good Practice for the Assessment of Compensation Claims***".

What the Defender considers particularly serious is the fact that the Ministry rejected a claim for appropriate satisfaction in a specific case stating that the complainants had not proven the occurrence of immaterial harm by providing necessary documents. Such justification is in violation of the case-law of the European Court of Human Rights and the Supreme Court of the Czech Republic (according to which the assessment is based on a "strong but rebuttable" presumption that unreasonably long proceedings cause non-material damage to complainants and no evidence in this respect is required in principle). The Ministry of Regional Development, by contrast, completely avoided assessing whether in the given case the length of proceedings had been unreasonably long.

Further, it follows from the conducted inquiry that the Ministry of Regional Development does not provide satisfaction for immaterial harm caused by an incorrect official procedure. It wrongly assesses an incorrect official procedure and requires that applicants prove immaterial harm although in such cases it is the responsibility of the State to rebut claims of its occurrence. See also "Compensation", page 81.

Handling applications pursuant to the Freedom of Access to Information Act

The Municipal Authority of Těrlicko acted unlawfully by discontinuing the handling of a citizen's requests for information, stating that it regarded the tens of submissions received every month as the abuse of the Freedom of Access to Information Act (Act No. 106/1999 Coll., as amended).

The Freedom of Access to Information Act, however, permits only three ways of handling requests for information. An authority may provide information, refuse to provide it or dismiss the request but in all three cases it must issue a decision on the matter. If an authority decides not to provide information, it must give reasons with reference to some statutory restrictions or, as in the case of the Municipal Authority of Těrlicko, it can refer to the abuse of the right to information or to the bullying action of the citizen. By not issuing a decision, the authority denies the citizen a right to a fair trial. See also "Right to information, personal data protection", page 71.

1 / 2 / Committee on Economic Affairs

The 39th meeting of the Committee on Economic Affairs, held in March 2013, had on its agenda a bill (parliamentary print No. 712) amending **the Electronic Communications Act** (Act No. 127/2005 Coll., as amended). The intended purpose of the amendment was to **transfer a large part of the agenda of the Czech Telecommunication Office** (adjudication of subscription disputes concerning monetary performance) to general courts.

The Defender disagreed with the intended purpose, and not only due to the current unfavourable situation in the judiciary, and addressed the chair of the Committee on Economic Affairs, informing him of his reservations regarding the draft, including statistical data about the flooding of courts gathered in the course of his activities.

He also pointed out that the long-term unsatisfactory situation in deciding subscription disputes needed to be addressed within the existing mechanism, whether by increasing staff of the Czech Telecommunication Office or through possible amendments to the Electronic Communications Act.

In the end, the amendment was not passed because with respect to the early termination of the electoral term of the Chamber of Deputies, it was not examined.

1 / 3 / Committee on Social Policy

The 31st meeting of the Committee on Social Policy, held in May, had on its agenda a bill (parliamentary print No. 905) amending the Pension Insurance Act (Act No. 155/1995 Coll., as amended) and the Act on Organisation and Implementation of Social Security (Act No. 582/1991 Coll., as amended).

The submitted draft concerned the issue of **topping up the so-called Slovak pensions**, which the Defender has pursued on a long-term basis. The Defender had submitted comments on the given amendment already within an intersectoral comment procedure but they had not been accepted. Therefore he asked the chair of the Committee on Social Policy for an opportunity to inform the members of the Committee of his reservations during the examination of the materials in question.

The given amendment was approved as Act No. 274/2013 Coll. and it **partly reflected the Defender's comments**, including the introduction of the institute of mitigating the harshness of the law in the area of a supplementary payment to some recipients of Czech and Slovak old-age pensions. See also "Slovak pensions", page 39.

2 / The Defender and the Government

In early 2011, the Public Defender of Rights and the Prime Minister of the Czech Republic (hereinafter only the "Government") agreed on details regarding the exercise of the Defender's powers in relation to the Government. Under the law, the Defender addresses the Government in three groups of cases:

The first group includes situations where, after the Defender's inquiry, a Ministry **has not adopted sufficient measures to remedy a specific shortcoming**. In that case, the Defender advises the Government of this situation (Section 20 (2) (a) of the Public Defender of Rights Act). The Government is advised only in the form of a material "for the reference of the members of the Government".

The second group comprises cases where, following the Defender's inquiry, a Ministry **has not adopted sufficient measures to remedy unlawful administrative practice that is more general**. In such a case, the Defender advises the Government of the systemic problem (again Section 20 (2) (a) of the same Act). The advice is submitted to the Government in the form of a non-legislative material, usually accompanied with a draft resolution through which the Government would oblige the relevant Ministry to change the administrative practice. The Defender usually attends the discussion of the material.

The third group represents cases where the Defender uses his special power and **recommends that the Government adopt, amend or repeal a law** or a Government Regulation or Government Resolution (Section 22 (1) of the same Act). The Defender submits his recommendation to the Government in the form of a non-legislative material, without a comment procedure and with a draft resolution through which the Government would oblige the relevant Ministry to carry out the relevant legislative work. The material is usually discussed with the participation of the Defender.

The Defender did not employ any of the procedures stated above in 2013.

2 / 1 / Submission of comments by the Defender

The Defender used the option of commenting on draft legal regulations and other materials submitted to the Government of the Czech Republic on **42 occasions**. The Defender submits his comments particularly

in cases where he has observed, in the exercise of his mandate, that legislation should be amended. Thus, he exercises a simplified form of his authorisation stipulated in Section 22 of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended) – to submit to the Government recommendations for issuing, amending or repealing a legal or internal regulation.

In this context, it is necessary to mention that the Government approved, through its resolution No. 820 of 14 November 2012, an amendment to the Legislative Rules of the Government, which – among others – **formalizes the Defender's status, enabling him to participate in comment procedures**, as of 1st January 2013.

The most important comments submitted were the following:

Comments on the substantive intent of an amendment to the Mining Act

The Government's draft substantive intent of a law amending the Mining Act (Act No. 44/1988 Coll., as amended); the draft was withdrawn. ***The Defender's comments were partially accepted.***

The Defender welcomed the submitted substantive intent of a so-called big amendment to the Mining Act since he had been long pointing out in annual reports on his activities that **the legal regulation of mining was out of date** and a product of its time and also noting actual problems arising from that.

The Defender in particular wanted the mining legislation to be amended so that it would impose a duty on mining organisations to submit **agreements on the settlement of conflicts of interest** made also with the owners of the affected premises if they so required in writing. He also noted the interconnected problem of insufficient definition of the terms "threatened building" and "affected building".

Last but not least, the Defender recommended amending the legal regulation of the institute of **protected deposit areas**.

Comments on an amendment to the Act on Public Servants

The Government's draft of the public servants act; Chamber of Deputies, 2013, VI electoral period, parliamentary print No. 1081; not discussed due to the termination of the electoral period. ***The Defender's comments were not accepted.***

The Defender evaluated the presented draft overall as **insufficiently prepared, chaotic and unmethodical**, reiterating that at least a portion of public servants should be in a public-law relationship with the State, as follows from Art. 79 (2) of the Constitution. The mentioned provision envisages with respect to employees exercising governmental authority in administrative authorities a different legal regulation than the Labour Code (Act No. 262/2006 Coll., as amended).

With respect to his **principal objections to the draft**, the Defender did not elaborate on his comments on the specific issues. Nevertheless, he drew attention to the items that he found lacking in the legal regulation, especially the stipulation of greater depoliticization of governmental authority at the central level, disciplinary responsibility enabling "repressive motivation" going beyond the Labour Code and the possibility of remedying an incorrect procedure of a public servant in that manner. Further, he found lacking the stipulation of duties of public servants and the possibility to enforce the fulfilment of the duties, or the stipulation of career advancement to motivate and keep skilled employees in the service to the State.

For more details on the Public Service Act, please see also "Evaluation of the Recommendations for 2011", page 11.

Comments on an amendment to the Social Services Act

The Government's draft amendment to the Social Services Act (Act No. 108/2006 Coll., as amended); promulgated in the Collection of Laws under No. 313/2013 Coll. ***The Defender's comments were partially accepted.***

The biggest reservation expressed by the Defender in his comments concerned the fact that the amendment had been submitted **at a time when the Czech Republic was facing an action** before the European Court of

Human Rights (Application No. 62507/12 – Červenka vs. Czech Republic) concerning the **restriction of freedom of a person** who had been placed and **kept in a residential social service facility without his consent**, on the basis of a decision of his guardian.

In may be added that in autumn 2012 a meeting had been held, summoned by the Government representative of the Czech Republic before the European Court of Human Rights. It had been attended by the staff of the Ministry of Labour and Social Affairs (and also of the Office of the Public Defender of Rights), its topic being a missing **substantive-law regulation concerning the restriction of personal freedom** (within Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms) in the area of social services. The Ministry of Labour and Social Affairs had promised to prepare a legislative proposal which would remedy the existing unsatisfactory condition, which, however had not materialised. See also "Part IV – The Defender and Facilities Where Persons are Restricted in Their Freedom", page 85.

In the comment procedure, the Defender therefore stated that he considered it **a lost opportunity** that the applicable new legal regulation had not been included in the amendment to the Social Services Act.

Comments on an amendment to the Antidiscrimination Act

The Government's draft amending the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.); the draft was withdrawn. ***The Defender's comments were not accepted.***

The draft was to incorporate a new area and a new ground of discrimination in the Antidiscrimination Act. Specifically, it was to provide for the issue of "**whistleblowing**", special protection for whistle-blowers reporting criminal acts to law enforcement authorities at their place of employment.

The Defender stated that he considered **extending the grounds of discrimination generally undesirable**. This new potential ground **moreover goes against the very sense of the non-discrimination law**, which follows from and partially overlaps with the provisions providing for equality and banning discrimination in the area of fundamental rights since it in fact constitutes a concrete expression of the right to equality.

The prohibition of discrimination is aimed against actions which differentiate not on the basis of individual characteristics of a person but on the basis of their affiliation with a certain group (i.e. based on generalization, prejudice and stereotypes) where such affiliation to that group is not freely changeable (typically race, ethnic group, sex, or disability) or is changeable only with reservation, i.e. with more difficulty, only under certain circumstances and for very compelling reasons, not many times during their life (faith, religion).

Although whistle-blowers would probably represent a minority in society (which is the only feature which brings them closer to the Antidiscrimination Act), it needs to be said that reporting a criminal offence is, in some cases, a legal obligation, while in other cases it is more of a moral duty. Therefore it should not be perceived as interference with human dignity (which is the substance of protection under the anti-discrimination law).

The consequences of incorporating a new substantive area and a new ground of discrimination into the Antidiscrimination Act can be considered ill-advised and undesirable, in the Defender's opinion. A similar attitude was also adopted by the Legislative Council of the Government.

Comments on the draft of the Act on the Residence of Foreigners, the Act on the Free Movement of EU Citizens and their Family Members and an act amending the acts concerned

The Government's draft of the Act on the Residence of Foreigners, the Act on the Free Movement of EU Citizens and their Family Members and an act amending some acts in connection with the adoption of the Act on the Residence of Foreigners in the Territory of the Czech Republic, the Act on the Free Movement of EU Citizens and the Act on the Protection of the State Border of the Czech Republic; not yet submitted in the Chamber of Deputies. ***The Defender's comments have not been completely dealt with yet.***

The Defender does not consider the newly proposed legislation regulating the residence of foreigners in the territory of the Czech Republic well-prepared – both from the substantive and the legislative point of view. He is convinced that the legal regulation will not bring *"legal rules that are simpler, more compact and more transparent for users"* as declared (see the substantive intent of the law).

The proposed legal regulation, with minor exceptions, weakens the procedural rights of foreigners in a totally unprecedented way and unfoundedly and unjustly increases the difference in the legal status of the family members of migrating EU citizens and the family members of citizens of the Czech Republic.

The Defender submitted a total of 144 comments on the three related drafts mentioned.

Comments on an amendment to the Consumer Protection Act

The Government's draft amendment to the Consumer Protection Act (Act No. 634/1992 Coll., as amended); promulgated in the Collection of Laws under No. 476/2013 Coll. ***The Defender's comments were taken into account.***

The aim of the submitted legal regulation was to prevent the abuse of consumers' trust on the part of dishonest entrepreneurs organising tours or other thematic events targeted especially at elderly people with an aim to offer and sell them products that are many times more expensive than comparable products in brick-and-mortar shops and often lack in the required or advertised quality.

With respect to the fact that the Defender had long pursued the issue (in particular as part of inquiries into complaints about the Czech Trade Inspection Authority), he submitted several comments on the draft requiring greater specification, in particular as regards a provision stipulating the compulsory elements of a **notification** that is sent by a salesperson to the Czech Trade Inspection Authority in advance, and also a provision regulating an **invitation to participate** in an organised event. See also "Consumer protection", page 73.

Comments on an amendment to the Act on Assistance in Material Need

Government's draft amendment to the Act on Assistance in Material Need (Act No. 111/2006 Coll., as amended); not yet submitted in the Chamber of Deputies. ***The Defender's comments were not accepted.***

The Public Defender of Rights expressed his **disagreement with the way the drafting party had decided to solve the growing phenomenon of accommodating persons** who have difficulty finding and keeping standard housing in sub-standard, unsuitable and overpriced premises. He regards the significant time limitation of the entitlement to a benefit provided for "other than residential space" as unmethodical because **the existing legislation does not give persons who have difficulty finding and keeping standard housing any alternative to leaving such premises (most frequently lodging houses)**. The draft anticipates more intensive social work with benefit recipients who live in sub-standard premises; however, neither the existing nor the proposed legislation gives any instruments to social workers in municipalities to secure new housing. The amendment to the Act on Assistance in Material Need is **not accompanied by a complex regulation of social housing** guaranteeing decent housing to persons in situations defined by law (loss of housing), for example through a municipality or a non-profit organisation authorised by the municipality. In the amendment, the Defender did not detect any further guarantees of the accommodation of persons, who, as a result of the coming into effect of the law, will have to leave contemporary housing because they will not have any funds to pay for it.

The draft does not contain a qualified estimate of the number of persons threatened by a loss of housing or their structure (to what extent vulnerable social groups are represented – families with children, elderly people etc.) and, in this respect, the risks of adopting the legal regulation are described in a completely inadequate way. Adopting the regulation will save State funds but at the expense of persons who are now living in "other than residential space" or who have the right to use only a part of a flat (residential rooms), e.g. sublease. Such outcome is not acceptable and in effect it **violates the constitutionally guaranteed right to assistance in material need**, which is necessary for securing basic living conditions (Art. 30 (2) of the Charter of Fundamental Rights and Freedoms). The right to assistance in material need entails a right to assistance in case of the loss of housing because **decent housing is one of the basic living conditions**.

With respect to the above, **the Defender proposed that the drafting party withdraw the amendment from discussion in the given form**, that it acquire relevant statistical data and prepare a law on social housing with other departments. For more on the issue, see "Supplementary payment for housing", page 37.

3 / The Defender and the Constitutional Court

In relation to the Constitutional Court, the Defender has a special power to submit his own petition **for annulling secondary legislation** [Section 64 (2) (f) of the Constitutional Court Act (Act No. 182/1993 Coll., as amended)]. He **did not use this right** in 2013.

As part of an amendment promulgated in the Collection of Laws under No. 404/2012 Coll., amending the Code of Civil Procedure (Act No. 99/1963 Coll., as amended) and other related regulations, the Constitutional Court Act was also amended.

As of 1 January 2012, the provision of Section 69 (3) of the Constitutional Court Act **lays down the status of the Defender as an interested party to proceedings to annul laws or individual provisions of laws**. Upon examining a petition forwarded to him by the Judge Rapporteur, the Defender is entitled to notify the Constitutional Court whether or not he will enter the proceedings as an interested party (prior to the amendment, the Defender could appear as an interested party to proceedings only in proceedings to annul secondary legislation). The Defender welcomed the change, as within his activities a wide range of findings of legislative character are available to him. When handling complaints, he encounters practical problems related to law application and in many cases such findings are of constitutional magnitude.

In 2013 the Constitutional Court called on the Defender to state whether he would enter proceedings as an interested party in a total of **18 cases**, and **in five cases** the Defender entered the proceedings before the Constitutional Court.

The first proceedings that he entered pertained to a **petition to annul Art. II (4) of Act No. 300/2011 Coll.**, amending the Lotteries Act and other Similar Games (Act No. 202/1990 Coll., as amended). See also "Evaluation of the Recommendations for 2011", page 11. He also provided his opinion in proceedings to **annul legal regulations regulating the "social-systems card" (sKarta).** See also "Evaluation of the Recommendations for 2012", page 12.

Further, the Defender entered proceedings **to annul Part 6, Effect, Art. VI of Act No. 494/2012 Coll.,** amending the Misdemeanours Act (Act No. 200/1990 Coll., as amended). See below, Chapter 3/1/.

He also appeared as an interested party to proceedings to annul **Decree setting out a new Indicative list of spa-rehabilitation treatment for adults, children and adolescents** (Decree No. 267/2012 Coll.).

Finally, the Defender entered proceedings as an interested party regarding a petition to **annul a part of the provision of Sec. 6i (1) of Act No. 234/2013 Coll.,** amending the Fuels Act (Act No. 311/2006 Coll., as amended). See below, Chapter 3/2/.

Further, the Defender forwarded to the Constitutional Court (not entering the proceedings as an interested party) his **opinion on a petition to annul Attorney's Tariff Decree** (Decree No. 484/2000 Coll., as amended), agreeing with the petitioners' arguments as his findings arising from his activities regarding the given issue were similar. The Constitutional Court subsequently annulled the Decree in question by its judgment of 17 April 2013, File Ref. Pl. ÚS 25/12.

In some cases, the Defender is asked by the Constitutional Court to provide his legal opinion. On those occasions, the Defender does not have the status of a party to the proceedings and appears as so-called ***amicus curiae*** – Section 48 (2) of the Constitutional Court Act. In 2013, the Defender was approached **once**. He provided his opinion in proceedings regarding an **individual constitutional complaint of a foreigner (citizen of the Russian Federation), with focus on the line of reasoning concerning the relation of international protection proceedings and extradition proceedings**. The Constitutional Court decided on the case on

10 September 2013, File Ref. III. ÚS 665/11, agreeing with the legal opinion of the Defender on the given matter.

In 2013 the Constitutional Court also approached the Defender asking him whether he would accept **public guardianship, or more precisely guardianship ad litem**, of participants to proceedings **in two** individual constitutional complaints. The Defender did not make use of the possibility.

3 / 1 / Petition on the District Court in Liberec to annul the provision of Part 6, Effect, Art. VI. of Act No. 494/2012 Coll., amending the Misdemeanours Act File Ref. Pl. ÚS 22/13

As an interested party, the Defender entered proceedings to **annul the provision of Part 6, Effect, Art. VI. of Act No. 494/2012 Coll**., amending the Misdemeanours Act (Act No. 200/1990 Coll., as amended).

In the opinion given, he noted that the relevant amendment to the Misdemeanours Act promulgated on 31 December 2012 in the Collection of Laws **set a retroactive effective date** of the legal regulation (from 1 July 2012). This is **in violation of the constitutional order**, in particular with respect to the principle of legal certainty (Art. 2 (4) of the Constitution and Art. 2 (3) of the Charter of Fundamental Rights and Freedoms).

In addition, the Defender provided a brief comment on the legislative process of the given legal regulation, including his opinion on its substance. In particular he informed the Constitutional Court of his **repeated disagreement in the past with the same draft amendment,** which introduced the **prohibition of stay as penalty also for some misdemeanours**.

The Constitutional Court **granted the petition** by a judgment of 12 November 2013, **arriving at the same conclusion**, i.e. that the retroactive effect of the legal regulation concerned was **unconstitutional**, and **annulling** the relevant provision of the quoted act concerning the effect.

3 / 2 / Petition of a group of Senators for the annulment of a part of the provision of Sec. 6i (1) of Act No. 234/2013 Coll., amending the Fuel Act File Ref. Pl. ÚS 44/13

The Public Defender of Rights, as an interested party to proceedings, joined a petition of a group of Senators of the Parliament of the Czech Republic to **annul a part of the Act on Fuels and Fuel Filling Stations** (Act No. 311/2006 Coll., amended). Specifically, the petition is seeking **the cancellation of a security deposit of 20 million korunas** that the distributor of fuels is obliged to provide within the relevant registration proceedings. According to the Defender, the amount of security deposit set cannot be applied to all entities without taking into account their economic size or other alternatives. The Defender further developed his arguments, explaining why he considered the security deposit set in that way to be **in violation of the principle of proportionality**. At the same time, he noted a **possible conflict with the provisions of the Charter of Fundamental Rights and Freedoms,** whose essence is the protection of the right of ownership and the right to undertake business. Last but not least, the Defender **subjected to criticism the relevant transitional provisions of the law in question** and demonstrated the discrepancy between the stated reason for introducing such security deposit and the subsequent result. In other words, if the legislator wanted to set the system by means of the mentioned security deposit so as to prevent entities that operate unlawfully from entering this sector, it should have done so with the legal regulation having future effect and not also retroactive effect since it is apparent from the explanatory memorandum to the bill that the lifetime of such special-purpose (fraudulent) companies is weeks and the market would "cleanse" itself within a very short period of time. According to the existing transitional provisions, however, the obligation to provide a security deposit will also impact distributors undertaking this activity lawfully, and should they fail to provide the security deposit, they will have to cease it.

The Constitutional Court **has not made a decision** on the petition yet.

4 / The Defender's power to file an action to protect public interest

Effective from 1 January 2012, the Defender was granted **a new power to turn (directly) to an administrative justice court with a so-called action to protect the public interest**. It needs to be added that before the mentioned amendment became effective, the Defender had had the option to propose that the Supreme Public Prosecutor file the given action, which he had also done several times.

An action to protect the public interest can be defined, in very simple terms, as an instrument ensuring the checking of the activities of public administrative bodies. In other words, authorised entities may, subject to conditions provided by law**, file an action against the decision** of an administrative body.

In 2012, the Defender **did not make use of this power**.

4 / 1 / Action to protect public interest, directed against permitting the construction of a photovoltaic power plant

The **first action** for the protection of public interest was filed by the Defender in 2012 and it was directed at a number of final administrative decisions rendered by the Municipal Authority of Duchcov, whereby the administrative authority had permitted the construction of a photovoltaic power plant in the cadastral area of Moldava in Krušné Hory, subsequently approving it for operation.

In connection with developments in the case-law (a decision of the Extended Chamber of the Supreme Administrative Court of 18 September 2012, File Ref. 2 As 86/2010), which clarified the character and the reviewability of a consent to the notification of construction and of other consents given under the Building Act (Act No. 183/2006 Coll., as amended), **in the course of the proceedings** (in a reply dated 31 October 2012) **the Defender withdrew a part of his complaint** relating to disputable occupancy consents.

As late as in September 2013, the Regional Court in Ústí nad Labem separated by a resolution a part of the complaint (according to the types of administrative decisions) for separate proceedings **without reflecting in any way the procedural act of the partial withdrawal of the complaint**. In connection with the resolution in question, it subsequently issued a resolution dismissing the complaint against the respective occupancy consents as inadmissible.

According to Sec. 47 (a) of Act No. 150/2002 Coll., the Code of Administrative Justice (Act No. 150/2002 Coll., as amended), a court discontinues proceedings by a resolution if the petitioner has withdrawn his or her petition. Therefore, if the complaint was (partly) withdrawn, the regional court could only choose to discontinue (and not to dismiss) proceedings in that part. Therefore, the Defender turned to the Supreme Administrative Court with a cassation complaint regarding the unlawful resolution on the dismissal of the complaint. The Supreme Administrative Court agreed with the Defender's line of reasoning, vacating the resolution of the Regional Court and discontinuing the proceeding by a judgment of 21 November 2013, File Ref. 9 As 122/2013.

As to the remaining part of the complaint filed by the Public Defender of Rights, **the Regional Court in Ústí nad Labem has not rendered a decision** yet.

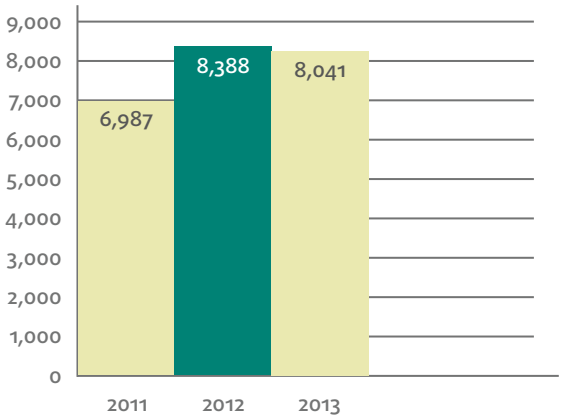
3 The Defender and Public Administration

1 / Basic Statistical Data

1 / 1 / Information on complaints received

The Defender received a total of **8,041 complaints** in 2013 (not including discrimination complaints – see Section V. – "The Defender and Discrimination", page 95). The number of complaints was similar as in 2012, when record-high 8,388 complaints were received. The Office of the Public Defender of Rights **was visited** by **1,198 individuals in person**, of whom 640 used the option to submit a complaint orally in a protocol and 558 individuals obtained legal advice on how to deal with a specific problem at the Office. For the sake of completeness, it should be noted that the number of complaints received by the Defender does not include additional filings made by the same complainant and delivered to the Defender while the file concerned is being processed. The number of complaints received in previous years is illustrated in a bar chart below.

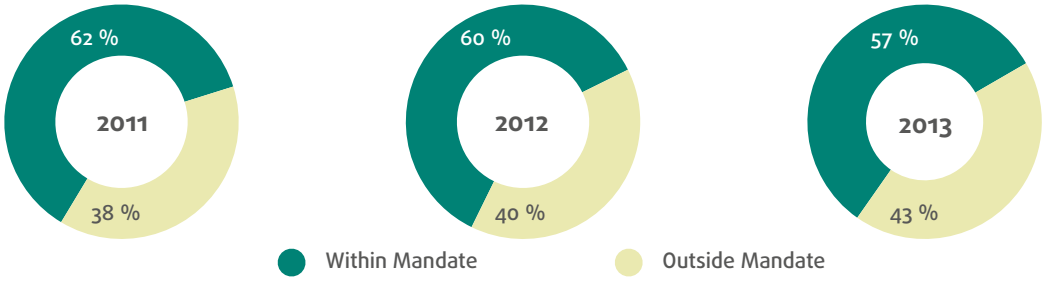
Complaints Received, per Year



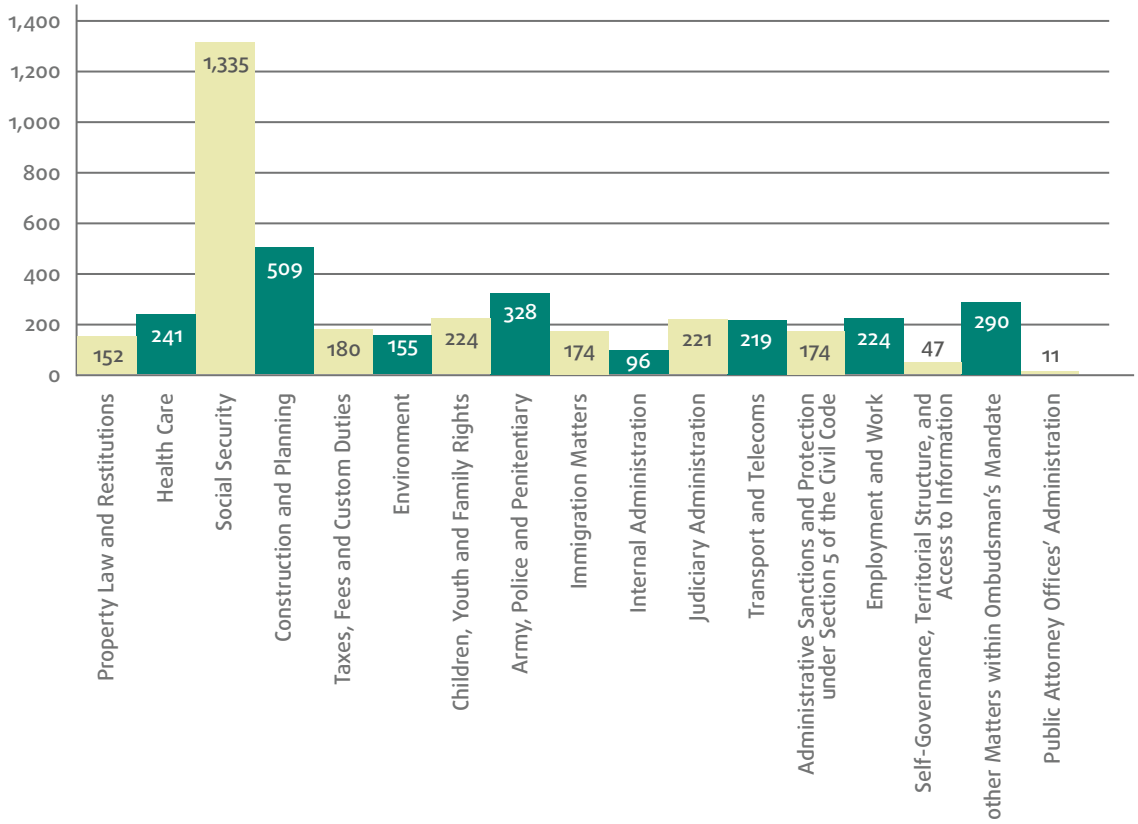
The information hotline available for requests regarding simple legal advice and queries regarding the progress in handling a complaint was used **by 6 134 people** in 2013.

A positive trend can be seen in the structure of complaints. As in previous years, complaints within the mandate of the Defender prevailed (**57% of the total were within the Defender's mandate**, and **40% of complaints outside his mandate**). In terms of the trends over the past three years, it is encouraging that an increasing proportion of complainants understand correctly the Defender's mandate, which seems to

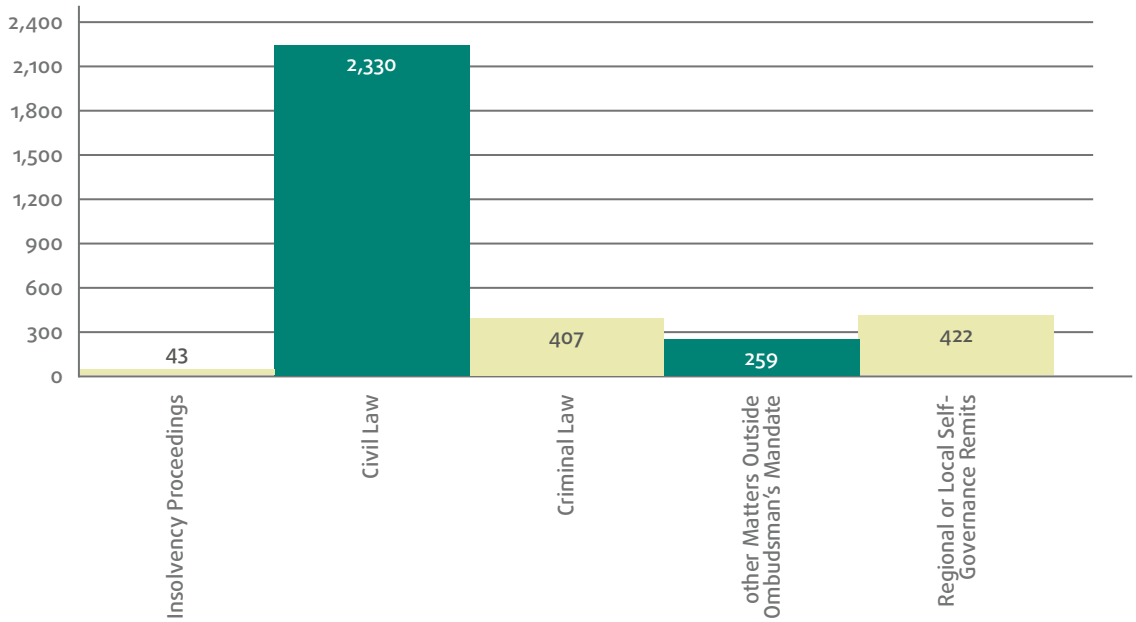
Structure of Complaints with Respect to the Defender's Mandate



Complaints Received within Mandate, by Field



Complaints Received Outside Mandate, by Field



suggest that the institute has anchored itself firmly in the legal awareness of the population (see the chart below).

The following graphs show that **most individuals** consistently address the Defender in **the fields of social security, the Construction Code, healthcare and the police and the prison system**. The individual areas of governmental authority to which the complaints were related can be summarised in the following charts:

The Defender **launched 701 inquiries** in 2013, using his **power to launch an inquiry on his own initiative in 37 cases**. As in past years, these pertained to issues of general character or situations where the Defender learnt of the authorities' incorrect procedure from the media.

1 / 2 / Information on complaints dealt with

In 2012, the Defender **dealt with 8,747 complaints**. Of the complaints handled:

- **901 were suspended**. The suspension was based primarily on a lack of mandate. To a lesser extent, they were suspended as a result of failure to supplement the missing prerequisites of a complaint or as a result of an obvious lack of substantiation.

- **6 708 were explained**. The Defender provided these complainants especially with legal advice as to further steps they should take to protect their rights. The Defender handled some complaints by informing the complainant that his or her issue was not unusual and launched a general inquiry on his own initiative on the basis of similar complaints.

The Defender closed **1,023 inquiries in 2013**, and:

- in **348** cases he **ascertained no maladministration** in the procedure of the authority concerned;

- in **675** cases he **found maladministration** in the procedure of the authority, where

  - in **553** cases the authorities took remedial measures themselves following the issue of **an inquiry report**;

  - in **97** cases the authorities failed to take remedial measures and the Defender had to release **a final statement**, including a proposal for remedial measures; only then did the authorities ensure remedy;

  - in **25** cases the authorities failed to remedy their maladministration even after the final statement was released. The Defender therefore used his **punitive power** and notified the superior authority of the maladministration or informed the public of the shortcoming.

The number of complaints dealt with in 2013 also includes **109** cases of **withdrawn** complaints as well as **2** cases where the complaint was actually, in terms of its contents, **an appeal** pursuant to the regulations on administrative or judicial matters.

Moreover, the Defender closed **19** so-called **inquiries of particular significance** in 2013, which should result in the change to the administrative practice in certain areas or the creation of a legislative recommendation for the Government and the Chamber of Deputies or the Defender's involvement in proceedings before the Constitutional Court.

2 / Selected Complaints and Commentaries

2 / 1 / Social security

Benefits of assistance in material need

Inquiries on own initiative with respect to contact points of the Labour Office of the Czech Republic
In the course of 2013 the Defender **continued to conduct inquiries on his own initiative with respect to selected contact points of the Labour Office of the Czech Republic (hereinafter only "the Labour Office of CR")**. Recommendations not heeded by the regional branches within written communication with the Defender and matters of a systemic nature were discussed with chief officers of the General Directorate of the Labour Office of CR and subsequently also with the Ministry of Labour and Social Affairs. Partial systemic measures were adopted on the basis of those discussions. With respect to supplement for housing and extraordinary immediate assistance, **the duty to substantiate the notification of the award of benefit where the application for the benefit has not been satisfied to the full extent was emphasised** in the internal regulations of the Labour Office of CR and the Ministry of Labour and Social Affairs. Since directors of regional branches of the Labour Office of CR stated work overload (caused by considerable understaffing) as the main cause of shortcomings on the part of labour office employees, the Defender also recommended increasing the staff at the Labour Office of CR. The General Directorate of the Labour Office of CR and the Ministry of Labour and Social Affairs agreed with this requirement. Upon a proposal of the Minister of Labour and Social Affairs, the Government approved in July 2013 **an increase in the Labour Office of CR's number of employees by 700 persons** (of which 319 were hired in 2013 and the rest will be hired in 2014).

Regarding some issues, however, the Defender did not reach an agreement despite holding discussions with the Ministry of Labour and Social Affairs. The Defender asked the Ministry to provide for remedy in specific cases where the Labour Office of CR had granted a benefit in an incorrect amount by a notification by cancelling the notification in review proceedings or by issuing an instruction of the Labour Office of CR to commence proceedings on the unlawfully denied benefit. Both means of remedy were repeatedly rejected by the Ministry of Labour and Social Affairs in the course of the Defender's communication with both Minister Ing. Ludmila Müllerová and Minister Ing. František Koníček. In their opinion, the Ministry is not authorised by the law to take such measure since a notification is not a decision pursuant to Part 2 of the Administrative Procedure Code (Act No. 500/2004 Coll., as amended). Therefore the Defender turned to the Ministry of the Interior, which is empowered to interpret the Administrative Procedure Code, requesting a statement concerning the interpretation. The Minister of the Interior submitted the Defender's questions to its Advisory Board on the Administrative Procedure Code. **The Advisory Board did not arrive at any conclusion regarding the possibility to review a notification in review proceedings** but it agreed that the Ministry of Labour and Social Affairs had the power, as part of the protection against inactivity, to instruct the Labour Office of CR in a specific case to commence proceedings on an unlawfully denied benefit. **Therefore, a remedy of an incorrect procedure of the Labour Office of CR on the part of the Ministry of Labour and Social Affairs is indeed possible and the Defender will also demand it in other cases in future**.

The use of so-called "**hybrid mail**", particularly to deliver benefit award notifications, is another problematic topic. The Labour Office of CR makes use of the possibility to have the notifications executed (printed out and put inside envelopes) by Česká pošta, s. p., through Postservis. The Defender is convinced that the stated procedure is in violation of the Administrative Procedure Code and the Personal Data Protection Act (Act No. 101/2000 Coll., as amended), since Česká pošta, s. p., is not an entity authorised by law to collaborate in executing notifications. **Therefore, the Defender repeatedly requested that the Ministry of Labour and Social Affairs cancel the instruction according to which the Labour Office is obliged to use hybrid mail with respect to all "ordinary" letters.** The Minister of Labour and Social Affairs repeatedly rejected such requests and the Defender thus asked the Minister of the Interior for a statement regarding the compliance of the practice of the Ministry of Labour and Social Affairs with the Administrative Procedure Code. The **Minister of the Interior agreed with the Defender after discussing the matter with its Advisory Board** and confirmed that the given practice was not in compliance with the Administrative Procedure Code. **The Defender will thus continue to demand terminating the use of hybrid mail and, if an agreement with the Ministry of Labour and Social Affairs is not reached, he will address the Government of the Czech Republic.**

Supplement for housing

When inquiring into complaints in the area of benefits of assistance in material need, the Defender repeatedly encountered **the problem of non-uniform, unpredictable and incorrect determination of justified housing costs**. In the case of a leased flat, justified costs are set at no more than the amount of standard rent; however, labour offices proceeded in quite different ways in determining the standard rent. The Defender therefore not only provided his statement on the manner of determining the standard rent within inquiries into specific cases but he also **endeavoured to achieve uniform practice through methodical guidance** of the Ministry of Labour and Social Affairs. With respect to the fact that in the middle of 2013 the Ministry was preparing the issuance of an internal regulation (normative instruction) concerning the supplement for housing, the Defender submitted comments on the draft instruction on the basis of his findings. The Ministry of Labour and Social Affairs accepted the comments and in August 2013 issued Normative Instruction No. 10/2013, which unifies the procedure of the Labour Office of CR in decision-making about the supplement for housing.

The Ministry of Labour and Social Affairs recommends in the instruction the manner of determining standard rent, which corresponds to the Defender's statements. The Labour Office of CR may set standard rent at a given place on the basis of data in the rent map (available on the website of the Ministry of Regional Development), or through its own inquiry (enquiries at real estate offices, relevant municipal offices). In such a case, however, it must determine standard rent at the given place separately for flats available on the market and for flats in municipal ownership. Only in exceptional cases, where persons occupy floor space which is disproportionally large for their needs, is it possible to compare the size of standard rent at the given place with costs of flat space recommended according to the number of persons. It is not possible to proceed in this manner if housing stock at the given locality does not include less expensive flats of a smaller size.

Further comments of the Defender concerned **the inclusion of contributions to the repairs fund** in justified housing costs in the case of persons living in cooperative flats and the inclusion of property tax in the case of owners of housing units. The Defender reached an agreement with the Ministry of Labour and Social Affairs also in these matters and the recommended procedure in the normative instruction corresponds to the Defender's statements.

The Defender and the Ministry of Labour and Social Affairs continued to **disagree about the cap on justified housing costs in the case of other than rental housing** (typically a lodging house) **and about the provision of supplement for housing if a person uses only a part of the flat or premises which have not been approved for permanent occupancy.** The Defender believes that the Act on Assistance in Material Need (Act No. 111/2006 Coll., as amended) enables paying a housing benefit to a person in material need living in a lodging house as stipulated in the Act on State Social Support (Act No. 117/1995 Coll., as amended) up to the amount of actual housing costs, but not exceeding the normative costs. The Ministry of Labour and Social Affairs continues to instruct the Labour Office of CR not to respect the statutory limit and instead to determine the level of "standard lodging costs at the given place", which may include lodging costs for the purpose of supplement for housing. Nevertheless, the Defender continues to disagree with the Ministry of Labour and Social Affairs over the provision of supplement for housing where a room is rented in a flat or on premises that are used as a flat and make decent housing possible but are not approved for permanent occupancy. **With respect to a room rental in a flat, the Defender recommends that the persons concerned defend themselves against the procedure of authorities in charge of assistance in material need by filing an action.**

Complaint File Ref.: 1490/2013/VOP/AV

For the purpose of the social security law the concept of a "flat" needs to be interpreted more broadly than it is defined by construction regulations since the purpose of social security regulations is to assist persons who cannot pay housing costs from their own income or obtain or maintain decent housing. Only then can the constitutionally guaranteed right to assistance in material need, which includes assistance in case of the loss of housing, be ensured.

The Labour Office of CR cancelled Mr L. J.'s supplement for housing because the premises in the basement of a family house used by Mr L. J. on the basis of a lease contract were not intended for dwelling (they were not approved for occupancy as a flat) by a decision of the construction authority. The Ministry of Labour and Social Affairs confirmed the decision of the Labour Office of CR. The Defender arrived at a conclusion that the concept of a flat needed to be, with respect

to the different purposes of both regulations, interpreted more broadly for the purpose of benefit regulations than for the purpose of construction regulations. The purpose of the public construction law is especially to keep the structures in a condition that does not pose a threat to a life and public health, the life or health of animals, safety or environment; whereas the purpose of social security regulations is to assist persons who are not able to pay housing costs from their own income or obtain or maintain decent housing. The housing standard for the purpose of providing housing benefits does not always necessarily have to meet the requirements of the public construction law; however, it should ensure decent housing. Likewise, the Supreme Administrative Court (judgment of 6 October 2010, File Ref. 3 Ads 23 / 2010) concluded that construction regulations were only a supportive criterion in defining the concept of a flat for the purpose of social security. Administrative authorities were not concerned in the given case whether the premises used by Mr L. J. over the long term on the basis of a lease contract were suitable for dwelling and fit in terms of health, and denied housing benefits without anything further. Since the Ministry of Labour of Social Affairs failed to respect the Defender's conclusions, the Defender recommended that Mr L. J. should turn to an administrative court.

Extraordinary instant assistance to cover co-payments for medicinal products

As part of inquiries on his own initiative and also on the basis of individual complaints, the Public Defender of Rights found that the Ministry of Labour and Social Affairs required the Labour Office of the Czech Republic in its methodological guidance not to provide extraordinary immediate assistance for covering co-payments for medicinal products even if the medical product subject to a co-payment was the only option of treatment of the person in material need and the person, after paying the co-payment, did not have sufficient funds to pay for food and other basic living needs. At a meeting with the representatives of the Ministry of Labour and Social Affairs and the Ministry of Health, it was concluded that such extraordinary situations (there is usually at least one medicinal product fully covered by insurance in each group of medications) can be solved practically only by extraordinary instant assistance. The Ministry of Labour and Social Affairs, however, insisted on its opinion that such a situation could not be solved by benefits of assistance in material need. Therefore the persons concerned have no other option but to seek necessary assistance through court.

State social support benefits

Housing allowance

The Defender encountered an inadequately formalistic procedure of the Labour Office of CR as regards the recognition of costs for the purpose of housing allowance for the previous calendar quarter. An entitlement to housing allowance is created on the day all statutory requirements are met, i.e. a certain form of housing (primarily home ownership, cooperative or rental housing), permanent address in the given flat and a certain proportion of income and housing costs for the previous calendar quarter. The Act on State Social Support (Act No. 117/1995 Coll., amended) does not stipulate that an applicant for housing allowance has to meet the requirements of a certain form of housing and the permanent address in a given flat already in the preceding calendar quarter for which income and housing costs are ascertained. It follows from the nature of the case, however, that housing costs for the preceding calendar quarter must incur in connection with the use of a flat on the basis of home ownership or cooperative or rental housing since only such costs may be recognised for the purpose of housing allowance, although the costs do not have to relate to the flat or the legal relationship to the flat for which the housing allowance is claimed.

Complaint File Ref.: 4663/2013/VOP/AV

If an applicant for housing allowance shared the costs of housing in the previous calendar quarter as a person assessed jointly with other persons and used the flat on the basis of a derived legal title as a result of family relationship, there is no reason, during the assessment of his entitlement to housing allowance, not to recognise these costs as if she herself had been the lessee of the flat.

The Defender was approached by a mother living together with daughters. The mother, the lessee of a flat, was drawing housing allowance. As of a certain date the daughter became the owner of the flat but housing costs continued to be paid by the mother since the daughter was studying. The Labour Office of CR, regional branch in Liberec, cancelled the housing allowance paid to the mother due to a change in the right to use the flat, arriving at a conclusion that the daughter as the owner of the flat was not entitled to the housing allowance since in the preceding calendar quarter she had not incurred any housing costs. The Defender concluded that the Labour Office of CR had erred by not taking into account housing

costs incurred by the mother in the preceding calendar quarter and shared by the daughter as a jointly assessed person. The Labour Office of CR agreed with the conclusions of the Defender, awarding the housing allowance to the daughter.

Disability benefits

Not providing long-term care benefits to Slovak pensioners living in the Czech Republic

Since 2008 the Defender has dealt with a problem of not providing long-term care benefits to the recipients of Slovak pensions who live in the Czech Republic and depend on the care of another person. **Slovak authorities refuse to send Slovak long-term care benefits** (the carer's allowance) **abroad**, arguing that the benefits are social assistance benefits and not social security benefits subject to the coordination pursuant to Regulation No. 883/2004 of the European Parliament and of the Council on the coordination of social security systems. The Czech Public Defender of Rights was of the opinion that they were indeed coordinated benefits (i.e. that Slovak authorities should send the benefits also to other EU Member States). Therefore he met with several Slovak Ministers of Labour, Social Affairs and Family as well as with Czech Ministers of Labour and Social Affairs; Czech Ministers were offering assistance to Slovak authorities in proceedings to enable Slovak pensioners living in the Czech Republic to receive such benefits. In the end, however, the Slovak side refused to send the benefits despite the offered assistance by Czech authorities and therefore the **Czech Public Defender of Rights turned to Commissioner László Andora, responsible for Employment, Social Affairs and Inclusion, asking the European Commission to file an action against the Slovak Republic for breaching the Treaty on the Functioning of the European Union** (the Czech Ministry of Labour and Social Affairs proceeded in the same way). The European Commission agreed with the legal opinion of the Defender and the Ministry of Labour and Social Affairs and attempted to make the Slovak Ministry of Labour, Social Affairs and Family change its administrative practice. However, as the Slovak side continued to refuse to send benefits abroad, **the European Commission filed an action against Slovakia with EU's Court of Justice** (Case C-433/13). The proceedings are pending.

Assessing contraindication in case of special aid allowance

The Defender was approached throughout the year by several complainants who had not been awarded an allowance for special aid, namely, for a vehicle, since a contraindication was present according to incomplete assessment conclusions, i.e. a health condition excluding the awarding of a special aid allowance. Namely, such condition can belong to mental disorders, behavioural disorders and intellectual disorders with a serious disorder, with disturbed cognitive and operating abilities, conditions of addiction to an addictive substance or addictive substances. For a certain health condition to be a contraindication to the allowance, it must be ascertained in an objective manner and it must make using the aid impossible.

In case of an allowance for purchasing a vehicle, however, the law expressly states that the fact that a person can be transported in the vehicle is sufficient for the use of the aid. The situation is different with respect to other special aids, which are presumed to be used directly and immediately by a single person. Therefore, an assessment serving as the basis for a decision must expressly state why the physician performing the assessment considers the use of the aid impossible, i.e. in what way the stated diagnoses limit the applicant in his or her ability to be transported in a vehicle. The limitation must reach such a degree of intensity that can justify without doubt the exclusion of the possibility to transport such person in a vehicle (also, for example, after the vehicle is adjusted). Stating the given diagnoses may not disqualify a person from getting a special aid. In the given cases, the Defender called attention to that fact and pointed out the incorrect procedure to the administrative authorities that make conclusions about the applicability of assessments. **Insufficiently substantiated assessment conclusions cannot satisfy the requirements of completeness and conclusiveness of an assessment** and if such an assessment is taken as a basis for a decision of an administrative body, it gives rise to its unlawfulness.

Pensions

Survivor's pensions

As in previous years, the Defender was approached by complainants who were obliged upon a decision of the Czech Social Security Administration (hereinafter also "CSSA") to return the overpayment on survivor's or orphan's pensions, either due to having failed to comply with the notification duty or due to having received

pension benefits while they should have presumed from the circumstances that they were not entitled to them. In most cases, the recipients of a pension benefit notified CSSA in a due and timely manner of the facts decisive for the provision of the pension benefit; however, CSSA continued to pay the benefit for several months and only then decided on its removal. The Defender is of the opinion, in accordance with the case-law, that **if an applicant duly fulfils his or her notification duty, the time delay before the pension benefits are removed must not prejudice the applicant**. In such cases, CSSA cannot decide on the recipient's obligation to return the overpayment on the pension due his or her failure to notify it of decisive facts because there is no causal link between the failure to notify CSSA of such facts and the unlawful payment of pensions benefits. In some cases CSSA decides on the liability for the overpayment on grounds that the recipient must have presumed from the circumstances that he or she was not entitled to the pension. In CSSA's opinion, the recipient's unintentional negligence is sufficient to create liability of the recipient for the overpayment (the recipient did not know that he or she should have returned the pension benefits but he or she should and could have known). With respect to the given cases the Defender concluded that the general principle of "ignorance of the law is no excuse" could not be applied across the board and that CSSA must state in its decision the circumstances of the case on the basis of which it concluded that the recipient should and could have known that he or she should return the pension paid, while taking into account the recipient's personal situation. Unless these facts are specified in the decision, such decision cannot stand in terms of lawfulness.

Disability pensions

The Defender dealt with several complaints about the procedure of CSSA in assessing the fulfilment of the condition pertaining to the required period of insurance by applicants for disability pensions after 31 December 2009 with the onset of their disability before 1 January 2010. In the cases concerned, CSSA had assessed the fulfilment of the required insurance period (newly also the condition of ten years of insurance in the last twenty years prior to the onset of disability) within the reference period since the onset of the relevant degree of disability (for example, in assessing the entitlement to disability pension for the third degree of disability, since the onset of full disability even though the applicant for the pension had been already partially disabled). The Defender expressed his disagreement with such interpretation of the Pension Insurance Act.

Complaint File Ref.: 5123/2011/VOP/EH

In assessing the fulfilment of the condition of the required insurance period pursuant to rules effective from 1 January 2010, the onset of disability as such needs to be taken into account as well as whether the disability remained uninterrupted regardless of a possible temporary change in the percentage reduction of the ability to work (change from full disability to partial disability and vice versa).

By its decision of 10 August 2011, CSSA rejected the complainant's application for disability pension due to his failure to have accumulated the required period of pension insurance, although he met an alternative condition concerning the insurance period for insured persons aged over 38 years newly introduced from 1 January 2010 (to demonstrate ten years of insurance period in the last twenty years prior to the onset of disability). CSSA did not recognise 12 March 1998, when the applicant had been found fully disabled, as the first day of disability because his disability had temporarily changed to partial disability (from 23 September 2004 to 13 January 2008). It determined 14 January 2008, when the applicant had been again found fully disabled, as the first day of disability.

For a correct assessment of the complainant's entitlement it was decisive, according to the Defender, when his disability had started and whether it had continued through 1 January and not whether its degree had changed while it continued. The applicant's disability, as a long-term unfavourable state of health causing reduced ability to work, lasted from 12 March 1998 to 1 January 2010 without interruption, or, more precisely, it lasts until present. A temporary change of the state of his health, therefore, should not have had an impact on the assessment of his entitlement.

Since CSSA did not remedy its shortcoming, the Defender turned to the Ministry of Labour and Social Affairs, as the superior body, requesting its standpoint on the procedure of CSSA and alternatively the provision for a remedy. The Minister of Labour and Social Affairs, however, did not find a shortcoming in the procedure of CSSA since CSSA proceeded in accordance with the legal opinion of the Ministry of Labour and Social Affairs. As the Defender did not manage to achieve remedy, despite having notified a superior authority, he advised the Chamber of Deputies of the Parliament of the Czech

Republic of this matter (see also "Petition Committee", page 21. In cases such as this one the Defender advised complainants of the possibility to solve the matter through an administrative action. The outcome of court proceedings will be binding for CSSA in this specific case as well as in analogous cases.

Paying the balance of pension in case of CSSA's incorrect procedure

The Defender repeatedly encountered complaints regarding the assessment of the health condition of applicants for disability pension, which indicated that the established onset of disability was inadequately substantiated, that the assessment was not based on sufficient facts of the matter or that it did not correspond to the conclusions of medical reports. **The Defender is not competent to assess the disability of applicants; however, he deals with the content of disability assessments with respect to the requirements of conclusiveness and completeness**, which serve as the basis for rendering a decision. If he finds that the assessment does not meet the requirements, he notifies CSSA of the shortcomings and requests remedy. In 2013, on the basis of doubts expressed by the Defender as to the correctness of the established date of the onset of disability, several extraordinary medical re-examinations were performed and subsequently the date of the onset of disability was changed. As a result, pensions which had been previously denied were granted or they were increased or the balance payment for the preceding period provided.

The so-called **small pension reform** introduced, effective from 1 January 2009, a rule enabling to pay a pension that was previously unlawfully denied or paid in a reduced amount due to an incorrect procedure of a social security body, without time limitation. At the same time, however, a transitional provision restricted the entitlement period for the provision of back payments of pension before the law took effect to three years (therefore, from 1 January 2006). The Defender regards the cases of incorrect assessment of the state of health whereby pension is not granted or is granted in an incorrect amount as an incorrect procedure of an administrative body. Initially, CSSA argued that establishing an incorrect date of the onset of disability constituted not an incorrect procedure of a social security body but a different opinion of a physician performing the assessment. Where the Defender expressed doubts about the established onset of disability, however, he always based them on the fact that the relevant physician had not sufficiently dealt with certain evidence of proceedings and that he had not requested additional evidence or medical files. **In disputable cases, CSSA eventually accepted the Defender's argumentation** and granted back payments of pension from 1 January 2006, to the maximum extent possible.

Slovak pensions

The Public Defender of Rights has dealt with **the issue of so-called Slovak pensions** since 2001. Therefore he welcomed a law amending the Act on Pension Insurance and Organisation and Implementation of Social Security (Act No. 274/2013 Coll., as amended), which **stipulates a top-up payment** to some beneficiaries of Czech and Slovak old-age pensions. Although this top-up payment cannot resolve all wrongs in the area of social security after the split of Czechoslovakia because the conditions for its provision are very strict (in particular the requirement of one year of insurance in the Czech Republic between 1 January 1993 and 31 December 1995), it will mitigate the unfavourable social situation of at least some of the persons affected. See also "Committee on Social Policy", page 24.

Pensions for persons of Czech origin

The Public Defender of Rights continued to be addressed in 2013 by persons of Czech origin who had come to the Czech Republic from post-Soviet republics upon an invitation of the Government of the Czech Republic. The given persons had reached the retirement age but had not been granted an old-age pension since **the Social Security Agreement between the Czechoslovak Republic and the USSR** (No. 116/1960 Coll.) **no longer applies** to the legal relations between the Czech Republic and the respective state. A constitutional complaint of one such person, filed in 2012 against this practice and accompanied by the Defender's opinion, was denied by the Constitutional Court. Cassation complaint proceedings before the Supreme Administrative Court are pending.

Persons of Czech origin had come to the Czech Republic in several waves. A so-called substitute pension, which is quite low, is awarded under a Government resolution only with respect to the last migration wave. The Ministry of Labour and Social Affairs therefore authorised CSSA to mitigate the harshness and grant the so-called **pro-rata Czech old-age pension** to persons of Czech origin who had come to the Czech Republic earlier. Persons of Czech origin who reach the retirement and apply for the mitigation of harshness will therefore receive a Czech old-age pension, which is, however, even smaller than the substitute pension

since CSSA reduces not only the percentage assessment of pension but also the basic assessment of pension so that it corresponds to the proportion of the period of insurance accumulated by the person in the Czech Republic to the total insurance period. The Defender therefore asked the Ministry of Labour and Social Affairs to provide methodical guidance to CSSA in this respect, i.e. so that in deciding on a pension after harshness is mitigated, CSSA grants to persons of Czech origin a pension in the same manner as a substitute pension (i.e. not reducing the basic assessment of pension but only the percentage assessment). The Ministry of Labour and Social Affairs, however, refuses to proceed in this way and the Defender will continue to discuss the matter with the Ministry of Labour and Social Affairs and CSSA.

2 / 2 / Work and employment

Employment administration

As in 2012, the Defender continued his effort to achieve the **abolishment of the DONEZ system** (the obligation of job seekers to appear at a contact point of public administration) and was considering exercising his power to file an action for the protection of public interest. In the first half of 2013, the whole system was being phased out and the conditions for the inclusion in the system made more specific. The project ended in September 2013. Despite the conceptual remedy, the Defender did not manage to attain adequate remedies in individual cases of complainants addressing the Defender since none of the Ministers of Labour and Social Affairs had commenced review proceedings of specific decisions on the removal of job seekers from the job seekers register due to their failure to appear at a post office. See also "Evaluation of Recommendations for 2011, page 11.

In connection with a judgment of the Constitutional Court of 27 November 2012, File Ref. Pl. ÚS 1/12, annulling a part of a legal regulation concerning the so-called **compulsory community service**, the Defender dealt with the practical consequences for specific persons. Above all, he recommended considering the filing of a civil action for the compensation for wages for the work performed or an action for damages or restitution for unjust enrichment. The Defender recommended that persons who had refused to perform compulsory community service without giving "a serious reason" (and who had been, as a result, removed from the job seekers register upon a decision of a labour office) request that they be re-entered in the register even if the period for which they had been originally removed from the register had not lapsed yet.

In the course of, the Defender paid increased attention to the issue of **a reduced amount of unemployment benefits** (45% vs. 65%) if an employment relationship is terminated for no serious reason. The Defender witnessed unwillingness of labour offices to recognize some of the stated reasons as serious (specifically, moving to be with the husband-/wife-to-be, disagreements with the superior, alleged bullying, or vindictiveness or the threat of transfer on the part of the employer). The Defender further focused on **retraining courses**, particularly on "chosen" retraining.

Complaint File Ref.: 6647/2012/VOP/MKZ

The labour office is not entitled to make the inclusion of a job seeker in a retraining course conditional on the submission of a promise of a potential employer to subsequently employ the job seeker.

The Public Defender of Rights was approached by Mr S. D., who had decided to attend a retraining course to obtain a class "C" driving licence but had received information from an employee of the regional branch of the Labour Office of the CR in Zlín that he had to obtain a promise of employment from a future employer or otherwise that it was not possible to register him in the retraining course.

In his inquiry the Defender focused on whether the submission of a promise of employment was required as a regular condition to include a job seeker in a retraining course [the Employment Act (Act No. 435/2004 Coll., as amended) does not recognise such a condition]. Moreover, retraining should improve the chances of a job seeker in the labour market in future and not with respect to a particular job. The director of the labour office stated that a written promise of employment was not an obligatory annex to "Interest in the selected retraining of a job seeker... " and that the labour office did not require it. If a job seeker has such a written promise, he may attach it to the application as supplementary information.

Following the Defender's inquiry, Mr S. D. was invited to the labour office and provided more accurate information. On the basis of the meeting, he filed two applications for a selected retraining course and both were approved.

With respect to an increase in the number of complaints of the citizens of the Czech Republic who returned to the Czech Republic after their employment in an EU Member State had terminated and who were not granted an **unemployment benefit**, the Defender decided to look into **the application of directly applicable EU regulations (so-called coordination regulations)** regulating the social security of EU migrant workers by the Labour Office. Several issues worth further attention emerged from the research: e.g. awareness of potential applicants for unemployment benefits or the form of advice and counselling provided by the labour office. The results and the Defender's proposals are expected to be discussed at a round table meeting at the Office of the Public Defender of Rights in the first quarter of 2014.

Labour inspection

In relation to the activities of labour inspection bodies, the Defender encountered a number of cases in 2013 that illustrate unsatisfactory maintenance of case files (it is impossible to reconstruct accurately the course of the inspection) and insufficient exercise of all powers of inspectors (particularly the possibility to interview employees). The inquiry also shows that labour inspection bodies use the materials submitted by the persons making submissions only very sporadically and do not confront employers with them. Therefore, based on a preliminary agreement, the **procedural aspects of labour regulation inspections** should be discussed with the representatives of labour inspection bodies at a round table meeting at the Office of the Public Defender of Rights in the first quarter of 2014.

Last but not least, the Defender dealt with the issue of the lower limit of a penalty range for allowing **illegal employment**, which is destructive for many employers. In connection with the performance of inspections to detect illegal employment, the Defender further requests that labour inspection bodies do not penalize employers for the failure to submit labour documents during inspections as for the performance of illegal work.

Employment in State service

As in previous years the Defender encountered incorrect procedures of some State service bodies within the Police of the Czech Republic, the Fire Rescue Service or the Army of the Czech Republic.

Deciding on actions bearing the characteristics of a misdemeanour

The Defender's findings show that **administrative proceedings conducted by State service officials are of standard that is far from that required of general administrative authorities.** The legal regulation of this type of proceedings shows shortcomings too. The Defender has thus long supported the change of personal venue (transfer to general administrative authorities) in proceedings on actions bearing the characteristics of a misdemeanour of persons subject to military disciplinary authorities and members of security forces – where acts are committed off duty and not in direct connection with duty.

Ordering stand-by duty and availability

The Defender handled complaints of professional soldiers who objected to being ordered to be on call without being granted remuneration for stand-by duty under the law. The Ministry of Defence had refused to grant the remuneration, stating that they had not been ordered to be on call since the location off military premises had not been determined, as required by the law. Instead, the soldiers had been ordered that they must be able to reach the base within a time limit, but without entitlement to remuneration.

According to the Defender, the State service authorities had breached the law. Although they had not used their power to determine the soldiers' location off military premises, they had ordered stand-by duty without granting remuneration. At the same time, by ordering the soldiers to stay available, they had restricted them during off-duty in a way not allowed by the law. The law does not recognise availability and does not regulate it.

Following a meeting with the Defender in December 2013, the Minister of Defence promised to pay **remuneration** retroactively to professional soldiers who made a new request **for stand-by duty ordered in violation of law**.

2 / 3 / Family and child

Complaints by children

From 1 September 2012, when the Public Defender of Rights launched a website for children and teens, to 31 December 2013, he received **63** various questions, requests, and complaints directly from children and young adults (in 2013 it was **44** cases), compared to ten questions a year in the previous years. The increase is significant. The Defender very much appreciates the trust of children and the youth, especially when they address him with their problems directly through a special e-mail, *deti@ochrance.cz*.

. The questions most frequently concern family problems (e.g. the form and frequency of contact with one of the parents, the removal of children from their parents' care, failure to pay maintenance and support, relations in children's homes) but also worries of young women related to an established pregnancy and questions regarding possible financial security of the family.

Amendment to the Act on Social and Legal Protection of Children

In 2013 the Defender started to encounter the problem of the application of social work instruments introduced by an amendment to the Act on Social and Legal Protection of Children (Act No. 359/1999 Coll., as amended), in particular the organisation of **case conferences** and **individual plans of the protection of children's rights**. The Defender understands that these instruments were introduced in the legal order only by the mentioned amendment (in his opinion, however, they are standard instruments of social work that could have been and in some cases also had been used earlier, albeit in a modified form). It follows from his inquiries, however, that while a number of bodies of social and legal protection spend a considerable amount of time on the given plans and most documents are of a high technical standard and they are very extensive, the aim of such plans does not always fully correspond to the needs of the child and his or her family. Therefore the Defender would like to point out the need of suitable methodological support.

In connection with the above-mentioned amendment, the Defender found a systemic problem regarding the **impact of the new legal regulation on married foster parents**. The Defender was approached by married foster parents raising three and more children in foster care and under wardship. The complainants had been entrusted by a court with the care of children, with the combination of two forms of foster care – joint foster care of spouses and sole foster care of one of the spouses. At the time of receiving the children, both spouses were entitled to a foster parent remuneration, which influenced their decision about whether and how many children they would receive, including children with severe disability. As of 1 January 2013 a foster parent remuneration is only due to one of the spouses – foster parents. The other spouse is looking for employment. The foster parent receiving remuneration has his social security contributions and general health insurance contributions, among other things, paid by the State.

The new legal regulation had not only a financial impact but it considerably affected the family life of foster families with a high number of children, some of whom are disabled, too. The complainants had received children expecting that they both would take care of them twenty four hours a day. The Defender compared the situation of married foster parents with that of unmarried foster parents. He concluded that the position of married foster parents was not equal with respect to the entitlement to a foster parent remuneration and the right to material security. Such practice violates the prohibition of discrimination and the right to equality before the law. Simultaneously, it constitutes discrimination on grounds of family status and the violation of the right to family and personal life. Moreover, as a consequence of the amendment, disabled children may face indirect discrimination since married foster parents will receive a considerably lower remuneration for another disabled child than unmarried foster parents will. The Defender therefore presented his conclusions to the Ministry of Labour and Social Affairs, requesting remedy.

Last but not least, the Defender found a systemic shortcoming concerning **the access of a child's legal counsel to files dealing with the youth protection** ("Om" files), maintained by a body of social and legal protection of children. Even though a legal counsel is appointed for a child in court proceedings to protect the child's rights, he or she does not have access to the files maintained by the authority, according to the current interpretation of the Ministry of Labour and Social Affairs. **The Defender considers the procedure so alarming that he demands that the law be amended** (see also "New Recommendations of the Defender for 2013, page 13).

Complaint File Ref.: 7068/2012/VOP/MPT

Where the parents of a minor child refuse to give consent to the child's hospitalisation and where such hospitalisation cannot be considered health care necessary to save life or to prevent serious damage to health within the provision of Sec. 38 (4) (b) of the Healthcare Act (Act No. 372/2011 Coll., as amended) but it is necessary in the given moment to compensate for the child's health condition, a body of social and legal protection of children is obliged to proceed within the intention of the provision of Sec. 16 of the Act on Social and Legal Protection of Children, particularly if the outpatient care has repeatedly failed.

The Defender inquired into a case involving minor A. K., born in 2004, who suffered from phenylketonuria and whose health condition had been deteriorating due to long-term and reoccurring mistakes of her parents. The mother questioned the legitimacy of the filing of a motion to award a preliminary ruling whereby the daughter was to be placed in the care of a diagnostic institution for children and whereby the daughter was eventually placed in the care of another relative.

The Defender found a shortcoming on the part of the authority, consisting, however, not in moving for a preliminary ruling but in the absence of social work and counselling in the past since the authority had had very serious indications of the failure of the parents to observe the prescribed diet.

Methodological activities of regions in detecting child abuse

In connection with the publicised case of abused children, the Defender looked into the administrative practice of bodies of social and legal protection of children in detecting child abuse. The aim of the inquiry was to analyse **the present methodological work with respect to the detection of child abuse**. The Defender addressed selected regional authorities, the Municipal Authority of the City of Brno and the Ministry of Labour and Social Affairs. Owing to the preparation and the subsequent change of the legal regulation related to the issue subject to the inquiry (amendment to the Act on Social and Legal Protection of Children No. 401/2012 Coll.), the call was later repeated. Within the inquiry, five main areas that the Defender considers crucial in the given field were defined, namely:

- the key role of the supervision of social workers and their further training;
- wide participation in the system of early intervention and cooperation with education facilities and providers of healthcare;
- thorough consideration of all possibilities of bodies for social and legal protection of children after the conclusion of criminal proceedings on the part of the Police of the Czech Republic;
- considering selecting a social worker specializing in the problem of abused children (for example as a consultant);
- the use of new tools introduced by the amendment to the Act on Social and Legal Protection of Children, in particular case conferences, and methodological assistance with the preparation of individual action plans.

2 / 4 / Healthcare

Dealing with complaints about the procedure of healthcare providers

The Defender most frequently found a **shortcoming regarding the appointment of independent experts and independent professional commissions**. Regional authorities had inquired into complaints only through their employees and where they had appointed an independent expert or an independent professional commission, they had failed to address experts in all fields of healthcare services pertaining to the given case.

Newly, the Defender inquired into the manner of conducting checks pursuant to the Healthcare Services Act (Act No. 372/2011 Coll., as amended), finding a shortcoming in the procedure of an authority consisting in an insufficiently determined purpose and scope of the check, underestimation of the selection of checking instruments, unsuitable composition of the inspection group (non-participation of an expert) and a related incorrect assessment of findings from the checks.

In terms of the subject-matter of complaints, the Defender registered an **increase in the number of complaints concerning the procedure of sobering-up stations** in 2013.

Entitlements of insured persons following from public health insurance

The Defender recorded a significant increase in the number of complaints regarding the coverage of medicinal products and medical means by the public health insurance. Most frequently, patients complained about the rejection of their application for an extraordinary coverage of healthcare services which are not regularly covered by a health insurance company but which represent the only possible way of treatment with respect to their health condition.

Although it is primarily the question of an expert medical assessment, in such cases the Defender examines in particular the compliance of the procedure of the health insurance company with the principles of good administration. The procedural mode of claiming entitlements of insured persons as established by the Public Health Insurance Act (Act No. 48/1997 Coll., as amended), including but not limited to an entitlement to receive therapeutic-rehabilitation care at the expense of the public health insurance system if statutory conditions are met, is, however, disputable. Frequently, insured persons must content themselves with the outcome of communication between their attending physician and health insurance company, i.e. contracting partners. Although the provision of a healthcare service at the expense of the public health insurance system constitutes a fundamental interest of insured persons, the legal regulation in force does not allow them in principle to take measures in order to protect it.

Therefore, in the interest of strengthening the predictability and transparency, the Defender has long been striving to ensure that in deciding on the spending of funds from the public health insurance on the treatment of individual insured persons, the procedural mode of claiming entitlements is clear and set in a way enabling the insured person to protect his or her interests.

The unsuitability of the present regulation is also manifested by the fact that health insurance companies themselves create their own procedural modes, including remedies. In this connection, the Defender endeavours to achieve improvement in insurance companies' practice, particularly in the area of communication with insured persons and as regards the possibility to review opinions of insurance companies.

Complaint File Ref.: 3599/2012/VOP/PH

Where a recommendation for spa treatment is rejected, the health insurance company is obliged, in accordance with the principles of good administration, particularly with the principle of positive approach, to inform the insured person of the reasons of the rejection and of the manner of seeking a remedy.

Mr Z. Š. was notified in writing by a physician reviewer of Česká průmyslová zdravotní pojišťovna ("insurance company") of the rejection of a recommendation for spa treatment. The document in question, however, did not contain the reasons of the rejection or a notice of a remedial measure. The complainant learnt the reasons of the rejection only during a personal visit to a branch of the insurance company since none of the attending physicians had been able to notify him.

The Defender does not deny that physicians attending to insured persons are the most qualified to explain the reasons for the rejection of a spa treatment recommendation. At the same time, however, his findings show that not all physicians provide sufficient information to insured persons allowing them to seek a remedy against the statement of refusal issued by the insurance company. With respect to the fact that this constitutes an entitlement of the insured person to performance from public health insurance (under the prescribed conditions), the Defender believes that the insured person should be provided the reasons of the decision in writing, within a reasonable time period, and with a notice of the manner the given decision may be challenged.

Appointing a guardian for insured persons in administrative proceedings

In 2013 the Defender dealt with the issue of the **appointment of a guardian for parties to administrative proceedings conducted by insurance companies**. Although the duty to appoint a guardian for an absent party to proceedings is an important part of the party's right to a fair trial, health insurance companies do not carry it out consistently.

In the Defender's opinion, which is based on the extensive case-law of courts (e.g. a judgment of the Constitutional Court of 24 May 2011, File Ref. II. ÚS 817/11, or a judgment of the Supreme Administrative Court of 29 November 2012, File Ref. 7 As 130/2012), a health insurance company must proceed with respect to persons of unknown residence or seat and persons to whom documents could not be delivered, as is established, in the following manner:

First of all, depending on the specific circumstances of a given case, the insurance company is obliged to take steps to ascertain the actual residence of such persons. If the actual residence cannot be ascertained, delivery by a public notice and simultaneously the appointment of a guardian for administrative proceedings may be considered. The guardian must be always appointed by the insurance company if the conditions stipulated in Sec. 32 of the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended) are met. Deviation from the given provision is not allowed.

The Defender is aware of the problematic nature of some aspects of the related legal regulation. Although the insurance company is obliged to appoint a suitable person as a guardian to ensure proper and not only formal protection of the interests and fundamental rights of the absent party to proceedings, for this purpose it has access only to a limited scope of data from the information systems of public administration. Compared with courts, for example, it may not acquire data about close persons from the information system on citizens or foreigners. Possible imperfections in the legal regulation cannot prejudice the insured, however, and therefore the Defender will continue to follow this issue.

Accessibility of healthcare services

The Defender was addressed in 2013 by a number of patients requesting the reversal of a decision of the providers or promoters of healthcare services terminating the existence of a specific healthcare facility. With respect to submissions regarding this issue, the Defender may, however, only deal with the question of whether the cessation of existence of a specific facility jeopardises the right of a patient to accessibility of a healthcare service.

Where the Defender concluded on the basis of a specific complaint that such a risk existed, he turned to the relevant health insurance company (as the guarantor of the accessibility of healthcare services) with a request for a statement. Subsequently, the health insurance company either submitted evidence that the regulations stipulating the accessibility of healthcare services had been observed or ensured remedy. Therefore, it has not been necessary yet to approach the Ministry of Health, which may impose a fine of up to CZK 10m on an insurance company for failure to secure an adequate network of contract providers of healthcare services.

2 / 5 / Courts

Public nature of court hearings and making audio recordings

The Defender considers **the prohibition to make an audio recording of a court hearing** a serious problem. He had already presented his conclusions regarding the issue of audio recordings in several inquiry reports, which in all cases led to the remedy of the incorrect procedures of courts through measures of the relevant court presidents. Nevertheless, during 2013 he encountered the practice of South Moravian courts, which did not allow making audio recordings without the consent of the party to proceedings.

A court hearing may be recorded with the knowledge of the court. The prohibition to make an audio recording is limited to cases of potential disruption of the course or the dignity of a court hearing (and not to cases of potential encroachment upon personal or other rights of the persons concerned). **The**

question of a possible conflict between the publishing of an audio recording and personal rights and the protection of personal data of the persons concerned should not be addressed by the court at the stage the recording is made. Nevertheless, the court may provide an adequate instruction to the person making the audio recording regarding the legal regulation of personal rights and personal data protection and regarding the necessity to observe the relevant regulations during the subsequent handling of the audio recording.

As regards complaints about the inappropriate behaviour of judicial persons, on the basis of the Defender's inquiry into one such complaint, the identity of persons is no longer checked in the corridors of courts.

Complaint File Ref.: 8136/2012/VOP/PN

The announcement of a case by the court reporter and preliminary ascertainment of the presence of persons summoned by the court pursuant to the provision of Sec. 11 of Act on the Rules of Procedure for District and Regional Courts (Act No. 37/1992 Coll., as amended) is a mere administrative act, the purpose of which is to inform persons of the commencement of a hearing. The purpose of the provision is to ensure that persons summoned by the court that are outside the courtroom enter the courtroom. The reporter it neither obliged nor entitled to check the identity of the persons summoned.

Legally relevant ascertainment of the identity of persons summoned by the court is carried out only after a trial commences and it should be carried out by the presiding judge according to the law.

A complainant, Mr M. Š., objected in his complaint about the inappropriate behaviour of judicial officers to numerous instances of behaviour of judicial officers occurring during a trial, which he had attended as a member of the public. The given complaint was addressed to the President of the District Court for Prague 8. One of the objections related to the procedure of the reporter, who had requested, when announcing the case outside the courtroom, that the persons summoned submit their proof of identification. In its response, a body of governmental administration of courts addressed the individual aspects of the complaint and found it partly justified. However, it did not provide any comment on the issue of ascertaining the identity by the reporter.

The statements of the court's vice-president indicated that such practice was common at the given court. In connection with an inquiry report, where the Defender noted that the legally relevant ascertainment of the identity of persons summoned by the court was carried out only after a trial commenced and that it should be carried out by the presiding judge, the president of the court accepted the Defender's conclusions and acquainted the judges and administrative workers at a work meeting with the correct application of the provision of Sec. 22 of the Act on the Rules of Procedure for District and Regional Courts.

Delays in court proceedings and expert examination

Where an expert (expert institute) causes delays in proceedings by unreasonable inactivity or an apparently incorrect procedure, the Defender appeals in his inquiry reports to the presidents of courts to consider thoroughly the possibility to **report the problematic behaviour of the expert to the relevant administrative body**, i.e. to the president of the regional court or the Ministry of Justice. **An application to initiate administrative proceedings with an expert is the manifestation of the due exercise of supervisory activities of the court's president over the smooth course of court proceedings**.

Information about the composition of a court of appellate review

The Defender dealt with a question whether so-called **letters of acceptance** may be used in appellate review proceedings as in constitutional complaint proceedings and cassation complaints. In a letter of acceptance, the Supreme Court would inform the participants to proceedings of the contestation of a case at a court of appellate review while stating the names of judges in the panel with the notice of a right to plea bias.

As a compromise, the InfoSoud application (eJustice project) could be changed to enable a party to appellate review proceedings to obtain information about the composition of the panel and other necessary information about the status of the appellate review proceedings. Then the InfoSoud application would

serve as a replacement of the letter of acceptance. **The President of the Supreme Court notified the Defender that she would initiate discussions with the Ministry of Justice with an aim to implement the solution proposed by the Defender**.

Lay element in judicial decision-making

As in previous years, the Defender continued to look into the shortcomings pertaining to the election and withdrawal of lay judges. The Ministry of the Interior prepared and published in cooperation with the Defender **methodical guidance on the procedure of a municipality in electing lay judges of district courts** (Guideline No. 4/2013). The Ministry of Justice informed the Defender that the applicable provisions of the Act on Courts and Judges (Act No. 6/2002 Coll., as amended) would be amended, one possibility being the abolishment of the institute of lay judges. The Defender will continue to follow the given issue.

Supervision of the Ministry of Justice and presidents of district courts over distrainors

The Defender found that in performing supervision, the Ministry of Justice had not sufficiently supported the discontinuation of distraintment to the extent of **the amount of pension (wage) not subject to distrainment, transferred to a bank account** (where it is subject to attachment for receivables), where the liable party had proved such fact to the distrainor. The liable party may withdraw twice the amount of minimum standard only on a one-time basis and the Pension Insurance Act (Act No. 155/1995 Coll., as amended) does not allow an immediate change of the manner of pension payment. Therefore, partial discontinuation of the distrainment is the only way to prevent the next pension payment from being credited to the account, where it is subjected to the attachment for receivables.

The Defender expresses doubts as to the permissibility of **the automatic issuance of distrainment orders for the sale of the liable party's property** irrespective of the amount of a claim and its accessions, the property value, and particularly the possibility to satisfy the claim and its accessions by other (preferred) means of distrainment.

Most "distrainment complaints" are not directed against the bodies of State supervision over the activities of court distrainors, which means that the Defender cannot look into them directly. Nevertheless, the complaints provide the Defender an overview of problematic situations, some of which may be covered by interpretation (distrainment of wages/salaries and pensions in bank accounts, one-time deduction from a several-months' severance pay with the last pay instead of calculating the deductions separately). The Defender therefore **pointed out to the Ministry of Justice that it was necessary to change the legal regulation** of the distrainment of long-service allowance (which would done by deductions instead of attachment for other receivables (other than wage garnishment)) and to stipulate a different manner of distrainment of so-called other income of persons serving the sentence of imprisonment, which is subject to salary/wage deductions as a standard. See also "New Recommendations of the Defender for 2013", page 13.

2 / 6 / Land law

Public nature and accessibility of cadastral records

The extent of cadastral records data accessible by the public emerged as a problematic issue in 2013. While some complainants noted that the data subject to public access were too extensive, others demanded even broader and more comfortable access.

The Defender does not consider **the public nature of the collection of documents**, containing, for example, contracts or court resolutions on inheritance, including numerous personal data (names, addresses, birth numbers, lists of property), unlawful. Cadastral authorities have a duty to collect and disclose such personal data by law. On the contrary, upon a complaint filed by another person, the Defender looked into the sufficiency of access to data in the register as such through the internet **application "Search the cadastre"**, which does not enable automatic mining of a large volume of data about individual properties and their owners. The inquiry has not been closed yet.

Reviewability of a decision rejecting an application for entry

The Defender commented on the possibility to conduct proceedings to review a decision of cadastral authorities rejecting an application for the entry of titles to property within public administration (not by virtue of judicial authority). Although it can be deduced from the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended) by a purely grammatical interpretation that review proceedings are excluded only in the case of a positive result of entry proceedings, and therefore that a review of a negative result is indeed possible, in the Defender's opinion, authorities also need to take into account the Act on Registration of Ownership Titles and other Rights in Rem to Real Estate (Act No. 265/1992 Coll., as amended; effective until 31 December 2013), in particular the system of the protection of rights as a whole.

Due legal defence against the rejection of entry is possible by civil-law means (i.e. by filing a civil action pursuant to Part five of the Code of Civil Procedure [Act No. 99/1963 Coll., as amended]). Compared to the general two-month time limit, in such cases the limit to file an action is reduced to mere 30 days. It would seem illogical, therefore, if review proceedings were allowed at the same time because a superior administrative authority would have a much longer time limit (1 year) for the potential revocation of a negative decision. That would mean a serious violation of the principle of legal certainty and the interference of the public administration in an activity that only the courts are competent to perform.

Correction of an error in the Land Registry

The Defender endeavoured to define the limits of applicability of administrative proceedings to the correction of an error in the Land Registry. The possibility to **correct an error consisting in incorrectly recorded data of the legal relation** (e.g. incorrectly recorded owner, beneficiary or grantor of easement) seems problematic. The case-law is not unified regarding this matter.

In the Defender's opinion, cadastral authorities should rely more on the published case-law than on unpublished judgments. If an error is found stemming from an incorrect record, all types of cadastral data may be corrected including data on legal relations. Where data on legal relations are concerned, **the authority is limited by the existence of a document proving the change of such legal relation**, as stipulated by Sec. 5 (7) of the Cadastral Act (Act No. 344/1992 Coll., as amended, effective until 31 December 2013). The document may have been already entered into the files, however. Further, **it is limited by the existence of an apparent mistake** made in keeping or updating the registry pursuant to Sec. 8 (1) (a) of the Cadastre Act.

Complaint File Ref.: 2776/2013/VOP/JK

The registration of the ownership title in the Land Registry by record may be performed in exceptional cases also on the basis of a court decision whose statement does not directly indicate that the person seeking the registration should be registered as the owner. This applies at least to cases when such a statement cannot be reached.

The Cadastral Office for the South-Moravian Region, the cadastral workplace of Vyškov (hereinafter only the "Cadastral Office"), rejected the complainant's application for the restoration of the original registration of his right in property in the Land Registry, auctioned in a compulsory public auction. The complainant supported his application with an enforceable judicial decision, whereby the mentioned auction had been declared invalid. The Cadastral Office justified its procedure by stating that the judicial decision to determine the invalidity of a public auction was not an instrument having the capacity to register the right in the Land Registry because it did not confirm or attest legal relations (it did not determine ownership). The Defender had noted already in the Annual Report on Activities in 2009 that although decisions containing a statement that did not indicate for whose benefit the right in rem should be registered did not usually have the capacity to register the right in the Land Registry due to their vagueness, there were exceptions when the "vagueness" of the statement could be covered by an interpretation and the right registered.

Regarding this matter, the Defender therefore addressed directly the Czech Office for Surveying, Mapping and Cadastre. The Office provided a statement that on the basis of a court decision on the invalidity of an auction, the proprietary right of a person who had been registered as the owner in the Land Registry before the result of an auction was registered

could be re-registered provided that following this registration no other proprietary changes occurred with respect to the relevant property. Further, the Office pointed out that the given matter was subject to the amended provision of Sec. 39 (3) (c) of Cadastre Decree (Decree No. 26 / 2007 Coll., as amended, effective until 31 December 2013), which no longer contains an express requirement that the fact being registered follow solely from the statement of a decision.
The Defender acquainted the Cadastral Office in question with this methodological conclusion. The Office accepted it and registered the title of the original owner (i.e. complainant) to his satisfaction.

2 / 7 / Constructions and regional development

Methodological guidance of the Ministry of Regional Development in the Construction Code field

Last year the Defender conducted an **inquiry on his own initiative with an aim to achieve uniform interpretation of specific issues in the field of the Construction Code** which had emerged as a general problem in the practice of building authorities. For that purpose, the Defender addressed the Ministry of Regional Development (the "Ministry") as a central body of governmental authority having relevant competence to interpret the provisions of the Building Act (Act No. 183/2006 Coll., as amended) and the implementing decrees.

The Defender recommended that the Ministry focus on the question which administrative authority (i.e. the building authority or the superior authority) is competent to review the permits issued according to the Building Act within the simplified procedural mode (planning approval, approval of the execution of the construction project as notified, occupancy permit). Another subject recommended to the Ministry was the **extent in which construction authorities should review a certificate issued by a chartered inspector** (issued according to the Building Act in wording effective before 1 January 2013) in proceedings to determine the legal relation, pursuant to Sec. 142 of the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended), in connection with the resolution of the Special Chamber of the Supreme Administrative Court of 6 September 2012, File Ref. Konf 25/2012. The Defender also requested that the Ministry interpret the practical application of the principle of considerate treatment of the neighbourhood, stipulated in the Building Act, as the duty of the builder, focusing on what means of law might be used to effectively enforce the fulfilment of the duty and how potential failure to fulfil the duty should be penalized. Last but not least, the Defender proposed updating the Methodological aid regarding distrainment proceedings in consideration of an amendment to the Code of Civil Procedure (Act No. 99/1963 Coll., as amended), which, effective from 1 January 2013, eliminates the possibility of the judicial execution of administrative decisions.

The Ministry of Regional Development issued the following methodological guidelines upon the Defender's recommendations: "On the possibility of defence against a certificate of a chartered inspector issued pursuant to the Building Act in wording before the amendment", and "On the application of the principle of considerate treatment of the neighbourhood in practice". In addition, the Ministry said that it would publish on its website updated methodological guidance regarding distrainment and issue a statement on the review of "permits" of construction authorities.

Complaint File Ref.: 7497/2012/VOP/MH

The builder is obliged during the project preparation as well as during the construction implementation to ensure considerate treatment of the neighbourhood. Considerate treatment of the neighbourhood means not only the compliance with legal and technical rules or technical standards in preparing and carrying out the construction but also actions of the builder that are considerate of the neighbours and also of other persons using the construction.

using his punitive power, the Public Defender of Rights closed an inquiry into a complaint regarding the nuisance and disturbance caused by noise, dust and light during the implementation of a construction. On the basis of the documents

gathered and a local inquiry, the Defender found that on the plot located in the complainant's neighbourhood, heavy construction machinery moved and parked (excavators, lorries) and earth was moved on a long-term basis, and such activity was regarded as an intrusive element in the given area.

Since the existing measures of the relevant authorities were found insufficient, the Defender decided to notify the superior regional authority of his findings. The Defender informed the Regional Authority of the Plzeň Region that both the general and the special construction authority for road constructions should deal with the activities in the given area as part of their competence, especially in their capacity as bodies of State supervision over construction. The Defender also noted that in the given case it needed to be considered whether the duty of the builder arising from the Building Act, which, among other things, regulates the duty to implement a construction while ensuring considerate treatment of the neighbourhood, were breached in relation to the ongoing construction activities in the complainant's neighbourhood.

Structures "approved for occupancy" where permit has been cancelled

The Public Defender of Rights repeatedly encountered cases where the construction permit (i.e. a decision or a measure of a construction authority upon which a structure has been carried out) had been cancelled by a decision of an administrative court while in the meantime the owner of the structure had acquired the right to use it permanently on the basis of an occupancy permit decision issued according the Building Act effective until 31 December 2006 (Act No. 50/1976 Coll., as amended) or an occupancy permit of the construction authority issued according to the Building Act effective from 1 January 2007. In such cases the occupancy permit decision or the occupancy permit cannot be reviewed, i.e. changed or cancelled, given the lapse of the statutory prescription period to apply for a remedy.

When assessing the cases, the Defender had to deal with a fundamental question: whether and in what manner it was possible, with respect to the existing case-law (judgments of the Supreme Administrative Court of 14 May 2008, File Ref. 3 As 11/2007 and of 21 July 2010, File Ref. 3 Ans 11/2010), to overrule the right to use the structure without violating the principle stipulated in Art. 2 (2) of the Charter of Fundamental Rights and Freedoms, according to which the power of the State may be asserted only within the limits set by law and in a manner determined by law. It follows from the case-law that **the existence of a final occupancy permit decision itself does not prevent the construction authority from proceeding in proceedings on the removal of the structure** or that the right to use the structure does not expire until a decision on the removal of the structure has been (potentially) reached. Within a constitutional complaint against one of the decisions of the Supreme Administrative Court, the Constitutional Court stated that the conclusions of the Supreme Administrative Court were in accordance with the Constitution (judgment of the Constitutional Court of 16 December 2010, File Ref. III. ÚS 2835/10).

If the law does not show how an occupancy permit decision or an occupancy permit may be cancelled after the expiration of statutory time limits and if it does not stipulate another way of asserting the State power to overrule the irrevocable right to use the structure, the Defender is of the opinion that such right cannot be overruled. The Ministry of Regional Development, approached by the Defender, adopted the same stance.

The situation remains unchanged even after an amendment to the Building Act, which, effective from 1 January 2013, deals with the problem of structures with expired permits by means of repeated building permit proceedings since the proceedings may also result in the issuance of a decision ordering the removal of the structure.

If in a specific case an administrative court binds a construction authority by its legal opinion to conduct proceedings on the removal of the structure also in the case of structures "irrevocably approved for occupancy", the construction authority is bound by such legal opinion and is obliged to conduct proceedings on the removal of the structure. The conclusion of such proceedings may cause a problem in practice. **The Defender believes that the irrevocable right to use the structure constitutes an impediment to the execution of a potential decision ordering the removal of a structure**. Therefore, according to the Defender, the appropriate procedure of the construction authority after ascertaining the existence of an irrevocable right to use the structure is to conclude the proceedings on the removal of the structure with the following statement: "the removal of the structure is not ordered".

Construction activity and co-ownership of buildings with units

In 2013 the Public Defender of Rights continued to receive complaints regarding construction activities and the co-ownership of buildings with residential units. The complaints mostly concerned problems of the practical application stemming from the relation of the Building Act and the Flat Ownership Act (Act No. 72/1994 Coll., as amended, effective until 31 December 2013). The Defender most often dealt with a problem whether a balcony accessible only from a specific residential unit was, in its character, a common part of the house or whether it could be defined, by the statement of the owner of the building, as appurtenance/part of the residential unit.

The Ministry of Regional Development has long been of the opinion, as given in its statement of 5 December 2005 (File Ref. 42071/05-71, E 2086/05-71), that loggias, patios or balconies are part of the outer building envelope, which constitutes the common part of the building. By contrast, the Supreme Administrative Court allowed, in its decision of 21 December 2005, File Ref. 1 As 2/2004, that a balcony may be under certain circumstances owned by the owner of a specific residential unit. The Public Defender of Rights found that the case-law of administrative courts was developing within the sense of the mentioned judgment of the Supreme Administrative Court. Therefore, in determining whether a balcony is part of the unit, construction authorities need to base their decision on the statement of the building owner that defines the units and the common parts of the building (or on contracts on the transfer of units in the building) recorded in the Land Registry. Incorrect establishment of the ownership of a balcony, loggia or patio has a crucial impact on the course and the outcome of administrative proceedings, and in particular on the identification of parties to proceedings and correct assessment of the source documents for proceedings.

The above mentioned continues to apply after the new Civil Code (Act No. 89/2012 Coll.) came into effect.

Executing decisions of construction authorities

The Public Defender of Rights is conducting an inquiry into **the execution of decisions issued by construction authorities in the public interest** (for example a decision on the removal of a structure, a decision imposing the duty to ensure remedy within construction site inspections, a decision on the immediate removal of a structure, or a decision ordering safety works). The Defender's findings suggest that **funds in the Czech Republic are not earmarked to cover the costs of enforcing decisions.** The practice shows that securing funds to execute a decision burdens municipal budgets, which means that municipalities are not willing or able to cover the costs of executing decisions of construction authorities. The duties imposed by construction authorities in the public interest are therefore only rarely carried out.

The Defender published an inquiry report, concluding that the **Ministry of Regional Development and the Ministry of Finance were jointly responsible for the fact that the problem of executing decisions of construction authorities rendered in the public interest remained unresolved.**

It is the Defender's belief that to hold a constructive discussion with the mentioned central bodies of governmental authority regarding this matter, it is necessary to possess transparent and up-to-date information from the relevant regional authorities and the Municipal Authority of the Capital City of Prague. The Defender therefore addressed the representatives of regional authorities and the Municipal Authority of the Capital City of Prague with a request for up-to-date information about the covering of costs of executing decisions issued by construction authorities in the public interest. On the basis of the acquired data, the Defender will hold discussions in 2014 with the Ministry of Regional Development and the Ministry of Finance with an aim to set the rules for covering the costs of executing decisions.

Protection against noise

The Public Defender of Rights continues to receive complaints about noise from technological sources of noise (most frequently from outdoor units of air-water heat pumps intended for heating and non-potable water heating). The Defender's inquiry showed that the procedures of public health protection bodies are not unified in handling complaints about noise from such new and specific noise sources. The Defender is thus communicating with the Ministry of Health to achieve the streamlining of the practice of Regional Public Health Authorities. The problem of technological sources of noise is also connected with the installation and approval of the given equipment in structures and on the related plots. In the Defender's opinion, public

health authorities as bodies of public health protection and the related governmental authority bodies play an important role in the processes since in the process of the installation and approval of such equipment they should issue their statements, assessing a possible impact of such noise sources on the vicinity before they are put into operation. The Defender acknowledges that the Ministry of Regional Development issued a statement in 2013 intended for construction authorities in order to ensure unified procedure.

A large number of complaints still concerns noise from road traffic. The Defender concluded that in particular the capital city of Prague had not managed to reduce traffic radically, especially freight traffic on roads in immediate proximity of housing estate areas (for example in Prague 4 – Spořilov) despite the existence of the Noise Action Plan. Insufficient pressure of public health protection bodies on the immediate adoption of effective noise-reduction measures and often insensitive traffic organisation contribute to the overall unsatisfactory situation.

Further, in connection with complaints about noise nuisance from the "New connection" railroad as a strategic railroad junction in Prague, the Defender opened an inquiry on his own initiative. The given section of the railroad considerably exceeds, on a long-term basis, the noise limit in protected outdoor areas of near-by blocks of flats. It is not acceptable, in the Defender's opinion, that although a permit for the railroad had been issued as early as in 2004, the railroad is still in trial operation without being approved for permanent use.

Heritage preservation

Last year the Defender also dealt with the issue of **the protection of railway engineering structures listed as cultural heritage**, finding that a number of such structures were on the list of the most endangered immovable cultural monuments and had been decaying. Besides the most valuable railway structures listed in the Central Register of Cultural Heritage of the Czech Republic, there is a number of less known but still valuable railway stations. The maintenance of smaller country stations is often unsatisfactory and many buildings are not in use and are neglected. The present transportation policy also presents a problem, as staffed stations are being massively reduced; the owners of buildings that are not in use prefer their demolition over repair and new use.

Within an inquiry performed on his own initiative, the Defender looked into the structural and technical condition of a railway station building of former Austrian North-western Railway in Dečín, listed as cultural heritage among the most endangered immovable cultural monuments. The Defender found that in the past three years there had been a ground for imposing a measure, both under the Building Act and the Heritage Preservation Act (Act No. 20/1987 Coll., as amended), whereby the owner of the building listed as cultural heritage would be forced by administrative bodies to adopt measures that would prevent further decay of the structure in question. The Defender noted that as a result of complex organisational relations and complicated decision procedures of the managing bodies of the owner, **the Rail authority or the State heritage preservation body had not been able to achieve remedy within a reasonable period.** The Defender arrived at a conclusion that the shortcoming could be systemic and it could reoccur in the future with respect to railway engineering structures listed as cultural heritage. Therefore, he called on the Rail Authority, the Ministry of Culture, the Ministry of Transport and the National Heritage Institute to address the problem of the protection of railway engineering structures listed as cultural heritage. As a result of this initiative, a joint committee was established to assess such railway structures.

Funeral services

The Public Defender of Rights published a handbook called **Funeral services** in 2013, which comprehensively describes the situation in the field of funeral services and points out some **reoccurring problems regarding the lease of a grave plot, operation of burial grounds, settlement of disputes over grave plots or procedures in protecting the respect for the deceased and the bereaved**. The publication was sent to all municipalities on the territory of the Czech Republic and the electronic version is available on the Defender's website.

With respect to funeral services, the Defender also looked into the ambiguous legal regulation of handling the bodies of stillborn babies. According to the regulation applicable to healthcare and funeral services, parents do not have the right to receive the body of a stillborn baby for the purpose of burying it respectfully. After considering the requested statements of the Ministry of Regional Development and the Ministry of Health,

the Defender expressed an opinion that the **legal regulation should provide for the right of the parents to receive the body of a stillborn child, including a foetus after abortion, for the purpose of its burial.**

The Defender also noted an increase in the number of social funerals arranged by municipalities. The Defender's findings show that with an increase in social funerals, the requirements of municipalities to have the costs of burials reimbursed through the Ministry of Regional Development or the Office for the Government Representation in Property Affairs rise (in cases where the deceased did not have an heir and his or her property is transferred to the State as escheat property). In this respect, the Defender notes that when the State transferred the responsibility for burials to municipalities, it is its duty to secure sufficient funds for covering the costs so that municipalities can fulfil the statutory duty in a due manner.

2 / 8 / Environment

Floodplains

The Defender continued an extensive inquiry, on his own initiative, into the procedure of the Ministry of Environment, the Ministry of Agriculture, regional authorities, and the Municipal Authority of the Capital City of Prague regarding floodplains. Its main objective was to draw attention to certain problems arising in the area of the protection against floods. The Defender reached a conclusion that the determination of floodplains and active floodplain zones ("zones") showed **shortcomings consisting in delayed updates of already determined floodplains and active floodplain zones** or in the fact that on some major watercourses, floodplains were not determined at all. This means that the Resolution of the Government of the Czech Republic No. 562, of 23 May 2007, approving the Plan of Main River Basins of the Czech Republic, has not been carried out. Within the inquiry, the Defender found unsatisfactory the current definition of the zones as given in Decree on the manner and scope of processing a proposal and the determination of floodplains (Decree No. 236/2002 Coll.). He also noted the difference between the definition of a floodplain in the mentioned Decree and in the Water Act (Act No. 254/2001 Coll., as amended) in relation to the area where the zone is determined. The Defender also concluded that the models for determining the zones, which are non-binding at present, should be stipulated in the form of secondary legislation. The inquiry further revealed that in some cases the individual binding parts of river basin plans within a single region show unreasonable inconsistencies with a direct impact on the decision-making and other procedures of administrative authorities since the binding parts of plans are binding for administrative authorities, which have to abide by them. As a result, within a single region different standards are set for the location and implementation of structures in floodplains in the given area.

The inquiry also concerned **the determination of floodplains and zones along the short stretch of a watercourse**. In this respect the Defender stated that floodplains and zones should be determined along the longer stretch of a watercourse so that a flood risk is assessed continually with respect to more extensive areas along the watercourse and not only locally. If a floodplain is determined along a shorter stretch of a watercourse, such procedure needs to be duly justified.

The inquiry also showed that administrative bodies lack methodical guidance in situations when simultaneously with planning proceedings or building permit proceedings, general measures on the determination of a floodplain are issued. In his final statement, the Defender said that it was **unacceptable to use** in a general measure (whereby the floodplain is determined) **expressions** of a similar meaning as **"passive floodplain zone"**, which in fact mean that certain structures are exempted from the active floodplain zone. The Defender also wanted to draw attention to the inappropriate method of assessing individual projects (structures) gradually built in floodplains in isolation, noting the necessity to assess the impact of each new structure on drainage conditions in the already developed land while taking into account changes in drainage conditions as a result previous land development.

The Defender intends to continue to follow the problem of floodplains.

The Green Savings Programme

The Public Defender of Rights performed an inquiry on his own initiative against the Ministry of Environment regarding the subsidies from the Green Savings Programme (Zelená úsporám), aimed at the procedure of the Minister of Environment in rejecting subsidy applications.

In 2013 the Defender issued a final statement regarding the matter, repeating his conclusions that **decision-making on a subsidy from the Green Savings Programme was subject to the Administrative Procedure Code** (Act 500/2004 Coll., as amended) and that a judicial review of a decision rejecting a subsidy application could not be excluded either. The Defender's conclusions pertaining to a judicial review were also confirmed by the Supreme Administrative Court, which decided in its judgment of 17 January 2013, File Ref. 7 As 173/2012, that a decision rejecting an application for a subsidy from the State Environmental Fund as well as a decision on remedies against such decision (i.e. decision on objections) were reviewable by court.

The Defender found the **procedure** of the Ministry of Environment, or, more precisely the Minister, **in violation of the law and the principles of good administration**, particularly with respect to deciding on the applicants' objections since the State Environmental Fund had been sending only notifications lacking the justification of the Minister of Environment's decision on objections to a decision rejecting the subsidy application. The applicants had not received the Minister's decision on objections or substantive reasons for the rejection of their objections. Moreover, the procedural mode of the submission of objections was not stipulated in any legal regulation or in Directive of the Ministry of Environment No. 9/2009, on providing funds from the State Environmental Fund within the Green Savings Programme.

The Defender called on the Ministry of Environment to **deliver** in a due manner to the applicants for a subsidy from the Green Savings Programme whose objections to the rejection of their application had been rejected the **Minister's decision on the rejection of objections including a justification**.

Since the Ministry of Environment failed to adopt the requested remedy, the Public Defender of Rights decided to inform the public of the matter. At the same time, he recommended that the unsuccessful applicants who were convinced of the legitimacy of their objections request a written version of the decision on their objections, including its justification, and subsequently challenge the given decision by filing an administrative action. See also "Petition Committee", page 21.

Hazardous waste

Last year the Public Defender of Rights closed an extensive inquiry concerning polychlorinated biphenyls stored on the premises of a former centre for the chemical modification of plants in Lhenice. About 5,500 m^3 of earth contaminated by PCB is stored on the premises. Further, there is contaminated water in concrete reservoirs and oils containing polychlorinated biphenyls. The waste had been brought in by E., s. r. o., a business company, on the basis of a lease contract. The company subsequently terminated its existence and the problem of waste on the premises has remained unresolved. The current owner of structures on the premises where the hazardous waste is located is in legal dispute with the Czech Republic regarding the clearing of these properties, connected with the issue of the waste ownership.

The Defender noted that with respect to the protection of environment, one of the crucial problems consisted in the fact that **legal regulations did not unambiguously deal with the issue of the ownership of waste** after the person who had been its owner had been dissolved by bankruptcy or liquidation. For example, the resolution of the Supreme Court in Olomouc dated 29 November 2005, File Ref. 38 K 20/2002, shows that encumbered property should not be excluded from the bankrupt's estate and that it should be redeveloped during bankruptcy proceedings, even if this should happen at the expense of proceeds of the remaining estate. Despite that, **cases like the one in Lhenice**, where the company causing a defective condition ceases to exist and the defective condition in the form of contaminated waste remains, **may appear again**.

Therefore, the Public Defender of Rights asked the Ministry of Environment to consider whether the existing legal regulation was adequate in this respect (if it prevented the occurrence of similar situations) and, should the Ministry come to the opposite conclusion, to proceed to **amend the relevant legal regulations.**

Game management

The Public Defender of Rights received several complaints about the assessment of a clean criminal record of a person for the purpose of the **position of a game manager and a game-keeper guard**. One of the prerequisites for discharging the given functions is a clean criminal record within the Game Management Act (Act No. 449/2001 Coll., as amended). A clean criminal record is assessed on the basis of *a copy* of a record in the Criminal Register, and a body of governmental administration of game management does not regard persons with a criminal record containing **expunged** wilful criminal offences as having a clean criminal record. Such persons may not perform the duties of a game manager and a game-keeper guard. The Defender considers the relevant provisions of the Game Management Act concerning a clean criminal record **unreasonably strict.** As a result, he opened an inquiry on his own initiative in 2013 aimed at reducing the strictness of the Game Management Act.

2 / 9 / Misdemeanours against civil cohabitation, protection of a quiet state of affairs

Bias of officials

In handling complaints regarding misdemeanours, the Defender quite often encounters a claimed bias of officials. The Defender presumes that **the duty of an official's superior** who is to decide about the disqualification of such person from the hearing of a case is **to justify duly** the decision with respect to the signs of bias defined in Sec. 14 (1) of the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended). If all employees in charge of the agenda of misdemeanours are disqualified, their superior (e.g. director of a regional authority or a secretary of a municipal authority) should authorise another competent official (an official hearing cases at a different department or a person having legal education) to hear the case.

Only if reasons for bias exist in relation to all officials competent to hear the case under the law, may the superior of the administrative authority refer the case to a superior administrative authority pursuant to the provision of Sec. 14 (4) of the Administrative Procedure Code for procedure in accordance with Sec. 131 (4) of the Administrative Procedure Code. This application must be also duly justified with respect to the disqualification of all officials. In the opposite case, the superior administrative authority may return the case and request that the subordinate administrative authority provide due justification of the application or authorise another official to hear the case.

Administrative fees for copies from misdemeanour files

The Defender dealt with the issue of payment of an administrative fee for a copy from misdemeanour files. He tried to **define the cases which are exempted from the general duty to pay,** arising from the provision of Sec. 2 (2) of the Administrative Fees Act (Act No. 634/2004 Coll., as amended), and **specified when the making of a copy from the file is related to misdemeanour proceedings.**

The Defender came to the conclusion that the relation to misdemeanour proceedings was always given if a party to proceedings requested a copy from the files during proceedings. Likewise, copies from the files should be provided free of charge to potential parties to proceedings prior to the commencement of proceedings if the making of copies can be linked to the future misdemeanour proceedings. After the proceedings terminate upon a final decision, the time and functional relations with the proceedings need to be examined. Such relation exists where a party submits an application for example within a period for the commencement of review proceedings or for the permission of new proceedings. After the expiration of statutory time limits, the time relation with misdemeanour proceedings can no longer be assumed, which means that the issuance of a copy from the files should be subject to an administrative fee. Making a copy from complaint files is also connected with misdemeanour proceedings if the complaint was related to the procedure of an administrative authority within the misdemeanour proceedings. By contrast, making a copy from the files for the purpose of filing a civil action with a court is not related to misdemeanour proceedings, in the Defender's opinion, and should be subject to a fee.

Deciding on the reimbursement of costs connected with providing explanations pursuant to the Municipal Police Act

The Defender encountered a case where the municipal police had **rejected, by** a simple **letter**, a request for the reimbursement of costs related to the provision of explanation pursuant to the provision of Sec. 11 (7) of the Municipal Police Act (Act No. 553/1991 Coll., as amended).

Since the procedure was a procedure of a municipality body with independent competence (outside the Defender's mandate), the Defender only stated that the decision-making of the municipality body about whether to provide reimbursement or not constituted decision-making on rights subject to the provisions of the Administrative Procedure Code pertaining to administrative proceedings. Upon the submission of an application for the reimbursement of costs related to the provision of explanation at the municipality police, the proceedings on the application are commenced within Sec. 44 of the Administrative Procedure Code. **If a municipality body does not grant the application for reimbursement, it should issue a decision on the matter, which can be appealed at a superior administrative authority**, i.e. at the Ministry of the Interior in case of the Municipal Police of the Capital City of Prague and at regional authorities in other cases. If a municipal body fails to issue a decision, it is possible, according to the Defender, to file an application requesting measures against inactivity pursuant to the provision of Sec. 80 of the Administrative Procedure Code, or, subsequently, under the conditions stipulated in Sec. 79 of the Code of Administrative Justice (Act No. 150/2002 Coll., as amended) to file an administrative action.

Complaint File Ref.: 8353/2012/VOP/IK

If, during proceedings before a decision is issued, information emerges establishing the possibility to waive the duty to pay the costs of proceedings or such information becomes known to an administrative authority in the course of its official activities, the administrative authority is obliged to check the veracity of such information and take it into account when deciding on the costs of proceedings.

If the right to appeal with respect to the costs of proceedings, conferred to the petitioner by the provision of Sec. 81 (4) of the Act on Misdemeanours (Act No. 200/1990 Coll., as amended), is to have a real relevance where a duty to pay the costs of proceedings as defined by law is automatically imposed, the petitioner should have the option to request the waiving of the costs of proceedings within an appeal and submit evidence in this respect.

A complaint of Ing. Š. K. concerned the procedure of the Authority of the Prague 13 Municipal Ward and the Municipal Authority of the Capital City of Prague in proceedings on a misdemeanour against civil cohabitation. In a motion to commence proceedings, the complainant had mentioned not having sufficient income (she only had parental allowance). Since the Authority of the Prague 13 Municipal Ward discontinued proceedings against the accused, it imposed a duty on the complainant to pay the full costs of the proceedings pursuant to Sec. 79 (1) of the Misdemeanours Act, although this provision allows an administrative authority to waive fully or partially this duty for reasons worthy of special consideration.

The Defender pointed out to the administrative bodies that they had failed to check and take into account the information about insufficient income of the complainant in deciding on the costs of proceedings and that they had failed to enable the complainant to assert facts constituting a potential partial or full waiver of the duty to pay the costs of proceedings also within an appeal against the decision. The Defender further concluded that the principle of the concentration of proceedings pursuant to the provision of Sec. 82 (4) of the Administrative Procedure Code would apply to the petitioner only with respect to the question of the offender's guilt and not with respect to the costs of proceedings.

The administrative authorities accepted the Defender's conclusions, stating that they would be followed thereafter.

2 / 10 The Police

The Defender quite often dealt with complaints about the procedure of the Police of the Czech Republic ("the Police") regarding transport.

Power of the police to impose and collect a bail

As to the power of the police to impose and collect a bail pursuant to Sec. 125a of the Act on Operation of Vehicles on Roads (Act No. 361/2000 Coll., as amended), the Defender concluded that despite the vagueness of statutory reasons for such procedure (the law only states that a *police officer is competent to collect a bail from a driver of a motor vehicle suspected of a misdemeanour against the safety and smooth flow of traffic on roads, with respect to whom a justified suspicion that he or she will avoid misdemeanour proceedings exists)*, it can be deduced that only a justified suspicion that the given person will become **unreachable for the purpose of proceedings** may be basically **the reason for imposing a bail**. The Defender bases his conclusion on the sense of the given provision, which lists only in paragraph 6 the specific conditions upon which the bail is forfeited, which the bail as such is expected to prevent.

Power of the police to take away a thing – mobile phone

The Defender looked into a case where a police officer, applying Sec. 34 of the Act on the Police of the Czech Republic (Act No. 273/2008 Coll., as amended), requested that a driver suspected of a misdemeanour pursuant to Sec. 125c (1) (f) item 1 of the Act on Operation of Vehicles on Roads hand over a thing (mobile phone). After performing an inquiry the Defender concluded that such procedure was not legitimate. The Defender does not regard a mobile phone as a thing significant for misdemeanour proceedings since it can be used only to prove that it was in the vehicle at the time of the alleged misdemeanour. An administrative authority is not competent to manipulate the phone in misdemeanour proceedings in order to obtain data on past communication because the data are protected by the privacy of correspondence guaranteed by the Charter of Fundamental Rights and Freedoms. Furthermore, such data are not crucial for misdemeanour proceedings as such **because a driver commits misdemeanour already by holding the telephone**.

The Defender also handled complaints about the procedure of the Police of the Czech Republic in resolving civil disputes that the parties had failed to settle amicably by themselves. An example of such a case, which pertained to a dispute over a flat, follows below.

Complaint File Ref.: 1667/2013/VOP/MK

If the Police have not established the user of a dwelling within Sec. 40 of the Act on the Police of the Czech Republic, the dwelling may be entered only within the scope of this provision. At the same time, the Police are obliged to protect a quiet state of affairs, which means, for example, to prevent the owner of a flat to drill out the lock in an entrance door to the flat used by another person.

All persons involved, including those who do not have any right to use the flat but have another important interest in the thing (for example, have their belongings in the flat), need to be notified of the removal of a seal in advance.

The Defender was approached by Mr L. Š. with a complaint against the Police of the Czech Republic, which had participated for several days in various ways in solving a private-law dispute between the complainant, who claimed that he was the lessee of a flat, and the property owner (lessor).

Based on an inquiry, the most problematic moment appeared to be the Police's entering the flat at the request of the property owner without previously establishing who the user was. The entry was preceded by a phone call of the lessor to an emergency line that there was a man carrying a weapon at his waist and posing a threat to tenants and that the man had hidden in flat No. 20. The police patrol did not ascertain any of the things claimed. The owner of the building also informed the patrol that the dangerous person was using the flat in question unlawfully and that he probably kept stolen items there. The owner of the building showed a copy of an entry in the Land Registry, stating that no lease contract for the use of the relevant flat existed. After that, the owner of the building told the police patrol that he had called a locksmith company, which would open the door to the flat, and asked the attending patrol to wait for the opening in case the complainant was in the flat and possibly also to document the stolen items found. Subsequently, the locksmith opened the door. By checking the flat, the police did not find anybody there. The owner of the property then stated that no stolen items were in the flat. The Police documented the condition and the equipment of the flat by taking pictures. The locksmith installed a new lock and the owner of the building took the keys. The Police referred the owner of the

building to civil proceedings for the resolution of the case. The Police did not obtain or try to obtain a telephone number of the complaint.

Subsequently, after the complainant, who claimed to be the lessee, tried to enter the flat, the Police sealed it. The seal was removed four days later. Only the owner of the property was notified in advance of this step, although there were items in the flat belonging also to the complainant.

On the basis of the available information, the Defender concluded that the Police had not had any legitimate reason for entering the flat, unless the police officers had presumed, for example, that the mentioned armed man was in the flat with another person whose life was endangered, which would create a reason to proceed pursuant to Sec. 40 of Act on the Police of the Czech Republic – which, however, was not the case. According to the Defender, the Police should have advised the owner of the building of the manner of solving the situation and of possible criminal consequences, as it had done, and then left the place. They should not have stood by without taking any action as the lock in the entrance door was being drilled open at the request of the owner of the property. The owner of the building had stated that the flat was used by the complainant and, according to his claim, without a valid lease contract. That information, however, was only one-sided and the police had failed to demonstrate an effort to have it confirmed or refuted by the complainant, who apparently had had keys to the flat and had come into possession of them in the past, probably not through an unlawful procedure.

The Defender saw another shortcoming in the fact that the complainant had not been notified of the removal of the seal in advance (unlike the owner of the property), which had placed him at a disadvantage compared to the owner of the building.

2 / 11 Prison system

As part of monitoring **cases of death** in prisons, the Defender looked into a case of the death of a convicted person caused by an overdose of the combination of medications and methadone. To explain the death of an imprisoned person is a duty of the State following, inter alia, from Article 2 of the Charter of Fundamental Rights of the European Union (the right to life). An inquiry into such an event must lead to adequate, quick, independent and impartial investigations, which, additionally, must public to a sufficient extent. In the given case, the Defender did not find a shortcoming pertaining to the investigation of the death.

The crucial problem of **overcrowded prisons** was only partly solved by the President's amnesty, announced as of 1 January 2013. The experts agree that the problem was only postponed because without the change in the punitive policy of the State or other relevant measures aimed at preventing recidivism, the capacity of prisons may be expected to become full again after a certain period.

Transfer of prisoners

In connection with the decrease in the number of prisoners, the remaining prisoners were transferred to enable the balancing of the capacity in prison facilities as circumstances allowed. That step was reflected in the contents of complaints addressed to the Defender. Most convicted persons who turned to the Defender requested, as a result of changes following the amnesty, repeatedly and in vain a transfer to a prison nearer their family. Without doubt, the closeness of a family and maintenance of original, unproblematic social relationships may contribute to the correction of a convicted person. The applications were usually rejected for capacity reasons.

The Defender repeatedly followed up this argument, coming to the conclusion in several cases that **even if the prison has spare capacity of a few places, the lack of capacity may still be the reason** for rejecting a convict's application for transfer. The total number of prisoners in a prison does not say anything about the number of occupied prison places in the individual parts of the prison (particularly in specialised wards), where the capacity of the ward in which the applicant should be placed given his or her characteristics is decisive. Misunderstandings occur repeatedly since the publicly accessible website www.vscr.cz contains only information about the overall usable capacity of the prison, i.e. of all the wards in aggregate.

Very often, the application of one convicted person is rejected for capacity reasons while the application of another is later approved. That of course raises the suspicion of convicted persons of certain favouritism although such situation can be explained by administrative reasons because the Prison Service of the Czech Republic ("Prison Service") does not reassess applications that have been already rejected. If a person files a new application, he or she can be successful owing to capacity changes as opposed to an earlier applicant. This is due to a **still non-existent system of processing applications for transfer**, which was first proposed by the Defender as early as in 2006. The system would enable processing applications continuously as places become available in relevant prisons (so that when places become available, applications are approved on a first-come, first-serve basis). The only change that the Defender noted in this respect was that newly, applications for transfer were kept only in electronic form (so far only in some prisons, according to the Defender's findings), which could be positive but it does not address the essence of the problem.

The number of complaints can be expected to increase as a result of a new legal regulation effective as of 1 January 2014, which changes the position of a convicted person, who **may apply for transfer only after the lapse of three months from the disposal of his or her previous application**. other problems regarding the transfer of prisoners may be expected in connection with the planned reduction of the types of prisons.

The Defender emphasised the necessity to provide, if possible, **specific reasons for the rejection of an application** instead of laconic "capacity reasons" or "personality reasons" in the process of handling applications. That could prevent convicted persons or related persons from filing useless and repeated applications for transfer to the same prison. The Defender also encountered a case of an untruthful or very misleading justification of the refusal of an application for transfer. The application of a convicted person had been rejected due to his criminal activity, although the Defender was aware, on the basis of a local inquiry performed at the given prison, that prisoners who had committed the same crimes were commonly placed in the ward to which the complainant had wanted to be transferred.

Thorough body searches

In the Annual Report on his activities for 2012, the Defender reported about a shortcoming on the part of the Prison Service consisting, pursuant to the case-law of the European Court of Human Rights, in thorough body searches performed routinely on imprisoned persons without the existence of a real suspicion justifying such body search of a specific convicted person. The issue of thorough body searches continues to occur quite frequently in complaints addressed to the Defender. The Defender also dealt with a case of thorough body searches at the Horní Slavkov Prison conducted generally on all convicted persons picked or randomly selected to undergo a urine test to detect the presence of addictive substances. Despite the Defender's long-term effort, an appropriate solution to the problem of body searches had not been carried out by the Prison Service of the Ministry of Justice and the Defender therefore decided to use his punitive power and notified the public of his findings in a press release. Instead of a remedy, the Defender encountered another case, which can be described as a serious excess. In the given case, **civilians** entering the prison **were subjected to a demeaning body search**. See also "Petition Committee", page 21.

Complaint File Ref.: 462/2013/VOP/MS

As the Defender stated earlier in the case of several convicted persons, a body search in general constitutes an interference with human dignity of the persons checked. Nevertheless, in the environment of the service of imprisonment, such intervention may be considered legitimate for the purpose of ensuring internal security (preventing the conveying of prohibited items to the prison), but only provided that the search is reasonable and is performed in a manner respectful of human dignity to the maximum extent. Body searches cannot be considered reasonable if convicted persons are forced routinely to do squats while naked or to raise the scrotum and the penis during thorough body search without the existence of an actual suspicion justifying such procedure. This recommendation is all the more applicable to civilians entering the prison. Serious reasons must exist for such interference with human dignity of persons not restricted in their freedom.

The Defender was approached by the parents of a prisoner from the Vinařice Prison, with a complaint that the employees of the prison had forced them to undergo a thorough body search prior to the visit of their son in the prison. It was not the first visit made by the parents and a small son of the convinced person "without any visual or sound check", allowed only when convinced persons enjoy the trust, fulfil their duties, "behave well and there are no problems with them". The convicted person also undergoes a thorough body search himself prior to the visit and after the visit. Their subsequent complaint addressed to the Prison Service and the Ministry of Justice was found unjustified with reference only to the Act on the Prison Service and the Court Security Service of the Czech Republic (Act No. 555/1992 Coll., as amended).

The given law entitles the members of the Prison Service to conduct a body search in case of a justified suspicion that the person is carrying a weapon or another item whereby the service of a term of imprisonment could be disrupted. Nevertheless, the prison's response to the complaint of the convict's parents did not indicate any suspicion of a security risk, which the law stipulates as the basic condition. The convict's parents had never been subjected to such a search before and the convict was not connected with the abuse of addictive substances or criminal activity involving addictive substances. Moreover, potential additional justification on the part of the Prison Service stating suspicion of the conveying of prohibited items or substances into the prison would be inconsistent with the fact that only the convict's parents but not the convict's son, also entering the prison, had been subjected to the body search.

As a remedial measure, the Defender recommended that thorough body searches of civilians entering the prison be conducted only in truly exceptional cases when there was a real and justified suspicion of the conveying of prohibited substances or items into the prison. Since the Vinařice Prison did not make any remedy and did not admit its shortcoming, the Defender decided to use his punitive power and notified the public of his findings. The couple who had been subjected to the search used their right to seek the protection of human dignity before court and filed a complaint against the Prison Service.

Smoking in prisons

A considerable number of convicted persons are smokers. Prison cells or dormitories are usually non-smoking. Designated smoking areas are located in individual wards. The Defender received a number of complaints from prisons about the **violation of the smoking ban** and about the fact that imprisoned persons, non-smokers, were exposed to tobacco smoke. Such violation constitutes a ground for imposing a disciplinary punishment and some prisons rightfully proceed to do so.

The legal regulation of the service of a term of imprisonment imposes a duty on prisons to place a convict who is a non-smoker at his request separately from those who smoke. The Defender has already pointed out that the prison cannot release itself from the duty referring to the capacity situation. The legal regulation is clear regarding the placement of non-smokers, distinctly reflecting the legislator's effort to protect non-smokers against harmful effects of smoking. One of the main principles of imprisonment is to treat convicted persons serving the term of imprisonment in a way ensuring the preservation of their health.

As a remedy, the Defender has already recommended in a few cases the establishment of a purely non-smoking ward. At present, the Defender is conducting more inquiries regarding a similar issue. In addition, in several cases general courts have granted the complaints of convicted persons for the protection of personal rights due to the encroachment upon the right to health caused by the exposure to the effects of passive smoking.

Acquainting convicted persons with evaluations prepared by prisons for court needs

Prisons, or more precisely their experts, prepare for some types of court proceedings a so-called evaluation of convicts pertaining to the course of imprisonment. The evaluation plays a crucial role particularly in the case of proceedings on a conditional release. The court, usually unfamiliar with the circumstances in the prison or the character of the person, takes the evaluation into consideration to a great extent. **The Defender encounters an increasing number complaints claiming that the prison stated incorrect information in the evaluation in order to harm the imprisoned person**. In one such case the Defender found that as opposed to the common practice of some other prisons, convicted persons in the Znojmo Prison were not acquainted with the evaluation before it was forwarded to the court. In the case described

below, the complainant objected to not being able to prepare duly for the court proceedings since he was not acquainted with the evaluation. After an interview with the expert employees of the prison, he had thought that the evaluation would be positive, but it was not, in his opinion. His petition for a conditional release was indeed rejected by the court. The Defender also commented on the **applicability of the basic principles of administrative body activities** on the Prison Service.

Complaint File Ref.: 6313/2012/VOP/MS

Generally in relation to persons serving a sentence, the Prison Service acts as a specific administrative body (its activity may be regarded as the performance of public administration).

The basic principles of the activities of an administrative body defined by the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended) are applicable to the activities of the Prison Service of the Czech Republic pursuant to Sec. 177 of the Code of Administrative Procedure, according to which the principles stated in Sec. 2 to 8 of the Code of Administrative Procedure shall apply also where a special regulation (here Sec. 76 (1) of the Act on the Service of Imprisonment) [Act No. 169/1999 Coll., as amended]) stipulates that the Code of Administrative Procedure shall not apply while it does not contain a provision in accordance with such principles.

Although the law does not explicitly state the duty of the Prison Service to acquaint convicts with evaluations before dispatching them to courts, such duty can be derived from the basic principles of the activities of an administrative body.

The purpose of acquainting convicts with evaluations is not to enable them to change spontaneously the wording of evaluations but to ensure that as part of their right to a fair trial they are ready for court proceedings regarding their petition.

The complainant objected to the contents of an evaluation prepared by the Znojmo Prison for the purpose of court proceedings on his conditional release. He also objected to not having been acquainted in advance with the evaluation, as a result of which during a court hearing he could not respond to the information contained in the evaluation in the same way as if he had been familiar with it before the commencement of the proceedings. Within the inquiry, the Defender criticised the fact that in the Znojmo Prison convicts were not acquainted with evaluations, which affected their right to a fair trial. The Defender believes that the duty to acquaint convicts with evaluations follows from the basic principles of the activities of administrative bodies according to the Code of Administrative Procedure, as a minimum.

The director of the Znojmo Prison argued that no legal regulation imposed such duty on the prison, adding that the prison was not subject to the Code of Administrative Procedure. Her further argumentation consisted in challenging whether the Prison Service was an administrative body. With reference to the recent case-law of Czech courts, the Defender also commented on the status of the Prison Service as an administrative body. Since the Znojmo Prison did not agree with the Defender's conclusions, he turned to the superior authority, General Director of the Prison Service of the Czech Republic, using his punitive power. General Director agreed with the Defender's opinion that convicts should be acquainted with evaluations as part of their right to a fair trial and promised to provide methodological guidance across prisons.

Healthcare

The issue of the quality and accessibility of healthcare services has been long and frequently emphasised in complaints. **Departmental health care providers are not motivated to work with convicted persons, nor are they independent of the Prison Service**. The only solution seems to be interconnecting the departmental healthcare with civil healthcare, as recommended by the Policy on the Development of Czech Prison System until 2015 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The fact that a complaint about the provision of healthcare is handled by the director of a prison, which convicts do not regard as an independent review, illustrates the interconnection between the healthcare provision and the Prison Service. The Defender repeatedly dealt with cases where just for that reason a convict had refused to allow the director of a prison to inspect his medical records, as a result of which the complaint could not be dealt with.

Specifically, in 2013 the Defender looked into a complaint of a convict who had become provably infected with hepatitis while serving the term of imprisonment.

2 / 12 Transport

Addressing the traffic problem in towns

The Defender repeatedly commented on deliberations of an authority in charge of regulating traffic in towns during the **assessment of options to deal with the traffic problem**. Traffic safety is always the primary aspect in all possible options. Nevertheless, if more options are comparable in terms of traffic safety, it is necessary to decide on the basis of other aspects (public interests).

Although an authority acts by virtue of office and not upon an application of the owner of a road, it should **take into account** while assessing the mentioned other aspects **the political will of the regional self-government** since the choice is not between a lawful/unlawful or good/bad solution but it is more of a political decision of a municipality pursuant to Sec. 35 of the Municipalities Act (Act No. 128/2000 Coll., as amended).

Quite often, the Defender dealt with the problem of by-passing toll-roads by freight transport. **Diverting freight transport** to class I roads is a lawful and principally appropriate measure.

As part of his inquiry, the Defender also addressed the issue of **the connection of a property to a local road**.

Complaint File Ref.: 7141/2012/VOP/DS

It is not in compliance with the law if an applicant for the connection of property to a local road pursuant to Sec. 10 (4) (b) of the Roads Act (Act No. 13/1997 Coll., as amended) is obliged to supplement his application with the consent of the road owner or even the statement of the road administrator. The owner's consent should be requested by the road administrative authority.

Where a road placed in the category of a local road upon an administrative decision is not owned by a municipality, the road administrative authority should decide on the exclusion of the road from the category of local roads. In such a case, the decision on the connection is no longer needed because the connection of property to special-purpose roads is not subject to an official approval.

Complainant J. M. requested help from the Defender since he had been unable to obtain the so-called "prior consent" of the owner of the road to which he wanted to connect his building plot. The problem consisted in unclear ownership of the road in question. While there was no doubt that the municipality owned the land under the road, there was disagreement between two divisions of the Authority of the Prague 4 Municipal Ward as to the ownership of the local road itself (the structure) and therefore the municipality was unwilling to make an unequivocal statement. The Authority of the Prague 4 Municipal Ward as a road administrative authority had requested that the complainant provide the consent and had not been willing to request the statement from the owner. Eventually, it had discontinued administrative proceedings because the complainant had failed to provide the required consent.

The Defender pointed out that according to an express statutory provision, the consent of the owner needed to be requested by the authority and not by the applicant. The authority is also obliged to establish the owner of the road and whom to approach. The question of the road ownership constitutes a preliminary ruling within the meaning of Sec. 57 of the Administrative Procedure Code (Act No. 500/2004 Coll., as amended), with respect to which the authority should have arrived at a conclusion. Therefore, the proceedings had been discontinued unlawfully.

Within the Defender's inquiry, a consensus was also reached with the self-government bodies as both divisions of the Authority of the Prague 4 Municipal Ward agreed that the local road concerned was owned by the municipality. The Defender nevertheless noted that if the municipality had denied its ownership, the road administrative authority would have had to decide on the exclusion of the road from the category of local roads, whereby the road would have become "only" a publicly accessible special-purpose road, in which case the connection of adjoining property was not subject to an approval and the complaint's problem would have been also solved.

In the course of the inquiry, the owner of the road (municipality) gave consent to the connection and the road administrative authority approved the connection of the complainant's property to the road.

Airport land

The Defender renewed discussions with the Ministry of Transport on a legislative solution to unresolved property relations between airport operators and (usually minority) owners of some airport land. Although the Ministry of Transport established a working group, which held meetings throughout the year, **it does not expect that the problematic part of the Civil Aviation Act** (Act No. 49/1997 Coll., as amended) **will be amended in 2014**.

Traffic violations

In the area of traffic violations, the Defender often encountered objections to on-the-spot fines in 2013, in particular in connection with reaching the threshold of 12 demerit points in the driver's point evaluation system. Drivers who find themselves in such a situation try doggedly to achieve the **cancellation of an on-the-spot-fine, also using calculated arguments**.

One of the objections concerned an alleged shortcoming of a police officer who had imposed an on-the-spot fine for one violation (failure to give way), although the complainant had reportedly committed several violations (breaching the duty to drive with consideration to others, follow traffic signs and traffic rules), whereby the duty to conduct joint proceedings on all violations had been allegedly breached. According to the complainant, that shortcoming constituted a ground for the cancellation of the fine in review proceedings. In a different case, a complainant raised an objection as regards the subject-matter competence of the police officer to hear the violation in on-the-spot fine procedure, claiming the violation should have been heard during administrative proceedings (repeated speeding). On those grounds, the complainant was seeking to achieve the nullity of the on-the-spot fine. The Defender did not agree with either of the objections and did not find a shortcoming in the procedure of the authorities.

2 / 13 Taxes, fees, customs duties

While complaints in this field usually show a great deal of variety, last year there was a noticeable number of complaints filed by working pensioners. Referring to discrimination, they challenged the **temporary cancellation of an income tax allowance** and the "threat" of General Financial Directorate that the suspension of the payment of a pension for one day could be regarded as "*the misuse of law, with all the consequences arising out the Tax Order*".

The Defender cannot directly assess one law with respect to another (the Antidiscrimination Act [Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.] and the Act on Income Taxes [Act No. 586/1992 Coll., as amended]), but he came to a general conclusion that **not granting a tax allowance to working pensioners did not constitute discrimination within the Antidiscrimination Act**. Discrimination is considered to involve a less favourable treatment of a certain person than of another person in a comparable situation on the basis of a prohibited discrimination criterion. Although the questioned provision on the general level impacts elderly persons, it does not in itself constitute discrimination on grounds of age. A person engaged in a gainful activity while simultaneously receiving an old-age pension is not in a comparable situation as other persons engaged in gainful activities because besides income from the gainful activity he or she receives an old-age pension (exempted from income tax up to a certain amount). The Defender further referred to the result of proceedings before the Constitutional Court conducted upon a petition of Senators under File Ref. Pl. ÚS 31/13.

In this connection, the Defender considers it problematic that as opposed to the earlier legal regulation, the amount of an old-age pension is not taken into account and a tax allowance is not granted even to pensioners with a very low old-age pension.

The Defender does not doubt the intention of the legislator to express by the rule pertaining to the receipt of an old-age pension as of 1 January of the taxation period that the taxpayer entitled to an old-age pension

as at that date had such entitlement before that date and can be reasonably expected to have such entitlement in future. Therefore, **he did not support those who in an effort to stay entitled to the tax allowance applied to the Czech Social Security Administration to have the payment of an old-age pension** suspended for a definite period of time (often for one day).

The remaining complaints were of great variety and they included complaints about the procedure and the decision-making of tax administrators (financial, customs and municipal authorities) and the legal regulation itself.

Although since 2013 municipal authorities have been assessing **local fees for municipal waste to the parents of minor payees**, unfortunately, they still cannot waive outstanding payments due by the then minors, not even in the most striking cases. When collecting such outstanding payments, they should at least remember to notify the debtors of the outstanding payment first because they might not be yet aware of their obligation.

A tax administrator cannot prevent the access to a **tax data box** to a tax adviser to a taxable person only because a power of attorney (which does not contain any restrictions) does not expressly state "with all tax administrators" and the tax adviser applied it only with respect to the locally competent tax administrator. When responding to a proposal to initiate proceedings, tax administrators should no longer generally exclude the possibility to provide information by referring to the **statutory duty of non-disclosure** if standard tax proceedings are not involved [e.g. in case of a submission notifying of the breach of duties arising from the Accounting Act (Act No. 563/1991 Coll., as amended)]. In addition, the tax administrator should not forget possible application, in some cases, of the Freedom of Access to Information Act (Act No. 106/1999 Coll., as amended).

Although **penalties for misdemeanours** are enforced within the Tax Order (Act No. 280/2009 Coll., as amended), such duties are (as opposed to standard taxes) of purely personal character (are connected only with the offender), and as such they **do not descend to heirs**.

People with income from gainful activities who otherwise could have their tax liability settled by their employer by means of withheld tax payments (even if they do not request an annual tax account) should be cautious of the existence of other income as a result of which they have a duty to file a tax return. If they become aware of their duty late, they are subject to **a penalty for a late tax return, which is due on only on the omitted income**.

2 / 14 Foreigner-related administration

Delays in proceedings

In connection with a significant increase in the number of complaints about delays in proceeding conducted by the Ministry of the Interior pertaining to the residence of foreigners, the Defender decided to pursue this issue on a systemic level. He asked the Ministry of the Interior to provide statistical data on the length of residence proceedings and the number of "delayed files". Subsequently, the employees of the Office of the Public Defender of Rights visited nine regional offices of the Ministry of the Interior with an aim to obtain detailed information about the situation in specific regions. The statistical data revealed that statutory time limits were not observed mostly in offices in **Prague** and, to a lesser degree, also in **Brno** and **Ústí nad Labem**.

The Defender came to a conclusion that the delays were not a result of the number of pending applications because at most offices the number had not significantly increased compared to previous years. **The problems were caused** (in particular in offices in Prague and Brno) **by the transfer of the administration of long-term and temporary residence from the bodies of the Alien Police to the Ministry of the Interior** in 2011. Moreover, in the given period the offices of the Ministry of the Interior had had to deal with an additional workload in connection with the introduction of new residence permit cards containing biometric data while sufficient staffing had not been secured.

The Ministry of the Interior managed to gradually lower the number of delayed files by means of overtime hours and by increasing staff at some offices. Thanks to that and also following other measures, the number

of decisions significantly rose in 2012 compared to the year before, and in some types of stays it even doubled. As of 1 August 2013, the number of employees of the Ministry of the Interior offices was again significantly increased. The Defender welcomed the above-mentioned measures; nevertheless, he will continue to monitor the smooth flow of residence-related proceedings.

Employment of foreigners

Despite the absence of legislative change, regional offices of the Labour Office of the Czech Republic ("the Labour Office of CR"), on the basis of the methodological guidance of the Ministry of Labour and Social Affairs, **considerably tightened their practice in issuing work permits** in 2012. The Defender thus decided to open an inquiry, on his own initiative, into the procedure of the Ministry of Labour and Social Affairs and the Labour Office of the Czech Republic.

It was discovered, for example, that on the basis of methodological instructions, foreigners had been required to attach to their application for a work permit **an official document recognising expert qualification**, although the law does not state such requirement. In this connection the Defender concluded that with respect to the constitutional principle that duties may be imposed only on the basis of law and within the intention of law, **the Labour Office of CR was not entitled to require** the given documents. The Ministry of Labour and Social Affairs is preparing an amendment to the Employment Act (Act No. 435/2004 Coll., as amended) to regulate the issue in a complex way.

The Defender also looked into the **directive way of setting the validity period of a foreigner's work permit**, or extending the existing work permit, which again is not supported in the law. By the Defender's inquiry, only partial remedy was achieved. A newly issued directive intended for the regional offices of the Labour Office of CR contains more eased conditions for the setting of the validity period of a foreigner's work permit.

Within the above-mentioned inquiry, the Defender also dealt with the interpretation of the term "family member" for the purpose of entry in the labour market in the Czech Republic according to the Employment Act. The interpretation adopted by administrative authorities enabling family members to enter the labour market only after receiving a temporary residence permit was in violation of the Communication from the Commission to the European Parliament and the Council of 2 July 2009 (KOM/2009/313). In connection with the Defender's inquiry, effective from 20 November 2013, family members of EU citizens **are allowed to enter the labour market if they show a proof (entry in a passport, confirmation) of having filed an application for a temporary residence permit for a family member of a EU citizen on the territory of the Czech Republic**. The status of a family member is de facto established upon the conclusion of marriage or civil partnership.

Business trips of foreigners

After analysing a decision on administrative expulsion, available to the Defender in connection with the monitoring of expulsions (see also Part VI – Supervision of the Expulsion of Foreigners, page 107), the Defender came to a conclusion that the bodies of the Alien Police had automatically regarded all cases where an employee – foreigner had performed work for his or her employer at a place different from the place stated in the work permit as the performance of work without a work permit, and for that reason the bodies of the Alien Police had imposed administrative expulsion. The Defender therefore decided to open an inquiry on his own initiative.

Inquiry on the Defender's own initiative, File Ref.: 4450/2013/VOP/AT

Sending a foreigner to work away from the place of work is possible under the conditions for a business trip stipulated in Sec. 42 of the Labour Code (Act No. 262/2006 Coll., as amended). Such a trip must meet the condition of a limited period of time and necessity. other interpretation following the repeal of Sec. 93 of the Employment Act would be contrary to the sense and the spirit of the law, or, more precisely, contrary to the intention of the legislator, and would disproportionately extend the duties of the entities concerned without the backing of the law.

According to the Defender's conclusions, it is not possible to accept an interpretation of the law making it generally impossible to send a foreigner working on the basis of a work permit on business trips. The imposition of administrative expulsion for the stated reason is therefore unlawful. Consequently, the Defender requested that the Head Office of the Alien Police review 110 factually similar cases of administrative expulsion imposed in 2012 and 2013. The Director of the Alien Police notified the Defender that the Alien Police bodies would proceed according to the interpretation of the law adopted by the Defender, which was subsequently confirmed also by the Supreme Administrative Court in its judgment of 22 August 2013, File Ref. 1 As 67 / 2013.

Short-term visa

In 2013 the Defender again received complaints from family members of the citizens of the European Union/ Czech Republic (typically spouses of Czech citizens) about the visa-processing procedures of embassies and of the Ministry of Foreign Affairs for a short-term visa. In most cases, administrative authorities justified their rejection of a visa application by their suspicion that the applicant had entered into a sham marriage with a Czech citizen, which constituted a circumvention of law.

The Defender pointed out that the issuance of a visa is **claimable by family members** of EU/Czech citizens. If an administrative authority intends to reject a visa application, it must prove the existence of a statutory reason for rejection (for example a sham marriage) in administrative proceedings. Since during short-term visa procedure the conclusion that a marriage is a sham one is usually based on discrepancies in interviews with both spouses (unawareness of important personal data or discrepancies regarding their life together and so on), the records of interviews must have a sufficient value as evidence and must be reviewable so that the issued decision can stand in a potential court review. In connection with the Defender's comments, changes were implemented in 2012, and the records of interviews formalized. Embassy bodies as well as the Alien Police bodies started to make records from interviews with spouses containing identification information about the applicant, description of the course of the interview, date, name and surname or badge number, signature of the interviewing officer and the applicant's signature. In the course of 2013, the applicable Alien Police bodies began to forward to embassy bodies originals of interview records to be filed in visa files.

Long-term visa

The Defender was repeatedly addressed throughout 2013 by persons whose application for a long-term visa had been rejected with reference to the risk of misuse. With respect to processing individual applications, the Defender noted in particular **shortcomings concerning the justification of a notification of an unsuccessful visa applicant of the reasons for rejection**. He also discovered other shortcomings repeatedly occurring on the part of the administrative authorities in question (the Department for Asylum and Migration Policy of the Ministry of the Interior and the Appeal Commission on Residence of Foreign Nationals). The given shortcomings were the subject of a work meeting of the employees of the Office of the Public Defender of Rights and the representatives of the Appeal Commission on Residence of Foreign Nationals as an appellate body.

VISAPOINT

With respect to the continuing violation of obligations arising from EU law as described by the Defender in the Annual Report on his activities for 2012, he continued to follow the issue of the VISAPOINT operation. In connection with the Defender's request for an opinion (forwarded to European Commissioner for Home Affairs Cecilia Malmström), the **European Commission launched in the given matter a so-called "EU Pilot procedure" against the Czech Republic**. The aim of the given procedure, which precedes a formal infringement procedure, is to address situations where the European Commission finds possible infringement of EU law on the part of a Member State. The procedure is still ongoing.

Asylum

The Defender also dealt with delays in international protection proceedings.

Previous inquiries of the Defender showed that after the expiration of the statutory limit to issue a decision in international protection proceedings, the Ministry of the Interior had **used repeatedly and mechanically in numerous cases the option to extend the limit** on the basis of Sec. 27 (1), second subparagraph of the Asylum Act (Act No. 325/1999 Coll., as amended). In one of the cases that the Defender inquired into, **the 90-day time limit had been thus exceeded more than 16 times**.

In 2013, the procedure of the Ministry of the Interior regarding this matter changed in connection with the Defender's inquiry (and also a judgment of the Supreme Administrative Court of 6 February 2013, File Ref. 1 Ans 19/2012). In future the Ministry of the Interior will proceed to use the option to **extend the time limit** according to Sec. 27 of the Asylum Act to the lowest possible degree and **only in exceptional and justified cases**, always stating the given reasons in the notification of the time limit extension sent to the applicant. In addition, the Ministry of the Interior will always specify the acts that are to be performed within the extended limit.

2 / 15 Records of the population, registry offices, travel documents, data boxes

Necessity of a new approach to permanent address

The necessity of an new approach to the institute of a registered permanent address has been repeatedly pointed out by the Defender. To analyse the practical impacts of the legal regulation of the registry of citizens and to outline possible legislative solution, the Defender held a round-table discussion in March 2013. According to the estimates of the Czech Statistical Office (based on the population census carried out in 2011), over 10% of citizens have their permanent address registered at a place different from their actual residence. The round-table discussion participants agreed that **it would correspond to the public administration needs if citizens had their permanent address registered at the place of their usual stay**.

With the adoption of a new legal regulation in 2000, the material approach to a permanent address was abandoned and its registration purpose highlighted. The changes were mainly a consequence of the transfer of the administration from the Police to civil authorities and the setting of a statutory basis for the operation of the registry of citizens. The reality has deviated substantially from the legislator's intention of that time. For example, it is possible to have one's permanent address registered at the reporting office. **The increasing number of citizens who have their address registered at the reporting office is caused particularly by fears of the distrainment of movable assets at the place of residence**. Citizens overestimate the relevance of permanent address because a distrainor may perform acts leading to the execution of a decision anywhere where the property of the liable party is located. Concerns of lessees about the lessor's reaction is also one of the reasons of not having the permanent address registered at the place of actual residence.

Serious shortcomings of authorities of small municipalities in the area of citizens registry

The Defender repeatedly encounters serious shortcomings of authorities of small municipalities in exercising the governmental authority in the area of citizens registry. They concern not only administrative proceedings on the cancellation of permanent address registration but also the termination of permanent address registration on the territory of the Czech Republic, with serious consequences for citizens. On the basis of such findings, the Defender supports the idea of transferring the citizens registry administration from the authorities of small municipalities to the authorities of municipalities with extended competence.

Proving the birth surname for the purpose of submitting an application for a criminal record certificate

Identity cards issued as of 1 January 2012 do not contain a birth surname. Nevertheless, when an application for a criminal record certificate is filed, this information must be verified to the competent authority's satisfaction. On the basis of information reported by the media, the Defender performed an inquiry into this problem, on his own initiative. According to statements of the Ministry of the Interior and the Criminal Register, as of June 2013 it is possible to check the birth surname in the information system of the citizens registry at public administration contact points with the consent of the applicant. Therefore, applicants for a criminal record certificate will again need only an identity card when filing the application.

Registration of permanent address of citizens permanently residing abroad

The Defender dealt with cases of the Czech Republic citizens who had been born abroad, had never had and did not wish to have a permanent address registered in the Czech Republic and requested the registration of their birth in a special registry or also the issuance of a passport of the Czech Republic. **Although the law does not require an authority to notify a Czech citizen** (or his statutory representative) born abroad that in accordance with the law the address of the reporting office will be registered as the address of their permanent residence, the authority should do so in line with the principles of good administration since various rights and duties are connected with the registered permanent address.

As of 22 November 2013, it is possible to find on the website of the Authority of the Brno-střed Municipal Ward (special register) a modified application form for the registration of birth accompanied with information on the registration of a permanent address on the territory of the Czech Republic and on its possible termination along with contact details for the relevant employees of the citizens registry department of the Municipal Authority of Brno. The modified form should be also posted on the websites of the Czech Republic embassies abroad.

Errors in official translations of foreign documents of the register and subsequent use of the name and surname in an incorrect form

Within an inquiry into a specific complaint, the Defender concluded that a registry office had not erred by failing to discover that a birth certificate submitted by the complainant was written in the Ukrainian language while the official translation had been made by an interpreter certified only for the Russian language. It had erred by leaving unnoticed the different forms of the complainant's name and surname on the official translation of the birth certificate and the official translation of a divorce decree. Additionally, an official from the Ministry of the Interior had also erred as it had stated incorrectness of the official translation of the birth certificate submitted with the application for the Czech citizenship. Neither a registrar nor an official of the Ministry of the Interior are authorised to state incorrectness of an officially executed translation; however, they can state that they have reasonable doubt about its correctness.

Registrars or other officials exercising governmental authority are not bound by any legal regulation to check the official translation of foreign documents of the registry. It is not their duty to ascertain in what language the official document issued by a foreign authority is written and whether the official translation of such document was made by an interpreter certified to translate from that language.

If it is ascertained that a person used her/his name or surname in an incorrect form owing to a wrong official translation, such person should be **allowed to choose** one of two possible solutions after presenting a new official translation. Either she or he can ask for correction of the entry in the registry and issuance of a new document of the registry or she or he can declare that she or he will continue to use her/his name and surname in the form stated in the issued documents.

Elements of the application for an new identity card in case of a lost identity card

If citizens cannot present their existing identity card when applying for a new identity card and they do not possess any other proof of identity, they must prove their identity pursuant to the Identity Cards Act (Act No. 328/1999 Coll., as amended) in another reliable manner. **Authorities requiring the presentation of a birth certificate in such cases proceed in an incorrect way**. As of 1 January 2012, authorities are entitled to require the presentation of a birth certificate only to remove potential variance with data in registers discovered when processing an application. The issue of presenting documents of the registry became more complicated with an amendment to the Act on the Registers (Act No. 301/2000 Coll., as amended), which came into effect on 1 July 2012, according to which the signature of an applicant on the application for the issuance of a document of the registry (or the signature on the power of attorney for representatives) must be officially certified.

Complaint File Ref.: 6437/2012/VOP/MV

The practice of a prison that does not enable the verification of the identity of prisoners applying for an identity card on the basis of files on prisoners kept by the Prison Service of the Czech Republic is in violation of the principles of good administration.

A group of convicted women from the Světlá nad Sázavou Prison turned to the Defender with request for assistance with obtaining a new identity card during their term of imprisonment. The Defender discovered that the Municipal Authority in Světlá nad Sázavou required convicted persons applying for an identity card without any other valid proof of identity to present at least a birth certificate or a marriage certificate. Following the amendment to the Registers Act effective from 1 July 2012, it was practically impossible for convicted persons who did not have relatives who could apply for the issuance of their birth certificate to file an application for an identity card during the term of imprisonment.

The Defender found shortcomings especially on the part of the prison, which had not enabled the use of the files of the Prison Service of the Czech Republic for the verification of the identity of convicted persons. As a consequence, the Municipal Authority had required the presentation of a birth or marriage certificate as an alternative solution. However, a document of the register cannot serve as the proof of identity when an application is filed. The appearance of an applicant is compared with a photograph taken during the previous application process only by the relevant authority before the identity card is ordered to be made.

After an inquiry report was published, the representatives of the prison and the Municipal Authority held a meeting and agreed that the prison would allow the files of the Prison Service of the Czech Republic to be used for the verification of the identity of convicted persons.

2 / 16 Right to information, personal data protection

Access to information

Besides the issue of disclosing salaries and remunerations of top officials addressed in 2012, the Defender newly pursued the provision of information on the misdemeanours of public officials. Further, he paid attention to the observance of procedures anticipated by the Freedom of Access to Information Act (Act No. 106/1999 Coll., as amended).

Disclosing information on salaries and remunerations of top officials

Deciding about requests for information on salaries or remunerations of officials is not simply deciding about whether to provide or reject such request. The decision-making needs to be fundamentally based on whether to disclose information on salaries of all "recipients of public funds" or only of selected ones with respect to whom **public interest** in disclosing such information **predominates** considering their position and powers (the application of the proportionality test and due substantiation are necessary prerequisites).

Disclosing information on misdemeanours of public officials

Misdemeanours according to the Conflict of Interest Act (Act No. 159/2006 Coll., as amended) committed by public officials are a textbook example of how the right to information usually takes the priority to the right to privacy. Personal data reflecting **the public or official activities of a person engaged in a public office** that may be provided without the consent of the data subject include information on whether and in what way the given person breached the Conflict of Interest Act and also information on how the administrative authority has handled the notification of a misdemeanour (how it has been disposed of on the merits/procedurally), including information on possible guilt and the penalty imposed.

Observing procedures in processing requests for information

The Freedom of Access to Information Act **permits only three ways of handling requests for information**. An authority may provide information, refuse to provide it or dismiss the request. If an authority decides not to provide any information, it must issue a decision and justify it duly. Even if a citizen floods an authority with tens of requests for information and the authority is convinced that such action constitutes bullying

and an intentional attempt to destabilise the authority, it must handle the requests in accordance with the Freedom of Access to Information Act. If the authority stops responding to the requests and fails to disclose such information, it acts unlawfully. By not issuing a decision, the authority denies the citizen a right to a fair trial. See also "Petition Committee" page 21.

Personal data protection

The matter of **video surveillance systems in blocks of flats** was the most common problem related to the protection of privacy and personal data in 2013. The Defender repeatedly looked into the inspection activities of the Office for Personal Data Protection, noted some shortcomings and where an agreement was not reached, he notified the public.

The Defender in general feels more comfortable in the role of the defender of privacy and is rather critical of the general trend to protect oneself or one's property by means of various monitoring devices. Nevertheless, he accentuates the present interest in ensuring greater safety. The installation of a video camera system, for example, may increase the feeling of safety (even though often delusive) or at least it may make it easier to determine the person responsible for the damage caused. Every time personal data are processed, which includes data processing through video camera systems, it must be ensured that the private and personal life of the persons monitored is not excessively invaded. Therefore, the Defender believes that the installation of video surveillance systems should be made in a suitable manner. The installation of video cameras must not lead to permanent monitoring of persons moving within the monitored area.

Although it cannot be ruled out that after the conclusion of an inspection, the person inspected will bring the video surveillance system back to the original unlawful state, the person performing inspection should always ascertain accurately and comprehensively the situation at the time of concluding the inspection, i.e. also whether the video surveillance system has been brought into accord with the law as the inspected person declared. A sketch of the location of video cameras without test images from such cameras to support with evidence the resulting situation is not sufficient. Such procedure thus became the subject of the Defender's criticism.

Providing personal data on citizens with registered permanent address

On the basis of a complaint of a member of the association of residential unit owners (the "association"), the Defender inquired into the procedure of a reporting office, which had provided data from the citizens registry information system on citizens who had their permanent address registered at the address of the house to the authorised owner – the governing body of the association. Within the inquiry, the Defender had to deal with different opinions of the Ministry of the Interior and the Office for Personal Data Protection.

The Citizens Registry Act (Act No. 133/2000 Coll., as amended) distinguishes between the owner of a building and the owner of a defined part of a building (residential unit). An application for the cancellation of the registered permanent address may be filed by the owner of the building as well as the owner and lawful user of the defined part of the building. Data on the registered citizens may be disclosed only to the owner of the building. For the sake of consistency of the law, the owner and the lawful user of the flat should also be entitled to be provided data on the registered citizens. Such entitlement, however, is not executable because data on the registered permanent address do not contain data about a particular flat.

The association **is not the owner** or co-owner of the building, however, as it only manages its common parts.

In the Defender's opinion, data on the citizens with permanent address registered at the address of the building may be disclosed only **on the basis of an application of all owners of residential units**. Saying that, the Defender does not deny that in some cases it may be desirable for the association to possess information about the persons living in the house; however, data from the citizens registry information system do not have a relevant information value in this case. The number and the identity of persons using the residential unit at that particular time do not have to correspond to the number and the identity of persons with permanent address registered at the given address. Personal data of the registered persons are not necessary for the protection of the rights and law-protected interests of the association as the manager. On the contrary, their disclosure to the association may constitute an unreasonable intrusion into the privacy of such persons.

Despite the final statement of the Defender finding an evident shortcoming of administrative authorities, the Ministry of the Interior and the Office for Personal Data Protection maintained their original views. Therefore, the Defender used his statutory power and informed the public of the unlawful action.

2 / 17 Consumer protection

As in previous years, the Defender continued to pursue the issue of **presentation sales events**. The complaints received indicate that despite wide publicity of the given phenomenon, consumers still participate in such events and enter into disadvantageous contractual relations.

The Defender appreciates the approach of the Czech Trade Inspection Authority, which is trying to be more effective in penalizing the organisers of presentation events. Its activities are based, among other things, on internal procedure documents issued in 2012 in connection with several inquiries of the Defender.

It is apparent that making audio recordings or audio-visual recordings of the event, without the knowledge of the persons attending, is the most effective means of proving unlawful conduct at presentation events. However, the making of recordings was not in compliance with law, as was also confirmed by the opinion of the Office for Personal Data Protection. The provision of Sec. 5 (2) (c) in connection with Sec. 8 (d) of the new Control Act (Act No. 255/2012 Coll., effective from 1 January 2014) brought a certain shift. Whether it really allows the making of recordings without the knowledge of the persons concerned is to be resolved by the case-law.

The Defender also welcomes **the launch of the Consumer Ombudsman system**, which could improve the access of consumers actively and immediately protecting their rights to free legal aid by **the creation of contact points at Trade Licensing Offices** and by cooperation with non-government organisations. Nevertheless, **the selected name is confusing for the public**. Owing to repeated confusion of the institute of the Consumer Ombudsman with the institute of the Public Defender of Rights, the Defender also published a clarifying press release.

The operation the *Consumer Ombudsman* system and the individual aspects of penalizing unfair business practices that occur at presentation events were also the subject of a work meeting of the employees of the Office of the Public Defender of Rights and the representatives of the Regional Trade Licensing Office of the Moravian-Silesian Region, the Moravian-Silesian and Olomouc inspectorate of the Czech Trade Inspection Authority and also consumer non-government organisations.

The Defender also welcomes the efforts of the Ministry of the Industry and Trade at the legislative level, specifically, an amendment to the Consumer Protection Act (Act No. 634/1992 Coll., as amended), debated by the Chamber of Deputies in December 2013, which introduces new duties for salespersons or organisers of presentations events. Newly, they will be **required to notify** the Czech Trade Inspection Authority **of the place and the date of an event** and also of the products to be offered at the event. See also " Submission of comments by the Defender", page 24.

In addition to the problem of presentation events, a large number of complaints addressed to the Defender concerned the **processing of warranty claims**. The given complaints related not only to issues subject to the supervision of administrative authorities (the length of processing a claim, notification of the warranty conditions) but also to the way claims were processed (rejection or satisfaction of claims), which, however may be settled only by courts.

Complaint File Ref.: 7811/2012/VOP/TČN

The commercial conditions of a seller must differentiate between the institute of "variance with the purchase contract" and "liability for defects of the thing sold". It is not sufficient to mention only "claims" in the commercial conditions, i.e. a term entailing both the liability for defects and the variance with the purchase contract.

A. F.'s complaint was directed against the procedure of the Central Inspectorate of the Czech Trade Inspection Authority (the "Central Inspectorate") and the Moravian-Silesian and Olomouc inspectorate of the Czech Trade Inspection Authority. The complainant objected to insufficient investigation of his submission concerning an operator of an internet shop that had failed to properly observe the duty to inform (failing to inform consumers of their rights should they make a claim following from the variance with the purchase contract).

The Defender asked the Central Inspectorate to re-assess the matter and to inform him of its findings or the remedies adopted. After assessing the matter, the Central Inspectorate came to the conclusion that the operator of the internet shop had failed to fulfil its duty to inform since it had not properly informed consumers of the institute of "variance with the purchase contract", thus breaching the provision of Sec. 13 of the Consumer Protection Act. The Inspectorate then returned the matter to the Moravian-Silesian and Olomouc inspectorate of the Czech Trade Inspection Authority, requesting that it address the consumer's complaint again and dispose of it according to its legal opinion.

Within his inquiries the Defender also noted that if a certain submission was primarily addressed to a business entity and not to an inspectorate of the Czech Trade Inspection Authority, the duty of the supervisory authority to duly investigate a suspicion of an administrative offence contained therein was not affected in any way. If the proceedings are only *ex officio* proceedings, which is also the case of administrative offence proceedings, to commence the given proceedings, an administrative authority may make use of information obtained from all legal sources. This applies for example to submissions pursuant to the provision of Sec. 42 of the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended), other submissions forwarded to the authority, information obtained during inspection of administrative proceedings conducted regarding a different case, information published in media or on the internet. The manner of obtaining information has only an impact on the notification duty of an administrative authority pursuant to the provision of Sec. 42 of the Code of Administrative Procedure.

Negotiating consumer loans over telephone

At the beginning of 2013, the Defender dealt with complaints of several persons about the methods of loan agents in negotiating a loan over the telephone. The Defender looked into the procedure of the Czech Trade Inspection Authority in cases when it had been addressed by a consumer objecting to the costs of a phone call to negotiate a loan.

Making telephone calls intentionally longer on higher-rate phone lines during the negotiation of consumer loans was found to be unfair business practice by the Czech Trade Inspection Authority. It is problematic to prove that a business entity really proceeds at variance with the requirements of professional care. Since such action cannot be an isolated act, **it is necessary to record a larger quantity of telephone calls made from various telephone numbers** and subsequently analyse the recordings thoroughly. The Czech Trade Inspection Authority therefore collaborated with the Czech Telecommunication Office regarding this matter. Given the seriousness of actions of some loan agents, it referred the case to investigative, prosecuting and adjudicating bodies with a suspicion of the criminal offence of fraud.

The problems outlined above were solved by an amendment to the Act on Consumer Credit and the Amendment to Certain other Acts (Act No. 145/2010 Coll., as amended), which came into effect on 25 February 2013. It prohibits loan agents from referring customers to a higher-rate telephone number while offering, negotiating or brokering a loan over telephone. A fine of up to CZK 20,000,000 may be imposed for violating the prohibition.

Consumer protection in the area of electronic communications

The Defender looked into a case of a complainant who had made a contract for the provision of telephone services by telephone. She subsequently objected that during the conclusion of the contract the provider of services had acted in violation of the prohibition of unfair business practices and turned to the Czech Telecommunication Office. In the Defender's opinion, in case of doubts as to the due conclusion of a contract by telephone or suspicion of unfair business practices during the conclusion, administrative bodies competent to deal with consumer protection should require the **submission of a copy of an audio recording** of the telephone conversation.

2 / 18 State supervision over and inspection of regional self-government

Protection of individual public-law rights against bodies of regional self-government

In the course of 2013, complainants addressed the Defender mostly with problems related to the conflict between the subjects of the right to self-government, i.e. between municipalities, or bodies of municipalities, and their citizens, during the practical exercise of independent competence by municipalities. Complainants often believed that in the process of supervising and inspecting independent competence of municipalities, the Ministry of the Interior ensured protection of individual public-law rights of citizens against their violation by municipal bodies. Such notions reflect the misapprehension of the nature of the right to self-government as the basic principle of a democratic rule of law independent of the State. Municipalities and their citizens are the subjects of the right to self-government and they are responsible for its exercise. State supervision and inspection is limited to an objective goal, i.e. public interest in the compliance of the exercise of independent competence by municipalities with the law. Internal relations between the subjects of the right to self-government are not the subject of supervision and inspection. The process of supervision and inspection does not serve to protect an individual public-law right of a citizen of a municipality.

A citizen may (in addition to responsible election of his or her representatives to the municipal assembly, internal control mechanisms and initiatives to the Ministry of the Interior to perform supervision and inspection) seek the protection of his or her rights before an administrative court.

Complaint File Ref.: 2921/2013/VOP/ZS

A citizen has a right, pursuant to Sec. 16 (2) (e) of the Municipalities Act (Act No. 128/2000 Coll., as amended), to inspect the resolution of the municipal assembly. If the resolution itself does not contain the complete information about the content of the municipal assembly's decision and refers to a written source document, such written source document constitutes an inseparable part of the municipal assembly's resolution and must be made available to the citizen.

As opposed to the members of the municipal assembly, a citizen does not have direct access to the minutes from a meeting of the municipal assembly. Every person may request the minutes from a meeting of the municipal assembly pursuant to the Freedom of Access to Information Act (Act No. 106/1999 Coll., as amended).

J. K. approached the Defender requesting an inquiry into the disposition of his complaint about unlawful actions of the Municipal Authority of Roudnice nad Labem by the Division of Inspection and Supervision in Public administration of the Ministry of the Interior. The citizen requested, as a citizen of the town, that the Municipal Authority of Roudnice nad Labem enable him to inspect the resolution of the municipal assembly setting remunerations of directors of organisations established by the municipality. After the resolution was presented to him, he started to make photocopies of the annexes and had a dispute with the Municipal Authority's employees, who wanted to prevent him from making photocopies, arguing that he did not have the right to inspect the minutes from a meeting of the municipal assembly. The complainant said in his defence that he had no intention to inspect the minutes from the municipal assembly meeting and that he wanted to exercise his citizen's right pursuant to Sec. 16 (2) (e) of the Municipalities Act to inspect the municipal assembly's resolution and since the resolution did not contain the information about the specific amount of remunerations with reference to an attached proposal of remunerations, he presumed that he had the right to inspect also that document. Subsequently, he turned to the Ministry of the Interior, which stated that the Municipal Authority must not allow the inspection of the minutes from the municipal assembly meeting. In the Defender's view, the Ministry had erred.

The Defender found that the Ministry of the Interior had long held the view that a citizen had a right, pursuant to Sec. 16 (2) (e) of the Municipalities Act, to inspect also documents that constituted an inseparable part of the municipal assembly's resolution in terms of contents of the decision. As regards information contained in the minutes from a municipal assembly meeting, a citizen does not have direct access to the minutes from the municipal assembly meeting but he or she can request the minutes by proceeding pursuant to the Freedom of Access to Information Act.

The Defender agreed with the view of the Ministry of the Interior. He recommended that the Ministry incorporate the findings from inspecting the actual exercise of the right of a municipality citizen in a general methodological recommendation and publish it on the website of the Division of Inspection and Supervision in Public administration of the Ministry of the Interior.

Inactivity of regional self-government bodies

The Defender frequently encounters complaints demanding that the State remove the inactivity of municipal bodies, which, in exercising their independent competence, render decisions pursuant to the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended) or a special law, typically the Freedom of Access to Information Act. The possibility of the State to provide for remedy is also limited in such cases. The State may request that the municipal body cease to be inactive and extend the time limit for issuing a decision but it is not authorised to take over the case and render a decision instead of the inactive municipal body.

Wedding fees

The Public Defender of Rights inquired into a complaint about the requirement of a registry office to pay, in addition to an administrative fee stipulated by the Administrative Fees Act (Act No. 634/2004 Coll., as amended), a fee determined by a municipal assembly for concluding a marriage not in the specified ceremonial hall. The Defender turned to the Ministry of the Interior, which found the resolution of the municipal assembly unlawful. The Ministry of the Interior started discussions with the representatives of the municipality, recommending that the problem of fees for above-standard wedding services be addressed in a more suitable manner. At present, the municipality does not regulate the payment for "above-standard" services by means of an authoritative decision but only on the basis of an agreement with the fiancés. If the municipality incurs additional costs in connection with the wedding ceremony, the issue of their payment (beyond the scope of the stipulated administrative fee) may be dealt with only by means of a contract (i.e. private contract with the fiancés) and not by an authoritative decision of a municipal body.

Procedure for the selection of a head teacher and the principle of inter-branch cooperation

Last year the Defender registered disagreements with the results of procedures for the selection of head teachers of various schools. In one of the cases addressed by the Defender, the complainant questioned **the procedure and the composition of a selection committee** since he believed that in a committee that selects a grammar school head teacher, a head teacher of a grammar school and not a head teacher of a secondary technical school should be one of the members. He had made his objection only after the selected candidate had been appointed head teacher of the grammar school, requesting the invalidation of the appointment so that a different person could be selected. He had also filed a complaint with the Regional Authority and the Ministry of the Interior; however, none of the bodies had taken any further steps.

The Defender found a shortcoming on the part of the Ministry of the Interior, which had taken a very reserved stance to performing the supervision of the resolution of the regional board announcing the selection procedure and appointing the selection committee and which had refused to perform inspection of the exercise of independent competence. He stressed **the necessity of inter-branch cooperation and consistency in handling complaints**. At the same time, he confirmed the conclusions that the **resolution of the regional board whereby a specific person was appointed head teacher of a school could not be subjected to supervision**. He also agreed with the conclusions of the Ministry of Education, Youth and Sports that from the point of view of expertise, **it was not decisive that a member of the committee for the appointment of the head teacher of the grammar school was the head teacher of a secondary technical school**. The Defender managed to initiate more intensive cooperation between the Ministry of the Interior and the Ministry of Education, Youth and Sports. The handling of citizens' complaints should not be a mere formality and to that end the Ministry of the Interior must request a **statement on the given matter from the Ministry of Education, Youth and Sports**. Insufficiently ascertained facts and the absence of cooperation **cannot be to the detriment of a complainant**. Common methodology for municipalities and regions should provide a solution.

2 / 19 Education

Capacity of kindergartens and decision-making of regional authorities

The Defender has been encountering a problem in the past three years consisting in only **theoretical possibility** of a child applying for pre-school education **to defend itself against an unlawful decision of a head teacher by appealing such decision**. Regional authorities usually cancel unlawful decisions of head teachers

and return the matter for new proceedings pursuant to Sec. 90 (1) (b) of the Code of Administrative Procedure (Act No. 500/2004 Coll., as amended). Subsequently, however, the child is not admitted to the kindergarten for capacity reasons pursuant to Sec. 23 of the Education Act (Act No. 561/2004 Coll., as amended), since in the meantime all available places in the kindergarten have been filled. Merely stating unlawfulness by an appellate body is therefore not able to remedy the consequences of an unlawful decision and **the whole appellate proceedings are only formal in character**. Cancelling an unlawful decision and returning the matter for new proceedings make sense only if head teachers leave some places in a kindergarten unoccupied for the purpose of appeal, which, however, they usually fail to do, according to the Defender's findings.

Therefore, the Defender recommends that in justified cases regional authorities exercise the option given in Sec. 90 (1) (c) of the Code of Administrative Procedure and **reverse the appealed decision or its part so that the child is admitted to the kindergarten**, even in excess of the maximum capacity.

The Defender would like to point out in this respect that the maximum capacity within the provision of Sec. 23 (3) of the Education Act and the Decree on Preschool Education (Decree No. 14/2005 Coll., as amended) **binds and limits in particular the promoters of kindergartens** and may not be to the detriment of a child who has not been admitted to the kindergarten in violation of law. Moreover, before the start of the school year, the capacity of a kindergarten is de facto not exceeded. An unlawful situation would occur only if the actual situation were not brought into accord with the law before the beginning of the school year. If a child is admitted to a kindergarten in appellate proceedings in excess of the existing capacity, it is the promoter's responsibility to bring the actual situation in accord with law before the start of the school year by increasing the capacity.

A very specific situation can be seen in the capital city of Prague, where children with permanent address in the municipal district where the kindergarten is situated are given priority. According to the Defender's findings, in several cases **children** who do not have their permanent address registered in the relevant municipal district **and who are in the last year before they begin compulsory school attendance are put at a disadvantage**. According to the Education Act, such children should have priority of admission to a kindergarten, i.e. regardless of the registered permanent address. **The appellate body**, however, **does not prevent unequal access to pre-school education**, although it is competent to do so under the law. The Municipal Authority of the Capital City of Prague has been confirming for a long time the decisions of head teachers who did not admit children with permanent address registered in another municipality to the kindergarten in the last year before the start of compulsory school attendance. Although the Defender discussed the unlawful administrative practice with the Municipal Authority of the Capital City of Prague, a remedy **was not ensured**.

Consent to establishing the post of an assistant teacher and the public character of criteria

The Defender noted an increasing number of complaints about insufficient funding and staffing to ensure supportive and compensatory measures for pupils with special education needs in primary schools. While inquiring into the complaints, the Defender also dealt with a **divided approach of regional authorities** as regards the application of the Code of Administrative Procedure to the consent to establishing the post of an assistant teacher and the disclosure of criteria for giving such consent.

The Defender reminded the regional authorities subject to the inquiry that the procedure in granting or not granting consent to the establishment of the post of an assistant teacher pursuant to the provision of Sec. 16 (10) of the Education Act constituted the exercise of delegated competence (Sec. 183 (6) of the Education Act). A regional authority **is obliged to apply the Administrative Procedure Code** to the stated procedure (Sec. 1 (1) of the Administrative Procedure Code in connection with Sec. 183 (1) of the Education Act).

As regards the public character of the criteria, the Defender believes that it is the duty of a regional authority to set **a written criteria** for giving consent pursuant to the provision of Sec. 16 (10) of the Education Act. The principle of legitimate expectation of the addressee of public administration requires that the regional authority disclose such criteria, preferably **in a manner enabling remote access**. Such procedure is necessary also with respect to the fact that the amount of public funds to establish the post of an assistant teacher is limited, which means that an administrative authority distinguishes among various special educational needs of pupils.

Regarding this matter, the Defender considers it necessary that the procedure of regional authorities in future **be unified by the Ministry of Education, Youth and Sports.**

Gap in legislation – catchment areas of primary schools

While inquiring into a specific complaint, the Defender found that the legal order fails to address a situation of a child who is subject to compulsory school attendance but the municipality where the child permanently resides **has not established a primary school or made a public-law contract on a school district with another municipality**. In the mentioned case, the procedure pursuant to Sec. 178 (3) of the Education Act cannot be applied since the regional authority may take action only if a catchment school already **exists**. The unfavourable situation is even aggravated in cases when **institutional education is ordered** but cannot be cancelled (even though the reasons ceased to exist) since the child does not have a catchment primary school at the place of permanent address. The Defender thus proposed during a debate on an amendment of the School Act that **the regional authority should have the power to determine** where a child would fulfil compulsory school attendance (by establishing or extending the school district through a general measure). The Ministry of Education, Youth and Sports **accepted the Defender's opinion**. Nevertheless, as at the end of 2013, the amendment to the School Act was not submitted to the Parliament of the Czech Republic.

Complaint File Ref.: 3304/2012/VOP/ZO

A municipality should establish kindergartens and primary schools with respect to local conditions ensuring that the needs of citizens are satisfied to the maximum possible extent. If the municipality does not establish a school, its duty is to secure education by means of a public-law contract with another municipality, i.e. to make an agreement on a common school district or to join an association of municipalities establishing a school.

Compulsory school attendance is imposed by the State and the responsibility for ensuring basic conditions for education and the fulfilment of this duty (including legislative conditions) also lies with the State. Such responsibility cannot be removed from the State by stating that the duties related to citizens' regional needs in the field of education are fulfilled by individual municipalities within the independent competence of their regional self-government.

Where the reasons for placing a minor child in institutional or protective education cease to exist and such education continues only due to the non-existence of a relevant school based on the permanent address of the child, the State breaches the right to private and family life. Institutional education is an ultima ratio tool and its use cannot legitimately disguise a failure to secure conditions for ensuring compulsory school attendance.

A head teacher of a primary school rejected a transfer of P.P., a pupil with special education needs, although the school was in the catchment area of the pupil. Remedy was provided for only by the regional authority, which decided on the pupil's appeal. Therefore, P. P. started his education in the catchment school against the head teacher's will. However, the head teacher did not ask the regional authority to establish the post of an assistant teacher nor did he use other measures recommended by a school counselling facility for the pupil's integration. The situation escalated by P. P.'s attacking physically the head teacher. Subsequently, he was hospitalised in a psychiatric hospital. With respect to a dismal situation in the family, the court ordered institutional education. During the institutional education, the health condition of P.P. stabilised but the parents failed to find a primary school for their son. In the municipality where P.P.'s family moved, a primary school was not established and the municipality had not made a public-law contract with another municipality ensuring compulsory school attendance. other primary schools rejected P.P.'s transfer with respect to their capacity and his health condition.

In the Defender's opinion, the school head teacher had erred by proceeding in violation of the Education Act and the Code of Administrative Procedure since he had rejected the transfer of the pupil to his catchment school. He had also committed an act of indirect discrimination on grounds of disability by failing to make adjustments in the pupil's education although he should have done so according to the counselling facility's recommendation. By supportive measures, risks connected with the health condition of the pupil would have been minimized. The problem with a catchment school was resolved only after the Defender stepped in.

In cooperation with a body of social and legal protection of children, the statutory representatives of minor P. P. succeeded in finding a suitable school so that the pupil could leave the institutional facility after 18 months and stay home within host-care regime. In September 2013, after 20 months, P. P. started to be educated in a mainstream primary school again.

The Defender also pursued the issue of **disagreements of persons with the results of procedure for the selection of head teachers of various schools**. This issue concerns the Ministry of Education, Youth and Sports and especially the Ministry of the Interior. See above 2/18 State supervision over and inspection of regional self-government, page 75.

2 / 20 other administrative authorities

Administration in the area of trade licensing

In connection with an inquiry into an individual complaint, the Ministry of Industry and Trade issued methodological guidance for trade licensing offices to ensure a uniform approach to **proving a legal title to the place of business**. According to the Defender's findings, as a proof of the legal title, some trade licensing offices require only the consent of one of the co-owners of the property where the entrepreneur wants to have his or her seat or place of business located. The Defender considers this interpretation oversimplified and in violation of the legal regulation of co-ownership in the Civil Code (Act No. 40/1964 Coll., as amended, effective until 31 December 2013).

Unless an entrepreneur is a co-owner of the property where he wants to have his or her place of business, he or she must prove the right to use the property by the consent of a majority of co-owners within the sense of Sec. 139 (2) of the Civil Code. This also applies to cases when the co-owner of the building is a governing body of a legal person whose seat is to be located in the building.

If the seat of a legal person is placed in a property that is part of **community property**, the entrepreneur should submit the consent of both spouses because giving consent to the establishment of a seat of a third person cannot be regarded as the usual administration of property pursuant to Sec. 145 of the Civil Code. As opposed to the previous case, however, failure to comply with this requirement is penalised only by relative validity (i.e. the consent of one of the spouses is considered valid unless the other spouse invokes its invalidity).

Analogous interpretation needs to be applied to proving the ownership title to the premises of an establishment or the right to use such premises.

Power industry, Energy Regulatory Office

In one of the cases that the Defender dealt with in 2013, a member of the association of unit owners had planned to place a solar photovoltaic panel on the house roof but had failed to obtain the consent of other members of the association.

Complaint File Ref.: 7265/2012/VOP/PN

In case of a photovoltaic power plant, electricity generators pursuant to the Energy Act (Act No. 458/2000 Coll., as amended) are deemed to include only things through which electricity is actually generated (solar panels) or that are essential for the generation (for example converters). Owing to this, the Energy Regulatory Office may examine in licence proceedings the existence of the applicant's right of ownership or right to use only in relation to such defined energy facility and not to the property or such parts of the property where the generator is located since the relevant parts of the property do not constitute a part of the energy-generating facility.

If a photovoltaic power plant is only a generator supplying all energy to the grid, a permit of the building authority is needed for the installation of such structure, or, more precisely, the facility. A planning approval

is sufficient to issue the permit; if the conditions for its issuance cannot be met, planning proceedings need to be conducted and a planning permit issued.

If the primary purpose of a photovoltaic power plant is to cover the energy consumption of a building, the building law regards it as a change, or, more precisely, a construction change of a building.

Ing. J. K., a member of the committee of unit owners' association, turned to the Defender requesting an inquiry into the procedure and the decision of the Energy Regulatory Office, which had granted a licence to an applicant (one of the flat owners in the house) to operate a photovoltaic power plant although he had not submitted the consent of co-owners of the common parts of the house, or, more precisely, a majority agreement with the installation.

Pursuant to the provision of Sec. 5 (3) of the Energy Act, an applicant for a licence is obliged to prove the right of ownership or the right to use the energy facility that is to be used to conduct the licensed activity. A crucial problem that emerged within the inquiry was the definition of the term "energy facility", which determines the power of the Energy Regulatory Office to request the proof of the right of ownership or the right to use the part of the property where the solar panel is to be installed.

The Defender also commented on Act No. 350/2012 Coll., effective as of 1 January 2013, amending the Building Act (Act No. 183/2006 Coll., as amended), stating that he did not consider it appropriate to proceed pursuant to the provision of Sec. 103 (1) (e), item 9 of the Building Act, according to which a notification of construction or a construction permit is not required in the case of power generation structures with total installed capacity of up to 20 kW. With respect to the potential implications of a photovoltaic plant for a property in terms of the construction law, fire-safety and the like, the Building Office should proceed pursuant to Sec. 103 (1) (d) of the Building Act.

Delivering documents according to the Code of Administrative Procedure

On the basis of his findings, the Defender opened an inquiry on his own initiative in 2012 focused on the **problem of delivering documents according to the Code of Administrative Procedure** (Act No. 500/2004 Coll., as amended), in particular as regards Sec. 23 (4), the second sentence of the quoted law – i.e. placement of uncollected documents in letter boxes of addressees.

The findings showed that administrative authorities proceeded in a very non-uniform manner when applying the said provision. Under the circumstances, the Defender considered it desirable to assess the procedures of administrative authorities within the Czech Republic and offer a generally acceptable solution, also in connection with the judgment of the Supreme Administrative Court of 25 August 2011, File Ref. 7 As 53/2011, which is not accepted widely.

After the inquiry, as part of which the Ministry of the Interior and all regional authorities and the Municipal Authority of the Capital City of Prague had been addressed, a final statement was published in November 2013, where the Defender expressed his conclusions. To sum up, **the procedure pursuant to Sec. 23 (4), the second sentence of the Code of Administrative Procedure is not a condition of an alternative delivery.** However, the following principles need to be followed:

- placement of uncollected letters in letter boxes or in other suitable places is a standard and it is possible to depart from it only in exceptional cases;
- where the administrative authority considers it desirable not to follow paragraph 1, it may do so only if it deems such procedure impossible or if it has excluded it itself;
- the reasons for proceeding pursuant to paragraph 2 will be recorded in the files by the administrative authority;
- failure to follow paragraphs 1 to 3 does not in itself cause the effects of the fiction of delivery not to be effective; however, a superior administrative body will point out the shortcoming in delivery and methodologically guide the subordinate administrative authority to proceed in a due manner;

– the implementation of the procedure pursuant to Sec. 23 (4), the second sentence of the Code of Administrative Procedure is not the condition of an alternative delivery.

2 / 21 Compensation

Ministries and the examination of compensation claims under the Act on Liability for Damage Caused within the Performance of Public Authority

In the field of compensation, in 2013 the Defender handled complaints of persons objecting that in assessing their compensation claims, authorities had failed to follow ***"Ten Rules of Good Practice for the Assessment of Compensation Claims"*** ("Ten Rules"), which the Government acknowledged through its Resolution No. 593 of 15 August, 2012 and recommended that authorities proceed according to them.

The submissions addressed to the Defender may be divided in **three groups**:

1. Submissions whereby persons ask for advice as to the formal aspect of a compensation claim, its requirements (so that it can be granted) and information about whom to contact, i.e. who is to handle their claim.

In such cases, the Defender gives the required information to the persons, sends a form of a compensation claim (which can be used as an inspiration if the text on the form does not fit their case) while informing them how an authority should proceed in assessing their compensation claim (in accordance with Ten Rules).

2. Submissions whereby persons complain about the inactivity of an authority in processing their compensation claim (if they are not processed within six months).

Most of such complaints were directed against the Ministry of Justice, which, owing to a high number of filings, is not able to process compensation claims within six months. Even though the Ministry of Justice had assured the Defender that it would send "acceptance letters" (if it is unable to observe the time limit), the Defender found that in several cases that had not happened. Therefore, the issue was again discussed with the Ministry of Justice in the course of the year and the Ministry promised to provide for a remedy.

3. Submissions whereby persons challenge the statement issued by an authority regarding their compensation claim.

In such cases, the Defender notifies the persons of the steps they should take if they disagree with the result of the preliminary assessment of their claim (turn to court), and, if possible, establishes whether the authority proceeded in accordance with Ten Rules in assessing their claim.

Compensation for an incorrect official procedure of the Ministry of Transport

In 2013 the Defender inquired into several complaints against the Ministry of Transport regarding the so-called preliminary submission of claims for damages or appropriate satisfaction, which is a necessary step that the injured party must take before filing a court action. In all the cases, the Defender found the processing of the claims in violation of the Act on Liability for Damage Caused within the Performance of Public Authority (Act No. 82/1998 Coll., as amended) or at least the principles of good governance summarised in Ten Rules.

The cases concerned the manner of **disposing of claims pertaining to unreasonable length of administrative proceedings pursuant to the Roads Act** (Act No. 13/1997 Coll., as amended). The Defender found that the Ministry of Transport had addressed and worked with the complaints in an insufficient manner and concluded that the Ministry of Transport had violated the principles of good governance since it had incorrectly interpreted the content of the claims and subsequently rejected them for that reason.

other cases related to the manner of disposing of claims seeking compensation for damage or harm caused by the **State's failure in implementing the Central Vehicle Register application** (e.g. waiting in offices, repeated visits). The Ministry of Transport had failed to adopt in good time sufficient measures, especially of organisational and personnel nature, to be able to cope with the expected wave of compensation claims as frequently noted by the media. Quite paradoxically, only a small proportion of the persons affected turned

to the Ministry of Transport (no more than 200 submitted claims); however, despite that, the Ministry of Transport was not able to respond within the statutory limit of six months.

Compensation for an incorrect official procedure of the Ministry of Labour and Social Affairs

The Defender also received several complaints about an incorrect procedure of the Ministry of Labour and Social Affairs in processing preliminary submissions of claims for appropriate satisfaction. Within inquiries into the complaints, the Defender repeatedly found **procedures at variance with Ten Rules**, particularly as regards voluntary compensation, the assessment of a claim according to its content and due justification of the conclusion of the Ministry of Labour and Social Affairs.

Complaint File Ref.: 3961/2013/VOP/DŘ

The Ministry cannot reject a claim for appropriate satisfaction for immaterial harm caused by an incorrect official procedure only because the claimed amount is disproportionate. Where the conditions for providing monetary satisfaction are fulfilled, the Ministry will provide voluntarily a part of compensation corresponding to the case-law and its established practice, and will refer the claimant to court concerning the rest of the claim.

The Ministry of Labour and Social Affairs refused to grant any compensation pursuant to the Act on Liability for Damage Caused within the Performance of Public Authority for repeated delays of the Czech Social Security Administration in proceedings on the reinstatement of a disability benefit, stating that the claimed amount of CZK 120,000 was excessive. At the same time, however, the Ministry of Labour and Social Affairs did not dispute that the Czech Social Security Administration had erred in the complainant's case and that immaterial harm had occurred.

The Defender opened an inquiry and found the procedure of the Ministry of Labour and Social Affairs unacceptable. According to his conclusions, if the Ministry of Labour and Social Affairs finds the total length of proceedings unreasonable and if it does not contest the occurrence of immaterial harm and if stating the breach of law is not sufficient in that particular (less serious) case, it must provide voluntary compensation. The Supreme Court of the Czech Republic expressed a similar opinion in its standpoint of 13 April 2011, File Ref. Cpjn 206 / 2010.

Moreover, the Defender registered cases where the Ministry of Labour and Social Affairs had provided voluntary monetary compensation for exceeding the reasonable length of proceedings by a shorter period of time than in the case described above. Since the processing of preliminary submissions of claims is subject to public law, the Ministry of Labour and Social Affairs must follow the principle of legitimate expectations also in this case, i.e. **ensure that in deciding about cases pertaining to a factually identical or similar matter, unjustified differences do not arise**.

Compensation for an incorrect official procedure of the Ministry of Regional Development

The Defender found that the **procedure of the Ministry of Regional Development did not respect the sense of the Act** on Liability for Damage Caused within the Performance of Public Authority. By adopting the Charter of Fundamental Rights and Freedoms, the State expressly granted citizens the right to compensation for damage caused by an unlawful decision of a court, a governmental authority or a public administration authority or an incorrect official procedure. At the same time, it pledged to guarantee the right to the citizens. In several cases the Ministry of Regional Development refused to provide satisfaction for immaterial harm, adding that it would not change its practice. It is apparent that until it accepts the fact that in **providing compensation, it is not purely a defender of the State** but it is also the executor of public administration (i.e. acts in accordance with the law, impartially, convincingly, effectively, openly, responsibly and in a timely manner), it will continue to adopt an approach to applicants for compensation involving minimum communication and transparency. Such action is short-sighted for the State and society and it increases distrust of citizens in the rule of law and negatively affects atmosphere in the society. See also "Petition Committee", page 21).

Compensation for an incorrect official procedure of the Czech Social Security Administration in distrainment deductions from pensions

In the Annual reports on the activities of the Public Defender of Rights in 2011 and 2012, the Defender pointed out **incorrectly performed deductions from pension insurance benefits by the Czech Social Security Administration** ("CSSA").

In 2013 the incorrect procedure was recorded to a lesser extent and, therefore, in most cases the Defender did not recommend applying for compensation to the Ministry of Labour and Social Affairs for the incorrect procedure of CSSA in performing deductions from pension insurance benefits (as in previous periods) and instead he dealt with the cases by approaching CSSA himself.

The Defender continued to monitor earlier cases (from 2011), where persons had turned to court after the Ministry of Labour and Social Affairs had not granted their claims for compensation.

With respect to the **lack of uniformity** of courts in assessing the territorial jurisdiction for disputes regarding compensation for CSSA's incorrect official procedure, the Defender turned to the President of the Supreme Court in December 2012 to consider using her power and propose that the competent Division **adopt an opinion in the interest of unified court decision-making**.

The President of the Supreme Court of the Czech Republic stated that on 18 December 2012 the Head of the Civil and Commercial Division had assigned a judge of the 30 Cdo panel to prepare a draft opinion on the subject of territorial jurisdiction (see the Annual report on the activities of the Public Defender of Rights in 2012).

The draft opinion was prepared and an internal comment procedure was held at the Supreme Court of the Czech Republic in May 2013. However, at a meeting on 12 June 2013, the Civil and Commercial Division failed to accept the proposal, with 21 votes in favour and 12 votes against the proposal, when the minimum of 23 votes were required. Therefore, the Head of the Division assigned another judge of the Division to prepare an alternative proposal.

In November 2013 the President of the Supreme Court of the Czech Republic notified the Defender that on 9 October 2013 the Division had adopted an opinion, **which can be expected to be published in the Collection of decisions and opinions No. 8/2013 by the end of 2013.**

4 The Defender and Facilities Where Persons are Restricted in Their Freedom

In 2013 the Defender launched a long-term project of monitoring the care for elderly people. Specifically, he focused on the conditions during the provision of care to persons suffering from the Alzheimer's disease or other kinds of dementia. In exercising the mandate of the so-called national preventive mechanism, within performing systemic visits according to Sec. 1 (3) and (4) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), he focused mainly on residential social service facilities. With respect to demographic development, it is apparent that the issue of care for persons suffering from the dementia syndrome will gain importance globally. The Public Defender of Rights therefore decided to examine how care for this extremely vulnerable group of persons was ensured in the Czech Republic.

In 2013 the Defender made a total of **15 systematic visits to homes for elderly people and homes with special regime** (of which one was a follow-up visit). Further, he visited a **non-registered facility**, which de facto provided residential social services to clients suffering from the dementia syndrome. The Defender had focused on non-registered facilities before and will continue to visit them also in 2014.

The aim of the visits was, above all, to ascertain in what conditions the elderly persons lived, how they were treated, whether their dignity was respected and their fundamental rights observed and whether the care was adjusted to the specific needs of that target group. In assessing the quality of professional care in the facilities, the Defender collaborated with experts on the given healthcare area, who also took active part in the systematic visits. The Defender also signed **memoranda of cooperation** with the Czech Association of Nurses, Czech Alzheimer's Society and the Czech Society of Palliative Medicine to ensure that the recommendations in the area of nursing and health care were in accordance with the expert knowledge.

For the first time, the Defender pursued the conditions **in sobering-up stations** and performed five systematic visits to such facilities. He thus responded to a judgment of the European Court of Human Rights, which had criticised the Czech Republic for the manner of restricting personal freedom in sobering-up stations in case of Bureš vs. Czech Republic (complaint No. 37679/08). More visits and systemic evaluation of findings will follow in 2014.

In 2013 **the monitoring of treatment in police cells** continued; four police stations were visited. Further, three systematic visits were made to **facilities for the exercise of institutional education** (one of which was a follow-up visit) and one follow-up **visit to a psychiatric hospital**. In addition, ten local inquiries were performed, concentrating particularly on complaints in the area of the prison system and the performance of public guardianship.

In the second quarter of 2013, the Defender published **summary reports on systematic visits** performed in the previous two years. They include a report on visits to educational care centres, a report on visits to diagnostic facilities, a report on visits to infant homes and a report on visits to children's psychiatric hospitals. In addition, the Standards of Care for Vulnerable Children and their Families, accompanying the Report on Visits to School Facilities where Institutional and Protective Education is Performed, published in 2012, were updated. In April 2013 the Defender held a seminar at the Ministry of Education, Youth and Sports on the protection of vulnerable children and their families, where he presented basic findings and recommendations from the visits. In connection with the mentioned systematic visits, the Defender addressed his recommendations on the removal of shortcomings and the remedy of unacceptable situations to the competent authorities, i.e. the Ministry of Education, Youth and Sports, the Ministry of Health, the Ministry of Labour and Social Affairs, and to regional authorities.

In September 2013 the Defender initiated a **meeting of the employees of the Department for Supervision** of the Office of the Public Defender of Rights performing systematic visits to school facilities for the performance of institutional and protective education and **public prosecutors** performing supervision of the compliance with legal regulations. The scope of competence of both overlaps at times but the starting points, the purposes of inquiries and the powers and tools differ. The purpose of the meeting, which was attended by almost 60 public attorneys, was to share experience with other participants and to strengthen the collaboration with regard to the interests of children living in institutions.

The Defender further prepared a **content analysis of internet presentations of regional homes for elderly people** titled "Access to the social service of a home for elderly persons". The analysis examines to what extent such facilities are open to various groups of applicants (mostly with respect to their health condition, level of income, or allowance for care). The analysis responded to findings from systematic visits that had showed the impossibility for some elderly people to get a social service. Within the analysis, the Defender formulated **seven recommendations for social service providers**.

As part of **international cooperation**, the staff of the Department for Supervision visited their colleagues in Slovenia and France. In addition, experience in the field of the prevention of maltreatment was exchanged during a visit of Georgian Ombudsman in the Czech Republic. The Defender's findings from systematic visits were also presented by the employees of the Department for Supervision at international workshops and seminars.

1 / The Defender and his Power to Impose Penalties

Slaný Children's Home with School

In 2013 the Defender used his punitive power regarding a systematic visit to Slaný Children's Home with School (as an independent facility of the Diagnostic institution, children's home with school, children's home, centre of educational care and elementary school Dobřichovice). On the basis of a systematic visit to this facility, the Defender concluded that **the staffing and also the care for children were insufficient to ensure the operation of the facility**. With respect to the fact that a majority of the clients of this facility form a particularly sensitive group of children requiring educational and therapeutic regime, the Defender pointed out, above all, the necessity to increase the number of experts (psychologists/special education officers) ensuring such regime. The Defender also recommended increasing the number of assistant teachers. **During a follow-up visit in September 2013, it emerged that not only had the Defender's recommendation not been respected but the bad personnel situation in the facility had further escalated**. Due to an insensitive approach on the part of the management and sudden departure of expert personnel, **the continuity of professional care had been fundamentally broken and the educational and therapeutic regime as such disrupted**. In an attempt to stabilise the facility (which had been given as an example of good practice in 2011), the Defender turned to the Ministry of Education, Youth and Sports (the promoter). The Ministry subsequently stated that it would take measures to achieve remedy, which involved the removal of the head teacher.

Liběchov Children's Home with School

The punitive power of the Defender was also used in connection with a systematic visit to Liběchov Children's Home with School, where the Defender **found maltreatment** and notified the superior authority, i.e. the promoter, of the case.

The most serious instances of maltreatment included, for example, locking children who fell ill in medical isolation and leaving them almost without contact with adults. Children were isolated after escapes and they were forbidden, by means of educational measures, to go out of doors for as long as 14 days. Contact among individual family groups was prohibited, as a result of which boys and girls did not have a chance of mutual contact. That measure was also very insensitive with respect to siblings. Children could not make phone calls in private but only during the presence of an educator, who prevented them from making possible complaints. Educators were instructed to check children's text messages. Children could spend only 45

minutes a day out of doors. (In this respect, the Defender noted that the standard time for prisoners is one hour). Children were not provided special educational or psychological care, although they were children with serious behavioural disorders. Finally, serious information regarding inappropriate contact between a social worker and minor boys was ascertained.

The Defender submitted these findings to the promoter and relevant bodies of social and legal protection of children and the supervising Public Prosecutor's Office. **Information indicating possible commitment of a crime was forwarded to the Police of the Czech Republic**. Subsequently, the promoter and the Czech School Inspectorate conducted inspections, the supervising public prosecutor performed a check and the Defender made a follow-up systematic visit. Most of the most serious shortcomings were subsequently remedied.

Psychiatric Hospital in Dobřany

Responding to a widely-covered incident of the death of a patient in a caged bed, the Defender performed a systematic visit to the Dobřany Psychiatric Hospital, focusing on the conditions for using this means of restraint within the facility. After conducting an inquiry, the Defender found debatable aspects pertaining to the justifiability of the caged bed use at the time of the death, i.e. whether the caged bed had been used for preventive reasons. Further, he questioned in some parts the internal rules of the hospital for the use of the means of restraint and found working conditions for the staff in the given ward very demanding and even hazardous (repeatedly since 2008). As the Defender's **exchange of views with the hospital was not satisfactory**, the Defender approached the Ministry of Health (the promoter), requiring an investigation of the event. After repeated requests for the Ministry of Health's statement, the Defender performed a follow-up visit.

The hospital responded to the tragic incident by taking measures, including organizational measures, **aimed at improving the patients' safety**. However, in the Defender's opinion, the investigation of the event conducted by the hospital and its promoter had failed to deal with certain debatable aspects pertaining to the legality of the caged bed use at the time of the death. The Ministry of Health had failed to take an active approach to an event as serious as the death of a patient retrained within involuntary hospitalisation, failing to conduct an impartial and thorough investigation of the event.

2 / Facilities for Elderly People with Dementia

In performing systematic visits, the Defender mostly focused on residential social service facilities providing care to elderly people suffering from the dementia syndrome. An inquiry was also conducted at one non-registered facility. **The Defender found maltreatment in seven cases**. The following facilities were visited (chronologically, from the beginning of 2013): Domov pro seniory Třebíč, Domov Slaný, Alzheimercentrum Průhonice, o. p. s. (Prague), Charitní dům pokojného stáří Cetechovice, Domov pro seniory Světlo (Drhovle), Domov pro seniory Uničov, s. r. o., Domov pro seniory Kobylisy (Prague), Domov pro seniory Pyšely, Dům seniorů Liberec – Františkov, TOREAL, spol. s r. o. (Královské Poříčí), Domov u zámku, o. s. (Chvalkovice na Hané), Lázně Letiny, s. r. o., Domov pro seniory Pampeliška (Česká Lípa), Domov pro seniory Zlaté slunce (Ostrava) and Centrum komplexních služeb pro rodinu a domácnost Kunštát.

During the visits, the examined areas included particularly the environment and equipment of facilities, whether the principle of the freedom to arrange one's own affairs was respected and the privacy of clients ensured, the clients' freedom of movement and their safety, the quality of the provided social services and nursing care, or the conditions of concluding a contract for the provision of social services and its contents. In all of the mentioned areas, the central theme was the protection of human dignity and the protection of (not only) fundamental rights and freedoms of clients.

The most frequent shortcoming encountered during the examination of material conditions consisted in the **failure to adjust the environment to the needs of clients with dementia**. Such persons may be disoriented and may easily get lost even in familiar places. Therefore, the area where they move around should be well organised and support spatial orientation (e.g. the use of different colours marking each floor, pictograms on room doors, orientation signs in halls and so on). One of the issues that the Defender criticised in some cases was **the absence of communal dining rooms or common areas**. Regular communal dining

has crucial socialization importance and clients with dementia may significantly profit from it depending on the stage of the illness (it improves the quality of the life of clients, forms a part of the daily programme, helps to maintain self-reliance).

In the area of ensuring privacy, the Defender was particularly interested in whether the **privacy of clients in toilets, during the maintenance of hygiene or the provision of nursing** care was respected, whether in a bathroom, on a bed in a room or in the nurse's room. He recommended that no one be exposed to being seen by other clients and that the relevant acts be performed behind closed doors or a screen. He also criticised, where relevant, **the impossibility of clients to store safely their belongings**. Although the Defender is aware that not all clients suffering from dementia are able to use keys to lockers or drawers, he recommended that those able to do so have a lockable space in their room and that conditions for the storage of belongings to protect them against theft be created for all.

While checking if the clients' freedom of movement was ensured, the Defender examined especially the use of restraining means within Sec. 89 of the Social Services Act (Act No. 108/2006 Coll., as amended). **Unlawful administration of sedatives** was a frequent shortcoming. The Defender found that physicians often prescribed irregular administration of sedatives in case of agitation or aggression. Nevertheless, the prescriptions are so vague that in practice it is not a physician who decides on the administration of a sedative but an employee of the facility (in some cases not even a medical officer). The facility does not regard the administration of sedatives as the use of restraining means even if the purpose of the administration of such medication in a specific case is to restrain a client (prevent him or her from walking, getting up, or due to aggressive behaviour). In a number of cases, no records about the administration of a sedative were maintained; the existing records gave rise to doubts as to whether the statutory conditions for the administration of a sedative as a means of restraint had been met and in several cases evidence about procedure in violation of the statutory prohibition of restraining movement was obtained.

As regards the quality of the care provided, in all of the facilities the Defender concentrated primarily on proper nutrition of clients. In particular clients whose communication ability is limited or who are permanently confined to bed have to depend completely on the care provided by the staff, which must include the provision of nutrition. **The underestimation of the risk of malnutrition** and its insufficient prevention was the most serious shortcoming in this area. In a number of facilities, nutrition screening is not performed, clients are not regularly weighed, food intake is not systematically monitored and facilities do not cooperate with a nutritional therapist. Clients suffering from the dementia syndrome belong to a risk group as regards the occurrence of malnutrition and some are completely dependent for nutrition on the care of the facility staff. The modification of food texture is a related problem. The Defender objected to cases where **all food components were blended together** during the mechanical modification of food texture (blending), which in the end looked very unappealing and unappetizing, preventing clients to enjoy their meals in any way. The Defender also focused on **the manner of preparing and administering medication to clients**. He criticised situations where medication was prepared according to medication lists, with changes and cross-outs made by the staff, and the correctness of the prescription could not be verified. Further, the Defender pointed out that **medication was not stored in a safe place** and could be also reached by persons who were not authorised to handle it. In most of the facilities visited, **micturition regime** (determination of the form and frequency of assisting clients to use the toilet) was not determined for clients suffering from dementia and in several cases the **onset of complete incontinence was even accelerated**. In most facilities, **depression was not systematically checked for or monitored** and **standardised monitoring of pain did not take place**. Finally, the Defender criticised the impossibility to establish from the files how long the patient permanently confined to bed **had not been getting up**, who had decided on the patient's further confinement to bed on an all-day basis and on what grounds. Permanent confinement to bed constitutes crucial and often irreversible deterioration in the quality of life and therefore it should be discussed by a physician and duly recorded in the client's files.

In the area of ensuring the safety of clients, the Defender found most shortcomings in the **incorrect use of sideboards**. Even though employees of facilities were aware that a sideboard could restrain the client's movement, they were not concerned with the purpose of its use if the client's guardian or relative had given consent to its use. The Defender repeatedly explained that the use of a sideboard was right if its purpose was to protect the client from fall after other less restrictive preventive measures had been tried out without success or their use had been excluded beforehand for a justified cause. In such a case sideboards are

a standard nursing instrument and the consent of third persons is without legal significance. However, the use of sideboards for the purpose of restraining the client's movement is undesirable and it cannot be made good by potential consent. **Insufficient prevention of falls** was another frequent shortcoming. Falls may have very serious consequences for elderly people (e.g. fractures, head injuries, anxiety, depressions and so on). The Defender criticised the absence of a systematic fall risk assessment, the absence of a proper analysis of the causes, the absence of preventive measures and of transparent statistics of falls.

The Defender also obtained findings about **the shortage of funds** in the given area of social services, although that was not the purpose of the visits. Social services are funded from multiple sources and subsidies from the State budget remain an important source for the providers. The size of subsidies earmarked for this area is stagnating or declining. Providers of social services are thus forced to reduce the working hours of professional medical staff; and headcount reduction also concerns direct care workers. This situation **affects the quality of the provided care and negatively impacts the life of clients** in the facilities. In some cases the facilities consequently cannot comply with the quality standards of care for this specific target group of clients. For example, in one facility the Defender recommended on-site presence of a head nurse on a daily basis and he acknowledged the care for clients provided by a sufficient number of direct care workers. The facility subsequently informed the Defender that it was forced to reduce the working hours of the medical staff and lay off more direct care workers.

Generalized findings, related recommendations and systemic evaluation will be published by the Defender in a summary report in 2014. In 2013 he already prepared and published partial outputs for practical use, such as "Extracts from reports on visits to facilities for elderly people" or a paper on the problems in ensuring the nutrition of elderly people.

3 / Sobering-up Stations

Sobering-up stations are specialized medical facilities intended for short-term stays and detoxication in case of acute intoxication by alcohol or other psychoactive substances. They are a special type of facility, on the borderland between out-patient and in-patient care. An intoxicated person is placed in a sobering-up station usually involuntarily and is released only by the decision of a physician. He or she is obliged to pay a financial amount for the stay at the sobering-up station, determined by the station.

The Defender visited **five** sobering-up stations in 2013, in Prague, Ostrava, Plzeň, Kroměříž and Karviná. During the systematic visits, he focused particularly on the issue of ensuring the privacy of persons placed in the stations, the fulfilment of statutory reasons for the placement of persons there, the use of the means of restraint, sufficient staffing and payments for stays at the station.

The Defender did not directly find maltreatment or deliberate infringement of the rights of the persons placed in the sobering-up stations; however, **he pointed out some serious shortcomings in the conditions** at the sobering-up stations and in the admission and release of persons. The most frequent shortcomings included failure to ensure, to a sufficient extent, privacy in a toilet, failure to actually examine all statutory conditions for the restriction of freedom at the time a person is placed in the sobering-up station and insufficient staffing in the facilities.

Findings from the systematic visits to sobering-up stations will be used by the Defender in 2014 to discuss this matter further with experts in that field and subsequently to formulate the standards of care for persons placed in this type of facility.

4 / Police Cells

Systematic visits were made to **four** police cells, namely to police cells in Sokolov, Vyškov, Ostrava and Ostrov. The Defender focused on checking whether fundamental rights of persons confined to cells were observed and their dignity respected. In particular he was checking whether the persons had been duly advised of

their rights and duties, whether they were provided food, whether they could perform personal hygiene, where and in what manner body searches were performed or whether medical aids (for example glasses) were deliberately taken away at the time of confinement.

In two cases a signed advice of rights form (notification advising persons confined of their rights and obligations) was not found in the files maintained at the time of confinement and **a reasonable doubt arose as to whether the person had been advised of their rights and obligations**, as prescribed by the law and other regulations. Familiarization with one's rights is one of the basic safeguards against maltreatment. In three cases the Defender found that when being confined to police cells, the persons had not been given the advice of their rights form to enable access to the information throughout the confinement.

In all four facilities visited, the Defender found that **the persons confined were provided only cold meals**. The Defender pointed out that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Revised CPT 2011 standards) requires that the confined persons be given a full meal at least once a day, i.e. more substantial meal that a sandwich (in Czech conditions typically a roll and salami or pâté). Therefore, he recommended that a warm meal be provided to a confined person at least once a day.

In three cases it was found that a bed sheet was not provided in cells, although it is mandatory cell equipment. Since bed sheets are not provided and blankets are successively used by several persons without being washed, physical contact with an already used blanket is more of a rule than exception. The Defender considers it unhygienic and demeaning.

5 / Conditions During Protective Treatment

Responding to complaints, the Public Defender of Rights inquired into the conditions during protective treatment in the Dobřany Psychiatric Hospital and the Bohnice Psychiatric Hospital.

A point system intended for the motivation of patients to treatment was the subject of the inquiry. The Defender found that the system in one ward was set is such a way that some patients **had been prevented from getting fresh air** for several months. That situation was caused by the structural and technical arrangement of the ward, which prevented patients who were not allowed to move out of the ward from going outside. As a result, in case of some patients, the treatment conditions were harsher than in prisons, where convicts may get fresh air for at least an hour a day. This standard must be maintained also during the protective treatment (an exception is possible only on the basis of the health condition of a patient and the exception may not be interpreted extensively). A thing that should be natural cannot serve as motivation.

Further, the Defender was interested in **the conditions during stays and the right of persons to privacy**. The psychiatric hospital was found to have rooms with 14 or 11 beds, where patients with various diagnoses were placed. A stay in such rooms could have a negative influence on patients and could also go against the sense of the therapy. The Defender found the related complaints justified and recommended that the psychiatric hospital make necessary changes. He also noted that to maintain the minimum standard of privacy it was necessary to create conditions enabling the storage of a reasonable amount of personal items in a lockable cabinet, with the key being in the patient's possession, provided the patient was able to use it. This standard needs to be maintained despite the financial requirements connected with it.

Another shortcoming encountered by the Defender in the area of privacy protection during protective treatment concerned **the manner of performing ward rounds**. The dignity of patients needs to be protected and the protection of their personal data needs to be ensured in such situations too. The requirements of the degree of this protection cannot be determined uniformly across the health care sector. However, it is reasonable to expect privacy in a situation when a patient is describing his or her experience and a decision is to be made about his or her future and civil life. If such a situation occurs during each ward round, privacy must be ensured during each ward round.

While inquiring into the conditions during protective treatment, the Defender also dealt with **the use of restraining means**. In one case he found a shortcoming in connection with the use of medication.

Complaint File Ref.: 461/2012/VOP/MLU

The use of the means of restraint is a serious intrusion into personal rights. Therefore, it must be evident without doubt that the intensity of the threat to life or the safety of the situation reached the level anticipated by the law.

On the basis of a complaint, the Defender inquired into the situation of a complainant hospitalized in the Bohnice Psychiatric Hospital, first on grounds of court-ordered institutional observation and subsequently within a six-month protective treatment.

When being admitted to the hospital for the purpose of observation, the complainant had been prescribed psychiatric drugs by a doctor at the admission centre. Since she refused to take them voluntarily, the medication was applied by injection. The refusal of the patient had culminated and she was restricted in her freedom for an hour by being strapped to bed. All that happened before the complainant could be examined by a physician at the ward where she had be admitted. Subsequently the patient was given medication despite her disapproval throughout the observation period and then also during the protective treatment, although the legal regulation at that time (as opposed to now) did not allow it.

The Defender found the manner of using the means of restraint and the involuntary medication of the complainant during her protective treatment unlawful and recommended remedial measures, which the psychiatric hospital adopted.

The prescription of "agitation treatment" (i.e. medication indicated in case of agitation or aggression) and the subsequent administration of medication at the nurse's discretion is, unfortunately, a procedure common in many psychiatric hospitals. Subsequently, it is not distinguished whether the procedure is part of the medication of the patient's illness anticipated by the physician or of the management of the patient's aggression or dangerous behaviour in general. The Healthcare Services Act (No. 372/2011 Coll., as amended), however, requires special, controlled procedure in case of specific administration of psychiatric drugs (used as the means of restraint). That applies to the administration of sedatives to avert an immediate threat to life, health or safety of the patient or other persons. Primarily, a physician should decide about each use after assessing the specific situation; a nurse should do so only in emergency cases and subsequently call the physician.

6 / Procedure of the Regional Authority in Taking Action Against Non-registered Social Service Facilities

In 2013 the Public Defender of Rights continued to pay attention to the problem of providing residential social services without proper authorisation (registration), i.e. without complying with the rules and quality requirements prescribed for this activity. The registration is tied to the fulfilment of statutory material and personnel requirements and enables State supervision of the quality of the services provided. The provision of social services without authorisation therefore carries a risk of maltreatment of clients and constitutes an administrative offence, against which the relevant regional authority is authorised to take action.

On the basis of systematic visits to two residential facilities in the previous years, **the Defender pointed out a significant risk of maltreatment in such facilities.** To reinforce preventive measures, in 2013 the Defender issued "Statement on providing social services on the basis of trade licences", monitored the procedure of one regional authority in taking action for an administrative offence of providing social services without authorisation and addressed the Ministry of Labour and Social Affairs with a request to unify the practice of regional authorities within methodological guidance.

Due execution of **administrative proceedings on an administrative offence** is complicated since the entities concerned do not cooperate with authorities. The task of the regional authority is to prove that services are

provided at a specific address and also to prove that the character of the services provided corresponds to social services. Nevertheless, there is strong public interest in carrying out proceedings and therefore the Defender insists that they be carried out while the principles of administrative punishment are observed.

In this connection the Defender makes a general note that if a regional authority has a reasonable suspicion that a facility provides social services without authorisation, it should commence administrative proceedings by virtue of office. A reasonable suspicion may be based for example on information given on the website of the facility, provided by witnesses, acquired during the authority's own activities or activities of other administrative bodies. In the course of administrative proceedings followed by the Defender, for example, the regional authority proved that the facility had provided a number of services having the character of social services; the employees had provided all-day nursing care to persons dependent on assistance, administered medication and applied regimen measures. The authority based its findings on documentary evidence, own inquiries performed in the facility and also a report of the Public Defender of Rights.

7 / Public Guardianship

The exercise of public guardianship (based on substantive law) by municipalities or, more precisely, by an authorised employee of a municipal office constitutes the exercise of governmental authority within delegated competence according to the case-law of the Constitutional Court and therefore falls within the mandate of the Defender. In 2013 the Defender obtained findings regarding this area of public administration by inquiring into specific complaints and also by performing systematic visits.

It might be mentioned that **lacking legal regulation of guardianship and insufficient methodological guidance** are very limiting factors in this area. Although the new civil law goes into more detail with respect to so-called supportive measures, it still does not enable effective protection of the rights of persons under guardianship, who mostly comprise persons with limited legal capacity. It is not specified what falls under the performance of the public guardian's duty or what its basic principles are. As a result, guardians are not sure as to the scope of their activities and interpret the best interest of the person under guardianship in various ways. Moreover, municipalities often struggle with insufficient staffing and funds in this area.

Deciding on hospitalisation and placement in residential social services

The Defender encountered a shortcoming in the decision-making of public guardians regarding principal issues in the life of persons placed under guardianship, specifically, regarding hospitalisation or the removal of persons from natural environment and their placement in residential social services. The nursing model, characteristic by the protection of persons with mental illness and their placement in institutional facilities, where they will get better care, is deeply rooted in public guardians.

The Defender dealt with a complaint of a psychiatric hospital patient regarding his hospitalisation commenced on the basis of an approval of a public guardian, whose action, moreover, the complainant regarded as the cause of the hospitalisation. Within voluntary hospitalisation he was restricted in the freedom of movement (he could not leave the hospital) and spent a considerable amount of his income on healthcare regulation fees every month. Although as of 1 January 2013 in the case of persons hospitalised in a psychiatric hospital on the basis of the public guardian's consent, court proceedings may be conducted on the permissibility of the admission and holding of such persons in the facility, no one had filed an application for their commencement until the Defender intervened. By the proceedings, the right of the person under guardianship to the protection against arbitrary restriction in freedom was carried out and the status of his hospitalisation, which had been de facto involuntary, was adjusted.

The Defender also dealt with cases when **the future of the person under guardianship had been decided without the public guardian's consulting the person's life situation** with other persons providing support and assistance to the person under guardianship (close persons, physician, employees of health and social services). In one case, the guardian even declined an offer of communication, stating the absence of a statutory requirement to communicate with persons providing care. Such approach is fundamentally at variance with the currently promoted concept of "supported decision making".

Inquiry on own initiative, File Ref. No.: 7402/2013/VOP/JR

It may be in the interest of a person under guardianship (and it may be a duty of the guardian) to consult the life situation of the person under guardianship with experts who are in contact with such person.

The person under guardianship has, as a person with disability, a right to life in natural environment. The guardian should endeavour to make it possible for such a person to lead an independent way of life and to that end the guardian should take advantage of all the services available.

A public guardian decided on the placement of a person under guardianship to a remote home with special regime. She was prepared to sign a contract on the provision of social service, despite a disagreement of the person under guardianship (after his previous indecisiveness) and a negative opinion of his outpatient psychologist and a field psychiatric team, who were in regular contact with the person. The public guardian refused to communicate with the persons regarding the matter.

The person under guardianship (suffering from schizophrenia) was stable in his natural environment, he had a lease for an indefinite period of time, was employed, was in a regular care of the psychiatrist and the psychiatrist team (three times a week), and had a home care service arranged. That mode of care was evaluated as optimal by the client and the staff involved. However, the guardian saw the best interest of the person under guardianship in safe environment of the home with special regime, where a place had become vacant. The matter was resolved by suspending the person's registration at the facility.

With respect to obligations arising from the Convention on the Rights of Persons with Disabilities, when public guardianship is performed, attention needs to be paid to the integration of persons under guardianship (including persons with permanent mental illness) in society. To this end, a social service that is restrictive as little as possible should be selected.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5 The Defender and Discrimination

In 2013 the Defender did not note a significant change in trend in the area of equal treatment compared to previous years. He continued to be addressed by persons claiming discrimination with respect to whom unequal treatment was not found (see below Part 2/Statistical Data on Complaints, page 97). **Vulnerable groups** of persons (elderly people, persons with disability, ethnic, religious and sexual minorities) addressed the Defender **to a small extent**. Nevertheless, it cannot be inferred that inadmissible differentiation does not take place in Czech society.

Where the Defender comes to a conclusion during an inquiry into a complaint that the specific case could represent discrimination, he subsequently finds that the victim of discrimination **does not intend to claim his or her rights in court** despite possessing quite strong evidence enabling **the sharing of the burden of proof** in civil court proceedings. As a result, the effectiveness of combating discrimination is **minimal** at present. The Defender therefore decided to specify, by means of research, the obstacles faced by a victim of discrimination in access to justice and subsequently formulate the measures needed to remove them. The results of the research will be available in 2014.

In 2013 the Defender as an *equality body* focused on **three activities** which may contribute to the enforcement of the right to equal treatment (in individual cases and on a systemic level).

Free legal aid to victims of discrimination

The Defender's cooperation with the *Pro Bono Aliance* civil association, which arranges free legal aid to selected victims of discrimination from cooperating attorneys, borne fruit. In all three cases forwarded to the association in 2012, **the claims of discrimination victims were satisfied out of court**. In a case of discrimination of persons with disabilities in public transport, the public transport company apologised to the victims in writing and changed its terms of transportation to prevent unequal treatment in future. In a case of discrimination in access to employment on grounds of age, the victim of discrimination was paid adequate satisfaction.

In 2013 the Defender forwarded another **three cases** to the *Pro Bono Aliance* association. The first two concerned discrimination in access to goods and services (on grounds of sex and on grounds of age), and the third concerned discrimination in access to employment on grounds of age, which is a consequence of the present economic situation and lowered chances of finding employment. In one case the victim of discrimination decided not to file a complaint. The results of the other two cases are not known to the Defender yet.

Situation testing

Situation testing is procedure for **ascertaining and proving discriminatory conduct**. It is used to create a situation in which a person who is a member of a group of persons facing disadvantage (e.g. an elderly person or a person with disability, a Romany person) is **intentionally exposed to potential discriminatory conduct** while the person tested, who is assumed to commit discrimination, is not aware that s / he is being **monitored**. At the same time, it must be apparent to the tested person (e.g. employer, provider of goods or services) that the test person is a member of a marginalized group.

The Defender uses situation testing when **conducting his own research** (see below Part 1/Recommendations and Research, page 96) and **in providing assistance to victims of discrimination**. In the latter case, situation testing is conducted by external colleagues mostly from non-profit organisations on the basis of a cooperation agreement, specifically by **Counselling Centre for Citizenship, Civil and Human Rights, IQ Roma service and the League of Human Rights**. A proof obtained in situation testing may be forwarded to the Defender, who assesses whether discrimination has occurred, or the discrimination victim may directly file a court action.

In 2013 the method of situation testing was used in cases regarding the access of the Romany minority to night clubs and rental housing and, further, the search of a disabled person for employment and suspected discrimination on grounds of nationality in access to financial services.

Cooperation with inspection bodies

The Defender and courts are not the only bodies that are expected to provide protection to the victims of discrimination. Such bodies also include **administrative authorities**, which may investigate whether an individual-entrepreneur or a legal entity violated the prohibition of discrimination. Therefore, the Defender cooperates with the **State Labour Inspection Office, the Czech Trade Inspection Authority, the Czech School Inspectorate and the Czech National Bank**. Findings and information regarding discrimination are exchanged during round-table discussions and expert seminars.

Inspection bodies (unlike the Defender) may enter premises of the inspected persons by virtue of office, interview employees, obtain evidence and impose remedial measures that are enforceable in administrative proceedings. The Defender therefore recommends that victims of discrimination, whenever it serves the purpose, **address the inspection authorities themselves** (as usually happens in the area of education and employment). In isolated cases, **the Defender addressed the specific inspection body**, requesting an inspection (for example in cases of suspected indirect discrimination against EU nationals in access to services). With increasing frequency the Defender assesses not only whether discrimination occurred in a specific case but also **whether the relevant inspection body proceeded during the investigation of discrimination in compliance with the law and the principles of good governance**.

1 / Recommendations and Research

In 2013 the Defender performed **one** research activity in the area of the right to equal treatment. The number of individual complaints of elderly people about the inaccessibility to financial services indicated the need for comprehensive research that would show whether the shortcomings of institutions were individual shortcomings (of shortcomings on the part of respective employees) or whether the problem was systemic.

Research on the accessibility of financial services to elderly people

If the provision of short-term services is limited by an upper age limit without anything further, it usually constitutes discrimination on grounds of age. That applies especially to financial services of short-term character, such as credit cards, short-term consumer loans, overdraft accounts, travel insurance, payment protection insurance related to short-term credit products, or vehicle insurance.

In case of mortgage loans or life assurance, setting an appropriate age limit may be legitimate with respect to the character of these products because the bank must proceed with prudence and perform transactions that are not detrimental to the interests of depositors (with respect to recoverability of their deposits) and that do not endanger the bank's safety and soundness.

The research rested on a questionnaire survey and situation testing. Within the questionnaire survey, all banks and branches of foreign banks, insurance companies and branches of insurance companies and selected non-bank providers of financial services were approached. The results of the questionnaire survey showed that **life assurance is the least accessible service to elderly people** (restricted by age by all insurance companies), followed by accident insurance (restricted by age by 90% of insurance companies) and payment protection insurance (restricted by age by 78% of banks, 100% insurance companies and 86% of

non-bank providers; another 11% of banks and 14% of non-bank providers use age as an additional criterion). Approximately, a third of the surveyed entities restrict by age the provision of travel insurance (37% of insurance companies) and mortgage loans (33% of banks; another 33% of banks use age as an additional criterion). Services that are relatively most accessible to elderly persons include financial leasing, voluntary motor insurance, compulsory motor third-party liability insurance, credit cards and overdraft accounts (each is restricted by age only by one entity), followed by consumer loans (restricted by age by 18% of banks and 6% of non-bank providers; 41% of banks and 38% of non-bank providers use age as an additional criterion).

In the second part of the research the questionnaire survey was followed by situation testing. Specially trained test persons of older age visited branches of the entities (or contacted by telephone entities that did not have brick-and-mortar branches) and requested credit cards, short-term consumer loans and travel insurance. The results of the situation testing showed that **some of the entities offering credit cards and consumer loans restrict the provision of those services by age**. Travel insurance was the only product that was not refused on grounds of age; nevertheless, a higher age is a factor that significantly increases its purchase price. In addition, some insurance companies did not enable persons aged over 80 years to take out travel insurance online (compared to younger clients). In one case, clients aged over 70 years could take out insurance with lower medical expenses cover. A credit card was refused to be provided on grounds of age without anything further by two entities. Another entity denied before the test person the fact that it provided credit cards. In one case an employee indicated that the applicant's age could be a problem. Explicit refusal solely on grounds of age was recorded at two out of fifteen entities. One entity refuses to combine an old-age pension and any other source of income for the purpose of reaching the minimum level of income. In two cases an employee indicated that the applicant's age could be a problem.

On the basis of the research results, the Defender formulated several recommendations. In particular, he recommended not applying upper age limits to services of a short-term character (credit cards, short-term consumer loans, overdraft accounts, travel insurance, payment protection insurance or motor insurance). Further, he recommended that an increase in insurance premiums for a short-term service on the basis of age be based on accurate actuarial and statistical data and the difference in insurance premiums or insurance benefits be proportionate. If a person has to pay double the premiums of a person younger by only a few months (or days), such increase is disproportionate, although it cannot be described as discriminatory without anything further. An old-age pension should not be an obstacle to the provision of financial services. During the assessment of income, incomes from several sources should be acceptable. If older applicants are required to visit a branch in person, in the interest of transparency there should be apparent reasons for such requirement.

2 / Statistical Data on Complaints

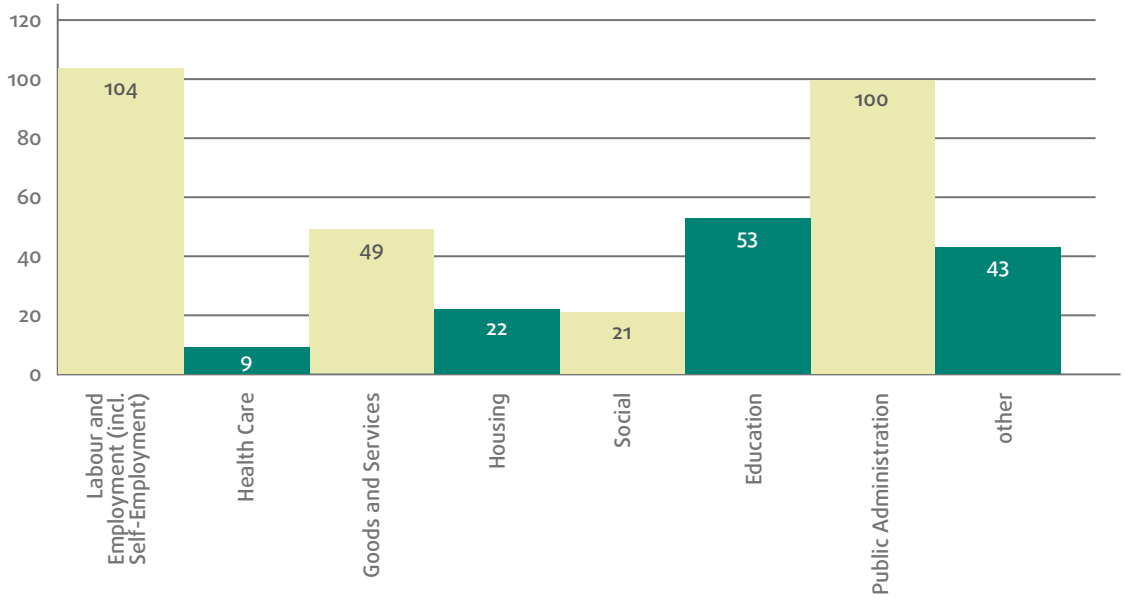
The Defender **received 360 complaints in 2013** about unequal treatment. He dealt with **401** complaints claiming discrimination. Discrimination was found in **20 cases**. In the other cases, the Defender provided the complainants with an analysis of the topic and advice as to further steps that could be taken in protecting their rights. A total of **40** complaints concerned an income tax allowance for tax payers receiving old-age pension (see also "Tax, fees, customs", page 65).

The following chart shows that **public administration** (**100** complaints) is the most common area where discrimination is claimed. According to the Defender's observations, people think that discrimination includes any unequal treatment or a subjective feeling of injustice. He therefore takes that opportunity to inform the complainants of what discrimination is in the legal sense and of the means of protection against it.

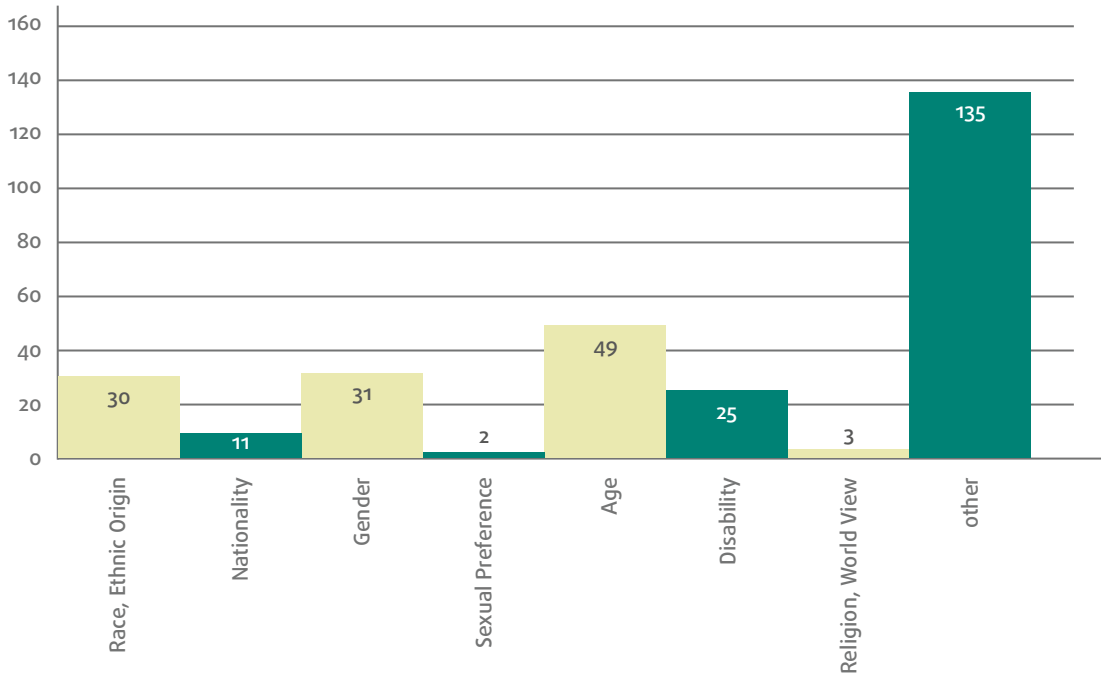
Labour and employment (104), education (53), and access to goods and services (49) are the most common areas expressly stipulated in the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.) where discrimination is claimed.

The following chart shows that not an insignificant number of people claim discrimination on grounds **not stated** in the Antidiscrimination Act. In 2013 they included particularly permanent residence, nationality, family status or social and economic status. The Defender places such grounds under "**others**" (**135**). Of the

Discrimination Complaints by Area



Discrimination Grounds



traditional discrimination grounds, the following were claimed most frequently: **age** (**49**), **sex** (**31**), **ethnic origin** (**30**) and **disability** (**25**).

3 / Selected Complaints and Commentaries

3 / 1 / Work and employment

Discrimination in the area of employment affects not only human dignity but also the possibility of persons to earn their living. This is one of the reasons that complaints in this area are (as in previous years) among the most frequent ones, accounting for a dominant part of the Defender's agenda regarding the right to equal treatment.

Unfavourable treatment on grounds of parenthood and disability

People encounter discrimination in employment (or in access to employment) for a number of reasons. For example, they often experience discrimination on grounds of parenthood; **quite often, questions regarding parenthood or care for children are asked before an employment relationship is established**, whereby the potential employer violates the Labour Code (Act No. 262/2006 Coll., as amended) and, moreover, the (unlawfully) obtained information concerning parenthood (and often also age and so on) constitutes the basis for a discriminatory rejection of the job applicant.

Frequently, the Defender also receives discrimination complaints by persons with disabilities, who often face unwillingness of an employer to adjust working conditions to their disability; **by breaching the duty to take a reasonable measure, the employer commits indirect discrimination.** Disability also represents an obstacle during the search for employment. In this respect, the Employment Act (Act No. 435/2004 Coll., as amended) does not help persons with disabilities since, effective from 1 January 2012, it excludes persons with disabilities from temporary agency work. The Defender provided his comments on this matter within the relevant comment procedure.

The Defender also handled two specific cases in the area of access to employment. In the first, he pursued the interpretation of the concept of "disability" and international and human rights obligations of the Czech Republic in the light of the case-law of the European Court of Human Rights and the Court of Justice of the European Union.

Complaint File Ref.: 157/2012/DIS/JŠK

Infection with HIV (including the asymptomatic phase) may be considered disability, i.e. a prohibited ground of discrimination according to the Antidiscrimination Act (Act No. 198/2009 Coll., as amended).

Strict restrictions in access to or performance of certain professions on grounds of disability without objective and reasonable justification constitutes the violation of the prohibition of discrimination and encroachment upon the fundamental rights.

The Public Defender of Rights was approached by Mr M.B. with a complaint about the procedure of his employer, the Czech Republic – Police of the Czech Republic, where he had worked as head assistant at the Department for the Protection of Constitutional Agents. Mr M. B. is HIV positive. The employer had learnt about his health condition and had requested a medical assessment of the medical fitness of a member of Security Corps to perform service. The physician had only checked the diagnosis in the university hospital where the illness had been detected, not performing any other examinations. The result of the medical assessment was that the complainant had ceased to be medically fit to perform service in the long term. The director of the relevant department had subsequently decided to release the complainant from the service.

The Defender considered problematic the fact that the assessment of medical fitness on the basis of the Decree on Medical Fitness (Decree No. 393/2006 Coll., as amended) was mechanical and automatic. Often, a review physician does not

have the opportunity to assess the actual medical fitness to perform service. If it follows from the Decree that the health condition in a given category constitutes medical unfitness without anything further, the classification is automatically connected with the termination of service; nevertheless, the provability of the causal link between disability and medical unfitness to perform service, which results in the termination of service, is missing in the outlined procedure. Moreover, owing to the mechanical manner of determining medical unfitness, the position of the State as an employer (compared to a private employer) is considerably easier and fewer duties are imposed on it.

The Defender concluded that the provisions of the Act on the Service of Members of Security Corps (Act No. 361/2003 Coll. as amended) setting strict restrictions in access to certain professions were, in the light of the case-law of the European Court of Human Rights (and also in the light of the decision of Polish Constitutional Court in an analogous case), in violation of international conventions on human rights and fundamental freedoms and of the Charter of Fundamental Rights and Freedoms. On the basis of the Defender's report, Mr M.B. filed a court action.

In the second case, the Defender examined the impact of rules for suspending work on a grant project on the life of parents (scientists). The presented case was also followed by the media.

Complaint File Ref.: 81/2012/DIS/ZO

The rules for allocating financial support for scientific projects from public funds, set by the Czech Science Foundation as the provider of this support, must comply not only with the Act on the Support of Research, Experimental Development and Innovations (Act No. 130/2002 Coll., as amended) and the Budgetary Rules Act (Act No. 218/2000 Coll., as amended), but with other legal regulations too, i.e. also with the Antidiscrimination Act. If the impact of seemingly neutral rules set for the suspension of work on a post-doctoral grant project places anyone at a disadvantage due to parenthood, the elements of indirect discrimination on grounds of sex (pregnancy, motherhood, fatherhood) are fulfilled.

Mrs. M.L., director of a public research institution at the Czech Science Foundation, addressed the Public Defender of Rights on behalf of several female scientists. The scientists requested that the conditions of implementing an already approved grant project be modified due to their motherhood. That mostly concerned the suspension of project implementation for the period of maternity or parental leave. While it was possible to apply for the modification of a project implementation period, or for the suspension of the project for a definite period of time, the rules were very restrictive. The application could be filed only twice a year within periods stipulated in advance, regardless of the subjective needs of the researcher. Moreover, work on a project could be suspended only for a year (no less, no more) and a post-doctoral grant could be provided to one person only once, within four years of receiving the doctor's degree. Therefore, if a researcher had to stop working on the project (since suspension was not possible), he or she could not re-apply for a post-doctoral grant. The Defender recommended in his report that Czech Science Foundation change the rules and make them more flexible so that access to post-doctoral grants, i.e. self-fulfilment at work, was not limited due to parenthood. At present, Czech Science Foundation is preparing changes to its rules and a new grant system.

3 / 2 / Goods and services

The area of goods and services is very diverse and the Defender continued to encounter complaints claiming discrimination in numerous services of various character. For example, the Defender dealt with a complaint of a pregnant woman who had reserved a medical stay in a spa, assuming that a physician would recommend suitable procedures. However, once there, she had been told that due to pregnancy she could not have any procedures (and subsequently had stayed at a different spa). The Defender also received complaints of persons with disabilities who could not use postal services due to the absence of barrier-free access. A specific category of services includes the access of a person with disability to a reserved parking space.

Age and disability as obstacles to access to financial services

The Defender was addressed, to a considerable extent, by elderly persons who had experienced problems with accessibility of financial products. Responding to the large number of individual complaints, the Defender carried out research (see above Part 1/Recommendations and Research).

In some cases, however, age was not an obstacle to accessing a financial product but was, for example, an excuse for a refusal to provide insurance payments from accident insurance, where the effects of injury were mistakenly ascribed to age. In addition to these complaints, the Defender also encountered cases where access to a financial product had been completely denied to a person with disability while the differential treatment was neither reasonably justified nor proportionate.

Complaint File Ref.: 110/2012/DIS/JŠK

Difference in treatment on grounds of age where a higher insurance risk is based on relevant and accurate actuarial and statistical data may be admissible if it consists in different assessment of the amount of insurance premiums or in different determination of the calculation of insurance payments.

Although accommodation of the eye naturally decreases with ageing, it is not possible to completely refuse to pay compensation to such persons for decreased accommodation of the eye if it occurred as a result of an accident and not age.

The Public Defender of Rights was approached by Mr J. M., who requested an inquiry into the procedure of an insurance company. He had taken out an insurance policy with the company, which had also covered permanent effects of injury. He had claimed compensation in connection with an injury to his left eye sustained after being hit by a puck. Even after undergoing several operations on his injured eye, his vision without correction was not as before. The insurance company had refused to pay insurance benefits, stating that the decreased accommodation of his eye was natural with respect to his age. The Defender concluded that in relation to the defined extent of insurance coverage, impairment of accommodation that had occurred as a result of age could be considered natural impairment while traumatic impairment of accommodation resulting from a sudden external event, i.e. impairment of accommodation resulting from injury regardless of age, could not be considered natural impairment.

The fact that the degree and the extent of the accommodation impairment corresponded to natural impairment did not mean that J. M. had developed natural impairment of accommodation. The medical report showed that the accommodation impairment had occurred as a result of an injury and therefore it could not be natural impairment as a consequence of age but traumatic post-injury impairment of accommodation, which in its extent only corresponded to impairments occurring in persons of the complainant's age also in a natural way. Since there was no causal link between age and the impairment, the Defender concluded that the procedure of the insurance company had been discriminatory. The insurance company did not agree with the Defender's conclusions, however, and was not willing to give satisfaction to the claimant. Mr J. M. did not file a court action.

The Defender also expressed his disagreement with the general practice of the largest postal licence holder in the Czech Republic consisting in unequal treatment of persons aged under 15 years. In addition to the principle of equal treatment, he emphasised the right of a child not to be subjected to arbitrary interference of other persons in his or her privacy.

Complaint File Ref.: 16/2013/DIS/LOB

Failure of a holder of a postal licence to hand over ordered goods to persons under 15 years of age constitutes direct discrimination on grounds of age according to Sec. 1 (1) (j) in connection with Sec. 2 (3) of the Antidiscrimination Act. At the same time, it could constitute an administrative offense consisting in putting a group of persons requesting postal services within Sec. 37a (3) (c) in connection with Sec. 33 (4) of the Postal Services Act (Act No. 29/2000 Coll., as amended) at a disadvantage without justification.

A child has a right to the protection of privacy, which includes the prohibition of arbitrary interference with correspondence. In order for the child to be able to actively exercise his or her right, it is necessary for the child to first get to the parcel. Therefore it is unacceptable if a postal licence holder sets internal rules that de facto restrict the child's right. Such interference is possible solely on the basis of a law. Moreover, it

needs to be borne in mind that the measure of the postal licence holder could also restrict the child's right to family life since by means of recorded postal consignments, the child could be keeping in contact with relatives or other close persons.

Minor A. M. (14 years) ordered some product online, using his saved-up pocket money. When he wanted to collect the parcel in person at a branch of the postal licence holder, he was rejected despite proving his identity by means of a valid passport. An employee of the branch claimed that she could not hand over a consignment to a person under 15 years of age according to postal rules. As a result, the parents of A. M. had to go to the branch to collect the consignment. Subsequently A. M. turned to the Defender since he considered the given practice unreasonable.

The arguments presented by the postal licence holder did not convince the Defender of the lawfulness of the procedure in handing over so-called recorded consignments. He came to the conclusion that the practice described above not only violated the Antidiscrimination Act but was also contrary to the right of the child to the protection of his privacy (prohibition of arbitrary interference with the child's correspondence). The Defender recommended changing the postal terms and conditions effective from 1 January 2014, among other things in connection with the coming into effect of the new Civil Code (Act No. 89/2012 Coll.), which significantly strengthens the rights of minors.

The postal licence holder did not agree with the Defender's conclusion and did not accept the recommendation. The Defender thus turned to the Czech Telecommunication Office, which may start administrative proceedings with the postal licence holder. Senders of consignments intended for persons under 15 years of age are put at a disadvantage because the post office sets stricter conditions for arranging contact between the mentioned persons (assistance of another person is needed to collect the consignment).

3 / 3 / Education

Problems of pupils with special educational needs

The Defender pursued complaints about inadequate support to pupils with special educational needs in primary schools also in 2013. He encountered several cases of indirect discrimination on grounds of disability in education. The Defender is alarmed particularly by situations where statutory representatives of a child must spend considerable amounts of money to pay for supportive and compensatory measures (such as assistant teachers) so that their child can receive education on the basis of a school counselling facility's recommendation in a mainstream primary school. The unfavourable situation described above remains unchanged and requires active approach of all actors in the field of education (governmental authority, self-government, teachers, experts, non-government organisations and parents). Without a change in the funding of regional education, the situation with respect to disadvantaged pupils will continue to deteriorate. First complaints against the State due to the breach of Art. 24 of the United Nation's Convention on the Rights of People with Disabilities filed by children's statutory representatives attest to the tense situation.

Discrimination on grounds of citizenship in tertiary education

The legal regulations of the European Union prohibit unequal treatment of citizens of the European Union. Despite that, the Defender often notes unequal treatment of such citizens (mostly Slovak nationals) in the area of education. Paradoxically, in the case examined by the Defender, the social advantage in the form of paid traineeship, for which persons not permanently residing on the territory of the Czech Republic could not apply, was funded from EU Operational Programmes.

Complaint File Ref.: 114/2012/DIS/JKV

Restricting the target group for the purpose of support provided within the Education for Competitiveness Operational Programme designated to support the regions of the Czech Republic only to citizens of the Czech Republic or, more precisely, to persons with permanent residence on the territory of the Czech Republic, constitutes discrimination on grounds of citizenship, which is in violation of the primary law of the European Union (Art. 18 of the Treaty on the Functioning of the European Union).

Considering the fact that the condition of Czech citizenship or permanent residence on the territory of the Czech Republic impacts in particular Slovak students coming to the Czech Republic to study, it is also a case of discrimination on grounds of nationality, in violation of the Antidiscrimination Act.

A student pointed out to the Defender that benefits arising out of the "Innovation of combined art study programmes at the Faculty of Arts of the Masaryk University" were granted only to students with Czech citizenship or permanent residence in the Czech Republic. The complainant claimed discrimination on grounds of citizenship since as a citizen of the Slovak Republic without permanent residence on the territory of the Czech Republic she could not participate in traineeships within the mentioned project.

The Defender concluded that while the support provided to students within the project factually fell under Art. 18 of the Treaty on the Functioning of the European Union (therefore the prohibition of discrimination on grounds of citizenship would apply), it was not maintenance aid, i.e. student grants or student loans within Art. 24 (2) of Directive 2004 / 38 / EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. With respects to maintenance aid, the Court of Justice of the European Union has decided several times that the condition of citizenship or permanent residence was legitimate. Nevertheless, the main aim of the programme is not to provide aid to students for the purpose of their managing their studies financially but to enable them to participate in a traineeship and to enhance their qualifications, and therefore also to increase the quality of human resources in the region. Moreover, with respect to the context of the region, the restrictive condition had an impact particularly on Slovak Republic citizens exercising their right to move freely for the purpose of education within the European Union. The Defender noted that students from the Slovak Republic were mostly not able to meet the condition for obtaining permanent residence on the territory of the Czech Republic; despite that, however, as a result of their study in the Czech Republic, they usually build up a close relation to the Czech Republic and often also settle here for the purpose of employment.

The Ministry of Education, Youth and Sports did not submit any convincing arguments, which led the Defender to a conclusion that the restrictive condition set in the provision of Sec. 13 of Call No. 28 of the Ministry as the steering authority of the Education for Competitiveness Operational Programme constituted direct discrimination on grounds of citizenship.

The Defender will require that in case of operational programmes and calls in the next period, the criteria for access to various programmes be set in accordance with EU and national regulations.

3 / 4 / Healthcare

Within an inquiry into a specific complaint, the Defender dealt with the issue of **providing healthcare in case of abortion,** which is regulated by the Act on the Termination of Pregnancy (Act No. 66/1986 Coll.) and an implementing decree (Decree No. 75/1986 Coll., as amended by No. 467/1992 Coll.). According to the quoted law, pregnancy may be terminated if a woman so requires and the duration of her pregnancy does not exceed 12 weeks and provided health reasons do not prevent it. The implementing decree further specifies that a period of less than six months after the last termination needs to be included among such health reasons. **The six-month prohibition** to have an abortion **does not apply**, according to the Decree, if the woman is **over 35 years of age** or if she has given birth at least twice.

After thoroughly considering the situation, the Defender came to the conclusion that if no **medical reason** existed for the age restriction, such disadvantage solely on grounds of age could fulfil the elements of **direct discrimination**. The Defender does not have any doubts that the law itself is **in violation of the EU law** since it excludes foreigners staying only temporarily on the territory of the Czech Republic from access to healthcare and healthcare services. Such rule constitutes without anything further **discrimination on grounds of citizenship**. The Defender acquainted the Ministry of Health of his findings. The Ministry is **aware that the legal regulation is out of date** and it is prepared to introduce a legal regulation, which had been proposed in 2011 (when it was subjected to expert discussions and passed through a comment procedure) but never adopted. The Ministry pointed out that the given proposal **did not contain any discriminatory provision**. The Defender will **continue to follow** developments regarding the new legal regulation.

3 / 5 / Housing

Housing is a basic and essential need of all people. According to the Defender's findings, unequal access to housing is most frequently encountered by **elderly persons, persons with disabilities and members of the Romany minority.** In most cases inquired into, however, **evidence** of discrimination is lacking (especially in case of municipal housing) and therefore the Defender is trying to **prevent**, using his authority, the **suspicion of discrimination** by formulating specific recommendations for housing providers.

Above all, the Defender concluded in 2013 that if a municipality wanted to define some municipal flats as **"starting flats" for young persons**, it needed to stipulate that first in **transparent rules**. If flats are not clearly defined beforehand as starting flats for young persons and the municipality subsequently refuses to enter into a lease contract with an elderly person, it gives rise to reasonable suspicion of discrimination on grounds of age.

In another case, the Defender stated that the rules for disposing of municipal housing stock **could not be protected under the Copyright Act as the intellectual property of the municipality**. The conditions for access to municipal housing must be transparent and the information about the rules for allocating flats must be **freely available to public**. On the basis of the given recommendation, the municipality published its criteria.

In assessing suspicious criteria for allocating flats (and their potential discriminatory impact on the Romany minority) the Defender relies on the wording of the so-called Race Directive [c.f. Art. 2 (2) (b) of Council Directive 2000/43/EC], according to which a **mere potential threat that a person might be put at a disadvantage** is sufficient for indirect discrimination to occur. Therefore the rules for disposing of the municipal housing stock may be discriminatory **without actual negative impacts on the legal sphere of a specific person**.

The Defender also came to the conclusion that **the acceptance of an application for a special-purpose flat intended for a disabled person could not be made conditional on drawing social security benefits**. The Civil Code (Act No. 40/1964 Coll., as amended, effective until 31 December 2013) contained only very brief legal regulation of special-purpose flats as a special type of housing for persons with disabilities, which is also the only condition for allocating this type of flat. **From the point of view of the right to equal treatment, the existence of disability is not tied to the granting of any benefit.** Although the level of self-sufficiency of the person applying for a special-purpose flat undoubtedly plays an important role in assessing the application for a flat, the connection with a specific benefit (e.g. disability pension, allowance for care), which should be the condition for allocating the flat, cannot be inferred from the law in force. Therefore, if the lessor of a special-purpose flat insists on the submission of a document showing that the person receives a social security benefit and **finds other documents proving the facticity of disability** (e.g. a statement of the attending physician) **insufficient**, the lessor might be committing discrimination against a person with disability.

4 / Public Awareness and Educational Activities

Public awareness and educational activities in the area of equal treatment are an inseparable part of activities of every national equality body. The Defender thus continued to cooperate with his key partners from the private sector; Pro Bono aliance and LMC, s.r.o. Students of Prague, Brno and Olomouc law faculties could take advantage of trainings and could expand their professional experience through clinics, thematic lectures or moot courts. The Defender and the employees of his Office participated in over thirty conferences and expert meetings relating to equal treatment and the protection against discrimination (situation testing, LGBTI rights, age management, education of pupils with special educational needs, whistle-blowing and others). The Defender also organised a round table discussion titled *Together against discrimination* for cooperating inspection bodies and selected central bodies of governmental authority to discuss some key issues (statistical data, proving discrimination, admissibility of recordings as a proof in administrative proceedings). At the turn of the year, he held a workshop titled *Discrimination in the mediator's practice* to establish whether mediation as a way of resolving a conflict could be recommended to victims of discrimination. At the largest event for experts, a conference called *equality and the prohibition of discrimination in activities of the Public Defender of Rights*, the legal regulation of equal treatment was discussed at a theoretical level and various

information and findings from cases were shared. Diversity of opinions about some problems contributed to a lively discussion of experts about the future of the protection against discrimination.

5 / Communication with European Entities

The Defender continued to cooperate closely with equality bodies within the Equinet network. Based on the Defender's nomination, two employees of the Office participated in working groups (equality law in Practice, Gender related issues). other employees participated in expert seminars and training sessions on selected issues (equality in remuneration, support of employers and providers of services, protection of persons with disabilities). As part of the cooperation, the Defender not only gained information from the activities of other organisations (for example about discrimination in advertising or about staffing and equipment to ensure equal opportunities for men and women) but he also provided findings from his activities to his European colleagues (affirmative action, discrimination on grounds of age in access to services, harmonisation of work and private life). Additionally, he presented his findings from situation testing to his Serbian colleagues. His findings regarding the protection of ethnic and sexual minorities were provided to the European Network against Racism and the European Union Agency for Fundamental Rights.

6 Supervision of the Expulsion of Foreigners

The mandate exercised by the Defender pursuant to Sec 1 (6) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), i.e., monitoring the exercise of the detention of foreigners, the exercise of administrative expulsion, surrender or transit of detained foreigners and the penalty of expulsion of foreigners who were placed in pre-expulsion custody or are serving imprisonment (hereinafter only "monitoring expulsion"), includes, in practice, monitoring administrative and court decisions rendered on administrative detention or expulsion of foreigners as well as supervising the execution of punitive and administrative expulsion, surrender and transit of foreigners. The Defender thereby provides a guarantee of an effective system for monitoring forced returns, as required by Article 8 (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Returns Directive").

In **2013** the Defender received and analysed a total of **2,193** decisions on administrative expulsion (in 2012 he received a total of 2,346 decisions), **258** decisions on detention or extension thereof (366 in 2012) and **13** judgments relating to a judicial review of detention (43 were sent to the Defender in 2012).

1 / Monitoring Expulsion

While monitoring the actual execution of administrative expulsion, surrender or transit of detained foreigners and the penalty of expulsion of foreigners placed in pre-expulsion custody or serving imprisonment, **the Defender supervised five cases of forced return of foreigners.**

They involved the monitoring of administrative expulsion of two citizens of Mongolia by land, returning within the "voluntary return" programme of the International Organisation for Migration and the surrender of a citizen of Nigeria to Italy within the so-called Dublin Regulation and, further, the same type of surrender of a ten-member family of Russian citizens to Poland. The Defender also supervised two cases of punitive expulsion, namely the expulsion of a citizen of the Slovak Republic and a citizen of Mongolia to the country of origin.

The Defender pointed out malpractice in one case consisting in placing applicants for international protection along with their eight children, immediately before they were escorted by the Police, in a locked room with bars for almost an hour while the paperwork was processed. Although their access to toilet was ensured, the Defender considers placing children in a room resembling a police cell completely inappropriate. He informed the Police of his stance and the Police pledged it would ensure remedy. The Defender did not find any shortcomings regarding other issues connected with the actual treatment of foreigners during the execution of return decisions.

2 / Deciding on the Obligation to Leave the Territory and Surrendering Foreigners under Readmission Agreements

On the basis of practical findings from monitoring expulsions, the Defender closed an inquiry pertaining to the decision-making of the Police of the Czech Republic on the obligation to leave the territory according to Sec. 50a of the Act on the Residence of Foreigners in the Territory of the Czech Republic (Act No. 326/1999 Coll., as amended). The Defender found during his inquiries that in certain cases the Police had not conducted the proceedings in

question and had thus failed to proceed in accordance with the law. The Defender further called attention to the application of the Agreement between the Government of the Czech Republic and the Government of the Polish Republic on the Surrender of Persons on Common Borders dated 10 May 1993 ("the Readmission Agreement"), not promulgated in the Collection of Laws, in administrative proceedings and the Police practice (detention for the purpose of surrender, decision on the obligation to leave the territory, execution of surrender).

The Defender acquainted the Chief of the Alien Police with the conclusions of his inquiry and requested remedy. On the basis of the Defender's inquiry, the unlawful practice of the Police was changed **and the Police will now conduct administrative proceedings with a foreigner on the obligation to leave the territory in each and every case** and subsequently render a decision. Additionally, after twenty years, **the Readmission Agreement with Poland was published in the Collection of International Treaties**, which opens up room for its application in practice.

3 / Conditions for Providing Legal Aid in Facilities for the Detention of Foreigners

Detained foreigners may be provided legal aid in detention facilities by legal counsels and non-government, non-profit organisations. Providers of legal services are not limited as to the number of visits to foreigners, and privacy is also ensured. The problem consists in insufficient technical background to ensure effective provision of legal aid.

As part of his activities, the Public Defender of Rights focused on the execution of the right to legal aid or on the manner of providing legal aid to detained foreigners. He found that providers of legal aid were not allowed to use mobile phones, computers or other similar electronic devices for notes-taking and communication in the facilities. As a result, the provider of legal aid could not use the services of an interpreter via a telephone when needed at that specific time and had to secure the physical presence of the interpreter on site, which was connected with significant costs and time delays. Further, when dealing with a client, the provider did not have access to legal information systems, text editors and the like. **Consequently, the legal aid provided is highly ineffective or, not uncommonly, it cannot be provided at all.**

The Defender addressed the Refugee Facilities Administration and the Police of the Czech Republic regarding this matter. With respect to special security measures in the facility, it was agreed that a computer with a printer, allowing the use of an external memory device, and a telephone line would be installed in the room designated for legal consultancy. Therefore, the unsatisfactory situation, which in effect prevented the full execution of the right to legal aid, which is the essential part of the right to a fair trial, was remedied.

4 / Issuing Binding Opinions of the Ministry of the Interior in Administrative Expulsion Proceedings

On the basis of monitoring the decisions received, the Defender encountered several problematic aspects occurring during decision-making on administrative expulsion according to Sec. 119 and Sec. 120 of the Foreigners Residence Act. They include, for example, the manner in which the Department for Asylum and Migration Policy of the Ministry of the Interior creates binding opinions on the existence of reasons preventing the departure of foreigners pursuant to Sec. 179 of the Foreigners Residence Act.

The Defender concluded that the purpose of examining the existence of the reasons preventing the departure of a foreigner was to ensure the protection to all foreigners subject to expulsion according to the principle of non-refoulement (i.e. preventing their return to a country where they would be under threat of harm specified in Sec. 179 of the Foreigners Residence Act, for example torture). Therefore **the binding opinion must be, even though it does not constitute a decision in administrative proceedings, duly substantiated.**

The Defender considers it problematic that the conclusion of the Ministry of the Interior regarding the possibility of departure is a mere formality in most cases. In the files examined, there was no evidence of the

Department for Asylum and Migration Policy of the Ministry of the Interior looking into specific information about the country of origin and assessing such information. The facts checking in the process of issuing a binding opinion of course cannot be subjected to the same standards as in international protection proceedings; however, in any case, it **must contain findings** as to what is the source of the foreigner's concern that he or she will face persecution or serious harm and a conclusion of the Ministry of the Interior regarding the departure supported by at least one specific reference to a report on the situation in the country of origin or other relevant source. The issuance of opinions in the matter of hours can be considered problematic too. An opinion may be issued within such a short period of time only in clear-cut cases. The time limit for issuing a binding opinion without undue delay cannot be interpreted at the expense of the due ascertainment of facts.

The Defender also assessed nine cases of the imposition of **administrative expulsion although the foreigners concerned had applied for international protection during the proceedings on administrative expulsion**. He examined in particular the compliance of Sec. 119a (1) of the Foreigners Residence Act with Art. 31 (1) of the Convention relating to the Status of Refugees. The Defender came to the conclusion that **the quoted convention provides a broader range of protection than the Czech Foreigners Residence Act**. If an applicant coming directly from a state where he or she is under threat of persecution and requesting international protection registers with authorities without undue delay and shows a compelling reason for his or her illegal entry or stay, the fact that he or she used counterfeit identification documents or a visa cannot be a ground for imposing administrative expulsion. The applicable provisions of Sec. 119 (1) (b) (1, 2) and (c) (1, 2) of the Foreigners Residence Act needs to be interpreted under the existing legislation in conformity with the Constitution, i.e. with the Convention relating to the Status of Refugees **taking precedence**. However, in future it would be more appropriate to change the legal regulation of Sec. 119a (1) of the Foreigners Residence Act. Applying procedure without taking into account the potential fulfilment of the conditions of Sec. 31 (1) of the Convention constitutes the breach of international obligations of the Czech Republic.

Statistics of expulsions, surrenders and transits in 2013, as described above, are provided in the following table.

2013 Statistics of Expulsions, Surrenders and Transits of Foreign Nationals

	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec
Criminal Deportation												
Total	**12**	**12**	**13**	**11**	**13**	**29**	**22**	**14**	**17**	**23**	**15**	**20**
thereof: by air	5	7	3	5	9	12	5	6	11	12	9	7
thereof: by air, escorted	1	0	0	0	1	3	4	0	0	0	1	0
Return/Removal												
Total	**7**	**8**	**5**	**10**	**10**	**6**	**10**	**4**	**6**	**6**	**2**	**7**
thereof: by air	2	2	0	3	1	2	3	1	0	2	0	0
thereof: by air, escorted	0	0	0	0	0	0	0	0	0	1	0	0
thereof: by air, IOM1)	3	2	3	5	5	2	1	1	3	1	1	3
Taking Charge under Dublin Regulation2)												
Total	**16**	**18**	**9**	**7**	**12**	**48**	**5**	**24**	**17**	**16**	**14**	**13**
Thereof: by air	0	1	0	1	1	0	0	0	0	0	4	0
Thereof: by air, escorted	6	5	2	1	2	0	2	11	9	0	1	1
Handover under International Treaties												
Total	**1**	**0**	**3**	**1**	**1**	**1**	**3**	**2**	**0**	**0**	**2**	**3**
thereof: by air	0	0	0	0	0	0	0	0	0	0	0	0
thereof: by air, escorted	0	0	0	0	0	0	0	0	0	0	0	0
Transit under Int. Treaties or Dublin Reg.												
Total	**11**	**10**	**15**	**1**	**4**	**3**	**8**	**5**	**4**	**6**	**1**	**2**
thereof: by air	11	10	15	1	4	0	8	5	4	6	1	2

2013 TOTAL	**568**

1) Within the International Organization for Migration's Voluntary Assisted Return Programme.
2) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

7 Public Defender of Rights and his Office

1 / Budget and Spending in 2013

From the beginning of 2013 the Office of the Public Defender of Rights operated on an approved budget in the amount of CZK 93,824 thousand. As of 20 March 2013, the budget was raised by CZK 4,183 thousand to **the total amount of CZK 98,007 thousand**, in connection with the extension of the mandate of the Public Defender of Rights. On the basis of an amendment to the Constitutional Court Act (Act No. 182/1993 Coll., as amended), effective from 1 January, the Defender may enter proceedings to annul laws or individual provisions of laws as an interested party (see also "The Defender and the Constitutional Court", page 28). In addition, the Defender became an obligatory participant in comment procedures with a right of submitting principal comments and handling disagreements according to the Legislative Rules of the Government (see also "Submission of comments by the Defender", page 24). Within an amendment promulgated in the Collection of Laws under No. 303/2011 Coll., the Defender has a power (in addition to the Supreme Public Prosecutor) to turn (directly) to an administrative justice court with a so-called action to protect the public interest (see also "The Defender's power to file an action to protect public interest", page 30). The mentioned increase in funds was also used to launch a children's website, whereby the Defender responded to the criticism of international organizations concerning the absence of an independent institution able to receive complaints filed by children, inquire into them and assess them, and thus protect children's rights. Of the total amount given above, CZK **89,511 thousand was used in 2013**, which is **a total of 91.33%** of the adjusted budget.

CZK 8,496 thousand was saved in the adjusted 2013 budged from funds for running costs, particularly on operating costs, travel expenses, fuel costs, energy costs and repair and maintenance costs. A saving of CZK 158 thousand was achieved on investment expenditures. Details of the financial results of the Office are available on the website at *http:// www.ochrance.cz*.

2 / The Personnel in 2013

The budget for 2013 determined an obligatory limit of 113 employees of the Office. Effective from 20 March 2013, the limit was raised to 119 employees in connection with the extension of the Defender's mandate and powers. The actual average recalculated number of staff recorded was **115.10 employees** in 2013, whereby the limit stipulated by the State budget was met. As at 31 December, the number of employees was 120. Of the total number of employees, 93 employees directly processed complaints, carried out detention visits and performed activities following from the Antidiscrimination Act (Act No. 198/2009 Coll., as amended by Act No. 89/2012 Coll.) and the Act on the Residence of Foreigners in the Territory of the Czech Republic (Act No. 326/1999 Coll., as amended) and performed other activities within the mandate and powers of the Public Defender of Rights.

As certain major cases needed to be comprehensively examined, the Office also continued working with external experts, mainly from the law faculties of the following universities: Masaryk University in Brno, Charles University in Prague, and Palacký University in Olomouc. With respect to the Masaryk University, selected law students in the fourth and fifth year of a master's degree study programme had their internship in the Office of the Public Defender of Rights.

3 / Annual Report on the Provision of Information Pursuant to the Free Access to Information Act

In 2013 the Office of the Public Defender of Rights (the "Office"), which is the liable party under the Free Access to Information Act (Act No. 106/1999 Coll., as amended), received and dealt with a total of **64 requests** for the provision of information pursuant to the Act. They were received in writing, by electronic mail or via a data box, or in person.

The information was provided in **52** cases, which mainly concerned requests about general observations from the Defender's inquiries and his positions on individual agendas (environment protection, social and legal protection of children, planning, building permit and occupancy permit proceedings and so on), requests regarding the management of funds by the Office (for example information regarding the budget, payroll expenses, employees, selection procedures, contractual relations), statistics of the complaints received according to specific areas (for example discrimination) or documents from the complainants' files. Applicants were also provided information relating to the delivery of documents to the Defender, the use of the e-marketplace (e-tržiště), actions filed for the protection of public interest or the course of discarding documents.

No complaint under Section 16a of the Free Access to Information Act was lodged by any of the applicants.

In **nine** cases the request for information (or its part) was rejected and in **four** cases an appeal was lodged against the decision not to provide information. In **one** case the applicant failed to respond to an invitation to pay the expenses connected with the provision of information within Sec. 17 (1) of the Free Access to Information Act.

The Regional Court in Brno decided in a judgment of 1 August 2013, File Ref. 31 A 1/2012, pursuant to the provision of Sec. 76 (1) (c) of the Administrative Procedure Code (Act No. 150/2002 Coll., as amended), without ordering judicial proceedings on the cancellation of a decision of the Public Defender of Rights dated 19 October 2011 rejecting a request for information and, pursuant to the provision of Sec. 78 (4) of the same act, on the return of the case to the Public Defender of Rights for further procedure. In the given judgment the Regional Court in Brno expressed a legal opinion that although the Public Defender of Rights was the liable party within Sec. 2 (1) of the Free Access to Information Act and the requested information concerned his subject-matter competence, a decision on the matter should not have been made by him but, at both stages, by his Office as the service organisation. Which employee of the Office is to provide the information and who is to decide on appeals or complaints is then determined by the Defender, who, pursuant to the provision of Sec. 25 (2) of the Public Defender of Rights Act (Act No. 349/1999 Coll., as amended), stipulates the details regarding the organisation and tasks of the Office. The court thus concluded that in the procedure in which the decision contested by the action had been issued, the provisions on procedure before an administrative authority had been substantially breached, which could have resulted in an unlawful decision in the case itself, consisting in the fact that a decision had been made by the Public Defender of Rights himself instead of the head of the Office.

At the same time, a duty to pay the costs of proceedings of CZK 3,000.00 to the complainant was imposed on the defendant and the amount was paid to the petitioner by the Office. The Office did not incur any other costs within Sec. 18 (1) (c) of the Free Access to Information Act.

The Defender issued, and not only in connection with the given judgment, new Statutes of the Office effective from 1 March 2013, authorising the head of the Office to provide information according to the Free Access to Information Act relating to the mandate of the Defender arising from the Public Defender of Rights Act (Art. IV of the Statutes). Subsequently, the head of the Office issued a new directive effective as at the same date relating to the provision of information about the activities of the Public Defender of Rights and the Office. Information regarding all cases or a decision not to provide information is newly provided by the Office or the head of the Office department within whose competence the request for information falls. The head of the Office decides on appeals against decisions not to provide information and on complaints about the procedure in processing requests for information.

	Total Number of Requests for the Provision of Information	64
Sec. 18 (1) (a)	Number of issued decisions refusing a request (or its part)	9
Sec. 18 (1) (b)	Number of appeals lodged against decisions	4
Sec. 18 (1) (c)	Copy of relevant parts of each court judgment	1
Sec. 18 (1) (d)	List of exclusive licences granted	0
Sec. 18 (1) (e)	Number of complaints lodged under Sec. 16a of the Act	0
Sec. 18 (1) (f)	other information relating to the application of the Act	0

4 / Presentation in the Media, International Cooperation, Conferences

4 / 1 / Presentation in the media, communication with the public

In 2013 the Defender organised **eight press conferences** and issued about **100 press releases** and reports on the latest events. Through media he acquainted the public with his activities, findings from inquiries into government administration activities, findings from systematic preventive visits to facilities where persons restricted in their freedom are held and recommendations in the area of equal treatment. These included, in particular:

- criticism pertaining to the insufficient measures of the Ministry of the Health to strengthen the protection against noise and warning that the public is omitted in proceedings to approve the source of noise exceeding noise limits;
- pointing out persisting shortcomings in the system of care for vulnerable children, in particular its fragmentation, long-time work overload of the employees of bodies of social and legal protection of children leading to insufficient social work with the family and, for example, long-term stays of children in infant homes;
- the results of research on the accessibility of financial services to elderly persons, which confirmed that a higher age is a reason for rejecting an application for a certain financial product or service or that it significantly increases the purchase price of the product;
- pointing out the inaccessibility of social services to an increasing number of elderly people suffering from dementia;
- statement regarding the payment of remuneration for stand-by duty to professional soldiers, ordered in violation of law as the so-called availability, and the pledge of the Ministry of Defence to be forthcoming in assessing soldiers' applications for the retroactive payment of remuneration;
- noting the duty of authorities to handle requests for information in compliance with law also in cases of bullying or an intentional action on the part of a citizen aimed at destabilizing the authority;

- criticism of the Prison Service of the Czech Republic for performing general body searches of prisoners without the existence of an actual suspicion justifying such procedure, and for impermissible body searches of civilians;

- information about favourable results of the Defender's activities in the area of employment – in particular the termination of the DONEZ system and active approach of the Labour Office of the Czech Republic in favour of the unemployed for whom their former employers failed to pay statutory premiums.

In the course of the year the Defender pursued his practice of posting selected inquiry reports and statements on interesting cases on his website (*www.ochrance.cz*) to make his legal argumentation available both to the professional and the general public. In addition, information leaflets explaining legal regulations and containing advice on how to proceed in certain life situations, which are available to visitors to the Office of the Public Defender of Rights and on the website, are updated and supplemented on a regular basis. Sixty-five such leaflets are available.

The **Funeral services** publication, issued as part of the Statement series, brought a detailed analysis of the legal regulation and the case-law as well as the Defender's legal argumentation in specific cases illustrating this topic.

In cooperation with Czech Television, the Defender prepared 16 episodes of a third series of the "The Defender", which were premiered by Czech Television from September to December 2013. Viewers were shown real life situations and provided advice on how to resolve them and how to assert one's rights.

Media interest in the Defender's activities is documented by a total of **4,480 printed or broadcast news items,** articles or reports. Television stations paid attention to the Defender's activities in **422** cases, the Czech Press Agency in **487** news items. Internet media considerably participated in the media presentation of the Defender's statements and findings by releasing a total of **2,104** news items and articles. The Defender and his deputy appeared in television and radio broadcasting, provided a number of interviews, participated in live broadcasting and answered citizens' questions in online interviews.

About **160,000** visits were logged on the website during the year and **6,000** users visited the special website for children and teenagers. Effective from 1 June 2013, the Defender also communicates with the public via Facebook.

4 / 2 / International meetings and conferences

- **Visegrád Group Ombudsmen's Meeting (Slovakia, Častá Papiernička, 10 – 12 April 2013)**

- *Theme: Ombudsmen's in relation to the promotion of good administration*

- **Meeting with members of the Committee of the Russian Federation on constitutional legislation, legal and judicial affairs (Brno, 14 May 2013)**

- *Theme: Competence of the Defender and his relation to the judicature*

- **Collegial bodies in public administration (Telč, 24 – 25 June 2013)**

- *Theme: Activities and decision-making of collegial bodies*

- **9th conference of the European Network of Ombudsmen (Ireland, Dublin, 15 – 17 September 2013)**

- *Theme: Good administration and the rights of citizens in a time of austerity*

- **Meeting with Georgian Ombudsman and his team (Brno, 16 – 17 September 2013)**

- *Theme: Performing visits to facilities where persons restricted in freedom are placed, protection against discrimination and competence in relation to courts*
- Active participation of the Defender in cooperation and exchange of experience within the network created by the European Ombudsman and the EQUINET network associating national equality bodies
- Meeting with ambassadors of Spain, Great Britain and Norway.

4 / 3 / Conferences and round table meetings organized by the Public Defender of Rights

Conferences

- **equality and prohibition of discrimination in activities of the Public Defender of Rights** (Brno, 20 February 2013)

Round table meetings, workshops and seminars

- **Together against discrimination** (Brno, 18 February 2013)
- **Registration of residence of Czech citizens** (Brno, 12 March 2013)
- **Protection of vulnerable children and their families** (Prague, 17 April 2013)
- **Selected issues in application of the Building Act** (Brno, 25 April 2013)
- **Charter of Fundamental Rights of EU and problems with its application in practice** (Brno, 30 May 2013)
- **The issue of discrimination in the mediator's practice** (Brno, 10 December 2013)

Conclusion

Last year marked the thirteenth year of the existence of the institute of the Public Defender of Rights in the Czech Republic. It was impacted by several personnel changes. The six-year mandate of deputy of the Public Defender of Rights RNDr. Jitka Seitlová ended and the post was assumed by JUDr. Stanislav Křeček in April. In December 2013, Public Defender of Rights JUDr. Pavel Varvařovský resigned from his post in the middle of his mandate and JUDr. Stanislav Křeček represented the Defender in full in discharging the duties of the office pursuant to the law. Within two months, as prescribed by the law, I was elected the Public Defender of Rights.

The Annual Report on the Activities of the Public Defender of Rights was practically being finished when I was appointed. Although I influenced its contents only minimally, I have, browsing through it, a feeling of familiarity and I do not find it difficult to identify myself with its content.

The year 2013 was also a year of legislative changes aimed at harmonizing public-law rules with the new Civil Code, which was already in force but not in effect. This "revolution in law" will undoubtedly be reflected in further activities of the Defender at least to the same extent as after the coming into effect of the new Code of Administrative Procedure in 2006.

As regards the structure of problems that people address the Defender with, 2013 saw the second highest number of complaints received and it was marked by a significant increase in complaints in the social area, in particular in the area of benefits. For the first time, the number of complaints regarding non-insurance benefits matched the number of complaints pertaining to pensions, which have been among the most frequent since the Office of the Public Defender of Rights was established. Over 1,300 complaints pertained to those two areas.

The Defender continued to issue expert publications from various fields of public administration, containing his ideas of good administrative practice in the given field, including model situations based on individual cases. Last year, the "Funeral Services" handbook was added to the existing range of publications. It explains and introduces to the expert and the lay public in a comprehensible way selected problems from an area not often covered in legal literature.

In 2013 careful preparations related to the "Together for good administration" project, created by the Office of the Public Defender of Rights, took place. The project comprises seminars and educational events for employees of public administration, healthcare and social facilities, non-government organisations, the private sector and for students. As far as public administration employees are concerned, they will be provided feedback on their activities by the Defender and her colleagues and they will be given methodological training aimed at unifying and improving the efficiency and quality of the performance of public administration.

The Defender also upgraded the website for children in 2013 to enable easier electronic contact, thus compensating, albeit only partially, for the non-existence of children's ombudsman in the Czech Republic.

The Defender's activities described in this report attest to the extensive cooperation with public administration and the functionality of the cooperation. By my activities, I shall endeavour to contribute to deepening the cooperation further and ensuring that the submitted complaints and good advice do not go unheard.

Brno, 18th March 2014

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

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