



**Information on activities for the second quarter of 2015
pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public
Defender of Rights, as amended**

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A Number of complaints, inquiries

A total of **2103** complaints were received in the second quarter of 2015, which is **66** more than in the same period last year. I was approached by 1348 persons in matters falling within my competence under the law, which is 138 more than in the second quarter of the past year. **Thus, the proportion of complaints falling within the Defender's mandate increased to 64%** (the figure for the past year was 58%). Most complaints were related to social security (387 complaints) and construction proceedings and spatial planning (137); many complaints (100) were also concerned with the prison system, police and army.

In **112** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints directed against discrimination in the sense of the Anti-discrimination Act reached **68**. In **17** cases, we also provided information and analyses related to discrimination to international parties and national bodies.

In the second quarter, we performed **5** systematic visits to facilities where persons restricted in their freedom are or may be present. In the area of monitoring detention of foreigners and exercise of administrative expulsion, we monitored **1310** decisions.

B Activities of the Defender

B.1 Public administration

The following recommendations and statements were issued during the second quarter of 2015 in relation to public administration, in particular:

B.1.1 Inclusion in the records of persons qualifying as future adopters or foster parents (file No. 7714/2012/VOP/HZ)

A complainant who wished to adopt a newborn or an infant up to two years of age approached the Public Defender of Rights in 2012. She complained about the procedure taken by the Prague City Hall, which had **decided to include her in the records of persons qualifying as future adopters or foster parents, on the condition, however, that only an older child could be adopted**. The reason was that the complainant was 53 years old.

My predecessor found that the Prague City Hall had not erred by taking the complainant's age into consideration. **According to the Act on Social and Legal Protection of Children (Section 22 (6)), the age difference between applicants and children should be taken into consideration in deciding on inclusion in the records of applicants. The difference should be reasonable and should correspond to the usual age difference between parents and children rather than grandparents and grandchildren.**

At the same time, however, my predecessor found irregularities in the respective file. The most serious one was that **there were two versions of the**

report from the psychological examination of the complainant. Both were issued **by the same organisation on the same date, but the conclusions differed**. The report which was less favourable for the complainant was not presented to her until the appellate proceedings before the Ministry of Labour and Social Affairs.

The Prague City Hall concluded that the existence of two reports was a fundamental error of its employees. A financial penalty was imposed on the responsible official of the City Hall and she was also trained in the Code of Administrative Procedure. The head of the organisation which had issued the two reports took measures to ensure that similar failures would not recur. The City Hall also introduced more frequent checks of files and internal audits focusing on files.

Having found these measures sufficient, I closed my inquiry into the complaint.

B.1.2 Protection of animals against cruelty (file No. 2806/2014/VOP/MKČ)

My deputy conducted an inquiry based on a complaint about possible cruelty against horses and inactivity of authorities. The complainants stated that they had been alerting authorities since 2010 about a place which was unsuitable for farming (unstable and muddy ground without vegetation) where horses were kept in the open almost all year round without any shelter, adequate food and source of water; the place was not adequately secured, as a result of which the horses occasionally escaped to the neighbouring plots of land, were often tied to trees, etc.).

The State Veterinary Administration for the Olomouc Region gave instigation to the competent municipal authority to hear an infraction under the Animal Protection Act, on grounds of cruelty due to inadequate conditions. It also provided the municipal authority with an expert opinion on the condition of the horses as well as the conditions in which they were kept, and lodged a proposal for ordering a reduction in the number of horses kept (other than by slaughtering them!) to a maximum of two with a view to revitalising the pasture over time. The municipal authority subsequently issued a decision which found the breeder guilty of an infraction, imposed a fine on him and ordered him to reduce the number of the horses kept.

My deputy found maladministration on the part of the municipal authority in that it imposed a certain duty on the breeder through a final decision, but failed to enforce it. The authority failed to proceed with enforcement despite the fact that the conditions for initiating a distraint procedure were met.

My deputy did not question the conclusions of the veterinary administration but expressed his reservations as to the procedure in relation to the owner of the plots of land at the time. The latter failed to provide collaboration during the inspection and did not allow the veterinarians to enter the part of the structure which was intended as a shelter. In that situation, it would have been appropriate for the veterinary administration to initiate administrative proceedings on the grounds of an administrative offence committed through failure to provide collaboration.

Both administrative authorities took active remedial steps after the report on the inquiry was issued. On the basis of the new inquiries, instigations were lodged against the owner of the plots of land on the grounds of violation of the Act on Protection of Animals Against Cruelty. The municipality purchased the plots of land

within a distraint procedure against the owner and the place is no longer used for keeping horses.

B.1.3 Disagreement of a municipality with the connection of a plot of land to a road (file No. 2853/2014/VOP/MBČ)

My deputy dealt with a case where a municipality had been refusing its consent to connecting the complainant's plot of land to a local road and the local government thus blocked a decision of governmental authorities.

The complainant's plot of land is adjacent to municipal land with a local road to which the complainant wishes to connect his land. According to the municipality, the road does not cover the entire plot because there is a green belt between the road and the complainant's land. The municipality required an easement to be established for the green belt for consideration. Since the complainant did not accept the conditions of the municipality and refused to sign an agreement on establishing the easement, the municipality did not allow him to build a driveway. Indeed, the municipality's consent is a precondition for an official permit, in the absence of which the municipal authority (which has the competence of a road administration authority) repeatedly rejected the complainant's application.

The complainant challenged this through appeals and the Regional Authority repeatedly referred the case back to the municipal authority for a new hearing. The Regional Authority held the view that the owner of the road could only link its consent or disagreement to the technical aspects of the case (i.e. the question of whether access is technically possible and the road has a sufficient capacity) rather than to any private-law arrangements with the applicant. **Although the opinion of the appellate body is binding, the municipal authority failed to observe it and always rejected the complainant's application.** Thus, the complainant became locked in an absurd tug-of-war between authorities lasting several years.

The inquiry led by my deputy was to ensure that a final decision was delivered in the matter of access from the plot of land in question to the road, where the complainant could then challenge such a decision, e.g., by lodging an administrative complaint. However, my deputy advised the complainant that while the opinion of the Regional Authority seemed more ideal or fair, the current legal regulations supported the interpretation used by the municipal authority that an access road cannot be permitted without consent of the owner of the road. It is not the conflict between the two legal views that is relevant now but rather the question of whether the view of the appellate body is binding and, even more importantly, whether the authorities have a duty to render a decision. For this reason, my deputy decided not to challenge the conclusions of the authorities but rather to try and ensure that a final decision was delivered at last.

Based on the most recent appeal, the Regional Authority did not refer the case back to the municipal authority and decided autonomously by permitting access to the road. Although the municipality has challenged that decision by lodging instigation for review with the Ministry of Transport, the purpose of the inquiry, i.e. issuing a final decision, was achieved. My deputy therefore closed the inquiry.

B.1.4 Fee for municipal waste – citizens of a municipality vs. owners of weekend homes (file Nos. 20/2014/VOP/MBČ and 1533/2014/VOP/MBČ)

I inquired into complaints concerning municipal decrees on a local fee for municipal waste that place the owners of weekend homes at a disadvantage compared to people permanently residing in the community.

The Local Fees Act defines two groups of payers: persons with a permanent residence in the municipality, who must always pay the fee, and owners of holiday homes, who pay for just one person even if there are several owners and users. It followed from the complaints that were subject to the inquiry, however, that municipalities adjusted the fees stipulated by law through reliefs in favour of their citizens. Some municipalities, for example, introduced a fixed relief for people with permanent residence whenever the fee was increased. In this way, the people registered in the municipality remained unaffected by the increased fee, while the owners of weekend homes had to pay more.

I found that the Ministry of the Interior as the supervisory body held the view that municipalities generally could provide such a fixed relief. All that had to be assessed, according to the Ministry, was whether the municipality had legitimate reasons to do so; in the cases subject to inquiry, the Ministry concluded that the difficult living conditions in a small municipality, local resident's commuting and all-year use of some weekend homes did constitute such legitimate reasons.

In my opinion, however, it is impossible to provide a relief to a whole group of payers. Municipal decrees on fees must be within the boundaries of the Local Fees Act (the Charter of Fundamental Rights and Freedoms as part of the Constitution of the Czech Republic stipulates that taxes and fees may only be imposed on the basis of the law). The categorisation of those liable to pay the local fee for municipal waste and determination of the proportions of their contributions are expressly stipulated by law. **Hence, if municipalities wish to relieve someone from the fee, they must use criteria applicable to both groups of payers – for example, take into consideration the payers' financial situation (material need).**

The Minister of the Interior insisted that a fixed relief for just one group of payers was possible but promised that the Ministry would examine more thoroughly the reasons that guided municipalities in introducing such reliefs. He simultaneously satisfied my request that the Ministry also acquaint the municipalities with my opinion as part of their guidance, including instructions on the website.

Considering that municipal decrees on the local fee for municipal waste are regularly amended in connection with changes in costs and the Ministry promised to also acquaint the municipalities with my opinion on reliefs, I decided not to turn to the Constitutional Court for the time being with a motion to assess the controversial decrees.

B.1.5 Professional qualification tests for applicants for driving licences (file No. 2496/2015/VOK/MP)

I was approached by D., s.r.o., with a complaint concerning the practice of the Ministry of Transport in connection with professional qualification tests for applicants for driving licences. **The Ministry insisted that the theoretical part of the test could only be performed on the premises of authorities rather than on the**

premises of driving schools as had been the case up to then. The multiple-choice test was carried out exclusively by electronic means and the software application did not make it possible to perform the test outside the premises of the municipal authority of a municipality with extended competence. This was intended to eliminate corrupt practices because, according to the Ministry, as a result of the previous practice, 35 examination commissioners, 32 driving school instructors and more than 200 applicants for driving licence had been accused in criminal proceedings.

Some driving schools and authorities did not agree with the new arrangement and insisted on the existing method of testing applicants.

Act No. 247/2000 Coll., on obtaining and improving professional qualification for driving motor vehicles and amending certain laws, as amended, stipulates that tests are carried out, as a rule, in a single day, at the driving school which provided the learning and training, unless the driving school and the examination commissioner agree on some other appropriate place.

Considering that the new practice of the Ministry of Transport was not in line with the wording of the relevant provisions of the Act, my deputy initiated an inquiry. While expressing his understanding for the reasons which guided the Ministry in establishing this practice, he advised the Minister of the variance with the law.

The Minister of Transport informed my deputy in his statement that he had personally **tasked the deputy head** of the Transport Administration Section to ensure, without unnecessary delay, **that tests can be carried out on the premises of driving schools** that have applied or will apply for this option through the municipal authority of a municipality with extended competence. In this way, the Ministry brought the performance of examinations into line with the law.

Considering that the Ministry eliminated a condition regarding which there were justified doubts, my deputy closed the inquiry.

B.2 Supervision over restrictions of personal freedom and monitoring of expulsions

Within the prevention of maltreatment and supervision over restrictions of personal freedom, we performed a **total of 5 systematic visits to healthcare facilities, or more specifically, facilities for the treatment of long-term patients** in the second quarter of 2015.

We already began visiting this type of facilities in the first quarter, **with participation of experts from among general nurses and physicians.** The following facilities were visited in the second quarter:

- Bubeneč Hospital in Prague's 6th City Ward;
- ADP SANCO s.r.o. in Prostějov;
- Ledec-Háj facility for the treatment of long-term patients;

- Hospital of the Brothers Hospitallers of St. John of God in Brno;
- Podřipská Hospital with Polyclinic in Roudnice nad Labem.

I closed a series of systematic visits to prisons by drawing up reports with my findings. I sent these reports to the prisons and I also discussed my findings in person with the General Director of the Prison Service of the Czech Republic.

B.2.1 Protection of the rights of elderly people – Final Report on Visits to Retirement Homes and Special Regime Homes

In a well-arranged and detailed report, I summarised systematic **visits to 14 (registered) facilities of residential social services categorised as retirement homes and special regime homes.**¹

The report represents a unique set of recommendations in the Czech environment, intended primarily for social services providers as well as professional public and general public. In the summary part, the report in fact lays down the standards of proper treatment of elderly people in the field of social services. I will soon submit specific systematic recommendations to the central governmental authorities, which I consider important for improving the care for elderly people.

The visits to the facilities providing social services to elderly people and my findings from these visits raised a fundamental question of what represents maltreatment in facilities whose main mission is to care for elderly and helpless people. Last year, I invited experts specialising in the provision of care and support in the field of healthcare and social services to look for an answer at the conference “Protection of Rights of Elderly People in Institutions, with an Emphasis on People Suffering from Dementia”. Their contributions were so beneficial that I published them in the form of a collection of papers.

B.2.2 Education activities of the Department of Surveillance over Restrictions of Personal Freedom

An authorised employee of the Department of Protection of Persons Restricted in Their Freedom took part in the conference “Implementation of the Return Directive: Challenges and Good Practices from the Perspective of the Central and East European Countries” held on 26 and 27 May 2015 in Riga, Latvia. He presented there **our experience with supervision over administrative expulsion and expulsion under criminal law, transfer and transit of foreigners.**

In co-operation with the Police Presidium, we organised 3 training sessions for the employees of the Pardubice, Hradec Králové and Liberec Regional Police Directorates, focusing on the treatment and rights of persons restricted in their freedom.

At a workshop dedicated to implementation of the Directive on Returns held on 15 May in Bratislava, Slovakia, an authorised employee of the Department of

¹The report is available at <http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/z-cinnosti-ombudsmana/zpravy-z-navstev-zarizeni/>.

Supervision over Restrictions of Personal Freedom presented our findings from the application of alternatives to detention of foreigners (analysis of a decision on the administrative detention of a foreigner), supervision over the conditions of detainment (findings from visits to detention facilities for foreigners) and supervision over forced returns of foreigners (the model of monitoring the forced returns of foreigners by the Public Defender of Rights and the findings made).

The head of the Department of Supervision over Restrictions of Personal Freedom also actively participated in the “Workshop on the Public Guardian Agenda” organised on the initiative of the Ministry of the Interior on 18 June 2015 in Prague. The workshop was concerned with fundamental aspects of the exercise of public guardianship, a challenging topic mainly for mayors from small municipalities.

B.2.3 Report on the Activities of the National Preventive Mechanism in 2014

For the very first time since 2006, i.e. the year when the Public Defender became the “national preventive mechanism” for supervising restrictions of personal freedom, I published a separate annual report on these activities in 2014.² This is an activity through which the Defender **fulfils the international obligation of the Czech Republic following from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**. Up until now, the activities as the national preventive mechanism in the past year were merely summarised in the Annual Report on the Activities of the Public Defender of Rights for the Chamber of Deputies. However, considering the scope of these activities, I decided to release a separate report on this sphere of my mandate.

B.3 Protection against discrimination

B.3.1 Discrimination on the grounds of disability in the allocation of public housing (file No. 169/2013/DIS/ZO)

I was approached by a complainant who contested the allegedly discriminatory practice of a municipality in **allocating leases for public housing**. The municipality chose the sealed first-price auction approach where the lease was to be concluded with the one who presents the highest bid for a square metre. The municipality posted the lease offer and the conditions of the announced tender procedure on the official board of the municipal authority.

Only two parties registered for the tender procedure, and hence the municipality was only able to assess two bids in connection with the offered housing.

The complainant – a blind person – presented the highest bid to the municipality, CZK 81 per square metre, and met all the other criteria (non-existence of debts towards the municipality, provision of a security deposit, etc.). Despite this, at variance with the conditions which had been set and published beforehand, the flat was allocated to the other party who had presented a lower bid (CZK 55 per square metre). The municipality substantiated its decision by stating that the flat was

² The report is available at http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/Zpravy-vyrocní/NPM-2014_CZ_ENG.pdf.

an attic with sloped walls and, as such, it did not meet the conditions of Decree No. 398/2009 Coll., on general technical requirements for barrier-free use of structures. The municipality stated that the flat was unsuitable for persons with reduced mobility, relying in its opinion on an expert report from the designer of the structure.

Having carried out an inquiry, I concluded that the municipality had been guilty of **direct discrimination against the complainant in access to housing** pursuant to Section 2 (3) of the Anti-Discrimination Act. **The municipality refused to conclude a lease with a person with a disability** who had met all the conditions of the tender procedure (and had presented the municipality with the highest bid for rent) on the grounds of the person's disability and, subsequently, granted the lease to the party whose bid had been second best.

I am convinced that the municipality did not have the right to decide, instead of the interested person, whether or not the housing was suitable for him considering his disability. Neither was the municipality entitled to make any assessment of his disability or ability to use the flat. In addition, any criteria in the selection of a party which are different from or additional to the criteria announced by the municipality at the time of publishing the call for tenders compromise the legal certainty of those applying for the housing and are at variance with the principle of legitimate expectation and predictability of public administration.

The **municipality** informed me in its response to my conclusion that **it had apologised several times to the complainant** and was prepared to allocate another suitable housing to him as soon as some became vacant.

C Legislative recommendations and special powers of the Defender

C.1 Comments on the draft law amending Act No. 40/2009 Coll., the Criminal Code, as amended, Act No. 169/1999 Coll., on imprisonment and on amendment to some related laws, as amended, and Act No. 293/1993 Coll., on execution of remand, as amended.

In connection with the above draft law, I welcomed the criticism from the party submitting the draft who pointed out the **often formalised and non-uniform decision-making practice of courts in the placement and transfer of convicts from one type of prison to another**. As a result of this practice, convicts are placed in prisons independently of their needs (the specific objectives of their rehabilitation programme). This creates non-homogeneous groups of convicts and hinders rehabilitation during the service of imprisonment.

The first Czech ombudsman, JUDr. Otakar Motejl, and my predecessor, JUDr. Pavel Varvařovský, both considered that it was not appropriate to entrust decisions on transfers between different types of prisons exclusively to courts.

The submitted draft law laid down that decisions on placement in various departments within a prison in the "guarded" category should be made by the warden of that prison. A complaint could be lodged against his/her decision, which would further be assessed by the General Director of the Prison Service of the Czech Republic or an employee authorised by him/her. An advisory commission of the

prison warden would always provide a statement on the complaint (this representing an element of independence in the decision-making process). At the same time, the draft excluded any court review.

As part of the external commentary procedure, I pointed out that **by their nature, the General Director or an employee authorised by him/her do not constitute an independent body**. This is true notwithstanding the mandatory opinion of the advisory committee. In addition, given that the placement of a prisoner in a specific prison (or department) has an effect on the conditions of imprisonment (i.e. more or less interference in fundamental rights), I do not consider it possible to exclude general court review of such a placement.

I concluded that **while I support the transfer of the competence to decide on placement in individual departments of a prison in the guarded category to the Prison Service of the Czech Republic, including the decision-making on appeals, I am against the exclusion of court review**.

On the basis of the comments raised, and also based on the discussion on the appropriate response, I hold the view that the party submitting the draft satisfied my reservations and the draft legislation was correspondingly changed, thereby also fulfilling the Defender's legislative recommendation from 2013.

D Other activities

D.1 Together towards Good Governance Project CZ.1.04/5.1.00/81.00007

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

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

The key activities of the project focus on exchange and comparison of experience and good practice examples with international partners, education of professional staff of the Office, organisation of training seminars, round tables and conferences for target groups, stays and internships for students and activities to raise public awareness about the competence of the Public Defender of Rights.

The following are the target groups of the project:

- local governments and their authorities and bodies, organisations established or founded by them and their employees
- governmental authorities and organisations established by them
- employers

- NGOs
- students

The Office of the Public Defender of Rights (Slovakia) and Alapvető Jogok Biztosának Hivatala – The Office of the Commissioner for Fundamental Rights (Hungary) are the project partners.

The following activities took place within the above project during the second quarter of 2015, in particular:

1) One individual international visit with a co-operating organisation

- One one-day visit to Slovakia (Office for Personal Data Protection)

Topics of individual visits – exchange of experience and sharing good practice in the following areas:

- public relations, information and educational activities focusing on the public (communication strategies and tools, effective communication of information to the public, etc.)
- professional education of employees (content and form of employee education, systematic planning of employee education, examples of bad and good practice, etc.)
- comparing methods of work (application of the Personal Data Protection Act – evaluation concerning adequacy of the period for the retention of personal data, legislative process within the adoption of the Payment Services Act, co-operation with the National Security Authority in matters concerning personal data protection in the banking sector, etc.)

2) Nineteen workshops for public administration and NGOs in Ústí nad Labem, Brno, Trpišov u Slatiňan, Hradec Králové, Liberec, Karlovy Vary, České Budějovice, Ostrava, Plzeň and Zlín

Topics: monument care; social and legal protection of children in the practice of the Public Defender of Rights; rights of a person placed in a police cell, use of force and maltreatment; benefits for persons with a disability; public roads; removal of structures; findings of the Public Defender of Rights concerning water; findings of the Public Defender concerning protection against noise; assistance in material need and housing benefits; how to write an action against a decision of an administrative authority in social matters.

Total number of participants: 569.

3) Two round tables for public administration, non-profit organisations and employers in Brno

Topics: female first-aid workers and equal access to employment, local fees.

Total number of participants: 58.

4) Three workshops within the Ombudsman Legal Clinic at Palacký University in Olomouc and student internships at the Office of the Public Defender of Rights.

Topics: liability of the State for damage in the exercise of public authority; distraint procedures held by court distrainers – supervisory activities of the State; inappropriate conduct of judicial persons, court delays.

Total number of students: 10.

- 5) Five informative/enlightenment meetings “We take interest in you” for the public during visits of the Public Defender of Rights in individual regions (Zlín Region: Valašské Meziříčí; Central Bohemian Region: Kladno; Liberec Region: Liberec; Karlovy Vary Region: Karlovy Vary; Ústí nad Labem Region: Ústí nad Labem), with the Public Defender of Rights participating in person

Topics: social care for ageing parents (twice), nuisance through excessive noise (twice), (un)equal opportunities in employment (once).

Total number of participants: 70

- 6) **One informative/enlightenment meeting with the public in municipalities up to 10,000 inhabitants, in Čejkovice**

Topic: nuisance through excessive noise

Total number of participants: 40

- 7) **Four informative/enlightenment meetings in schools, in Vlašim, Jablonec nad Nisou, Sokolov and Ústí nad Labem**

Topic: diversity in school environment

Total number of participants: 203

- 8) **One informative/enlightenment meeting in a socially excluded area in Brno**

Topic: Discrimination in the area of schooling, housing, employment and access to services

Total number of participants: 22

The project outputs and indicators are fulfilled according to the set timetable.

Brno, 22 July 2015

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