Veřejný ochránce práv
OMBUDSMAN

# Ten Years of the Ombudsman as the National Preventive Mechanism

Since 2006, the Defender has been performing systematic visits to facilities where people are restricted in their freedom, **strengthening their protection from torture and other forms of ill-treatment**. Thus, the Defender acts in the capacity of the **national preventive mechanism** pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The visits are carried out **at places where freedom is restricted ex officio** (prisons, police cells) and also in **facilities providing care** on which the recipients are dependent (retirement homes, treatment facilities for long-term patients).

During the visits, the Defender and the employees authorised by the Defender may **enter all places within the facility, inspect all records** including medical records, **speak with all persons** (employees, patients, prisoners, etc.) without the presence of third persons. The Defender performs the systematic visits without previously notifying the head of the facility. The visits may take place at any time of the day (including at night and early in the morning) and even on non-working days. In the preparation and during the course of the systematic visits, the Defender works together with external experts – physicians, psychiatrists, nurses, etc.

The Defender addresses proposals for improvement of the situation found during the individual visits to the facilities and their founders. The Defender submits generalised findings and systemic recommendations concerning the conditions in a specific type of facility to the responsible governmental authorities and makes them accessible to the public in summary reports from visits to various types of facilities.

The 10 years of Defender's activities in this area also revealed obstacles which cannot be removed or remedied by the Defender alone. These problems concern the system as a whole and generate lots of difficulties and limitations faced by the citizens in their everyday lives. We discuss them in the following three chapters:

- Systemic problems in care for the elderly
- Unification of care for vulnerable children
- Relocation of prisoners – means of preserving the family

## Systemic problems in care for the elderly

The Public Defender of Rights has been carrying out inspections in treatment facilities for long-term patients, retirement homes and special regime homes since 2006. The Defender has visited a total of 17 treatment facilities for long-term patients and 84 social facilities for the elderly. The Defender has examined the **living conditions of 8,714 elderly persons**.

Over the course of this period, the Defender ensured remedy of numerous shortcomings and drew attention to others. Our experience shows, however, that there is a growing systemic problem that the Defender cannot resolve alone. Nevertheless, the Defender must point out that the problem exists.

The ageing of the population presents us with new problems that we are unfortunately unable to manage even today. The present system of care for people in facilities for long-term patients and social facilities for ill people, such as those with Alzheimer's disease, often fails to cater for the clients' needs.

**Treatment facilities for long-term patients** have the status of health care facilities. Elderly people are placed there for supplementary treatment with limited availability of social workers' services due to the low number of working hours for which they are hired. Yet they often need social care to the same extent as they need medical care.

In contrast, social workers are available in **social services facilities** catering e.g. for people with Alzheimer's disease. However, the social workers often cannot adequately provide the sort of health care their clients urgently need. The usual reason behind this is under-financing.

There are other problems. For instance, it is estimated that in **social facilities**, i.e. special regime homes and retirement homes, payments from health insurance companies cover merely two thirds of the actual costs of nursing care. Rehabilitation care is not covered at all unless specifically ordered by a physician. The payment mechanism differs from that in hospitals where a similar arrangement would be unimaginable. Under-financing further increases the outflow of workers, acts as a disincentive for the existing staff and makes the work unattractive. This generates more problems for the future.

Municipalities that should establish retirement homes to satisfy the social needs of their citizens lack the required funding. They are not entitled to any money from the State budget. Moving from the hometown to a remote facility often severs the elderly person's last social and family ties. Residential services should be community-based, i.e. they should not promote segregation and should not suffer from the problems found in large institutions. This follows *inter alia* from the international commitments concerning protection of people with disabilities, which (in legal terms) also includes Alzheimer's disease.

**Proposed changes**

- Care is currently centred on a specific area (social care vs. health care). However, the primary concern should be to cater for people's needs in both areas notwithstanding

whether the person concerned is placed in a health care facility or a social services facility.

- Nurses in social services should be remunerated for all the work they perform.
- Social workers should be remunerated for their work in healthcare facilities so as to meet the needs of the patients.

It is necessary to assume that an **aging person has both health care needs and social needs**. Professional care by experts from both areas must be available. Health care and social workers already work in treatment facilities for long-term patients. The problem is that the financing available covers only limited working hours. The work of these professionals is not always linked with the work of nurses and doctors.

A draft law is currently under preparation. However, it is not certain when and in what form it will be adopted. The present Government will (most likely) not manage this by the end of its term.

## Unification of care for vulnerable children

Over the past ten years, **we checked the living conditions of 2,178 children living in institutions**. We were usually able to remedy the shortcomings in some of the institutions and facilities very quickly. However, when the problems were due to e.g. a lack of employees, it was usually beyond our means to ensure an effective solution.

**Examples of the shortcomings we remedied:**

- the children were allowed to spend time with their parents only as a reward;
- the personnel was ignorant of the children's health problems, confusing them with "disobedience";
- hospitalisations because of a lack of outpatient services or failure to use them;
- escaping children were punished instead of the staff trying to understand the reasons why they tried to escape;
- the children were separated from their siblings; there was no social work to promote contacts with relatives and preserve the family;
- conditions were not created in which the children could learn usual household tasks (preparing food, managing family budget, etc.);
- the children had no private space to keep their personal items in (lockable cabinets);
- the children were not allowed to wear their own clothes;

- the children were not allowed to care for themselves like their peers in school – shave and put on make-up;
- not every child was allowed to spend time outside at least once per day;
- the children's private correspondence (e-mails, text messages, etc.) was monitored;
- the children did not have access to the Internet;
- the children were not allowed to use their mobile phones and talk on the phone in private.

The existing means available to us make it possible to remedy individual violations of existing laws and guidelines. However, systemic failures and shortcomings are beyond our power.

**In general, the system of care for vulnerable children in the Czech Republic is below the standards of other European countries.** The main problem is the high number of children in institutional care. There are no targeted efforts aimed at placement of children in alternative forms of care, more intense work with the family and prevention of situations where the only choice left is to place the child in institutional care. Placing infants in infant care centres, a phenomenon unseen elsewhere, is a topic in itself. Unfortunately, this practice makes the Czech Republic an outlier in Europe.

**Institutional care as such suffers from several systemic shortcomings.** Care for vulnerable children is split between three Ministries and divided between state authorities and local governments as well as between the public and private sector. Both Czech and foreign experts often criticise this situation. For example, the Council of Europe and the UN Committee for the Rights of the Child have repeatedly pointed out the problem.

One of the basic prerequisites for a remedy is to unify the childcare system, a process which has been discussed for many years in the Czech Republic without a tangible result. None of the Ministries involved has a sufficient mandate to ensure and implement the measures required for the necessary transformation of the system.

We have repeatedly dealt with the consequences of fragmentation of care, most recently in the 2011 Report on Systematic Visits to School Facilities for Institutional and Protective Education (and previously in our 2007 report).

**Persisting problems**

- Even very young children are placed in institutional care (infant care centres for children up to three years of age).
- Children in the Czech Republic have been through years of analyses and planning without any tangible progress.

- Improvement in individual facilities can be attributed to the effort of certain individuals. It is not systematic but rather based on individual initiative.

**Problems due to fragmentation of care**

- The primary objective should be to keep the child in the family, and if this is impossible, to provide for alternative family care. Preventive measures should be preferred to avoid placing children in institutions.

- A child is examined by numerous experts, each of them focusing on one aspect of the child's development but none of them is able to integrate these various aspects and set a general direction of care.

- It is not obvious which expert should prevail when it comes to decisions in important matters concerning the child – the physician, teacher, psychologist, head of the facility or the body of social and legal protection of children (BSLPC).

- Paradoxically, the key role is entrusted to a governmental authority (the BSLPC), despite the fact that another body (the facility) often knows the child and the family better; however, it lacks the powers and finances that are required for direct social work or representation of the child.

- No specific person is appointed to be responsible for the child's progress in institutional care.

- There is an absence of systematic work with the family, paradoxically because it is against the interests of the facility – systematic work would result in an outflow of children from the facility and a reduced budget.

- One child is entrusted to the care of 7 to 10 persons.

- The responsibility for the care is split between the Ministry of Labour and Social Affairs, the Ministry of Education, Youth and Sports, and, where infants are concerned, also the Ministry of Health.

- This results in fragmentation of responsibility and coordination.

**The proposal for unified care was recently abandoned "shelved" again and the present Government will no longer deal with the issue.**

**Timeline – adolescent child with problems**

1. A child has problems – truancy, minor thefts, disturbing the peace, failure at school, aggression at school, etc.

2. The child is identified by the BSLPC.

3. Attempts at resolving the problem; the BSLPC, family and school: out-patient services, e.g. in an education counselling centre, educational care centre or the psychiatry, if required.

4. The problems remain unresolved – the BSLPC applies to a court to order institutionalisation.

5. The child is placed in an educational facility – a diagnostic institution assesses the child's needs. The BSLPC has the obligation to visit the child once in 3 months.

6. The institution lacks the means and capacity for work with the family. This, after all, is not the institution's task – it cares for the child and not for the family. It communicates with the family, but it cannot impose any measures.

7. The child leaves the diagnostic institution on the basis of a court decision.

8. The child is diagnosed and proceeds to another facility which again learns more details about the child and again is not equipped to work with the family; if the family lacks motivation, nothing changes and any hope for return to the family is further diminished.

9. The BSLPC is overloaded; it visits the family when the child is to spend his or her holidays with the family but is unable to correct the conditions in the family; social services do not have the capacity to ensure preservation of the family.

10. Although the court requests reports from the school facility, it in fact cannot influence the situation of the child – the court must rely on the initiative of the BSLPC when reviewing the reasons for continuation of institutional education.

**The child's path to an infant care centre**

- The child goes to an infant care centre from the maternity hospital because the mother is not prepared to care for the child.

- The mother disagrees with adoption – therefore, the child remains in the infant care centre.

- It is a medical facility, not a social facility. The infant care centre concentrates on the child's health without really supporting the mother, without teaching and guiding her – the mother's interest in the child is slowly declining.

- Each day outside the mother's arms is damaging for the child. Under the guidance of the Ministry of Health, a child should not stay in an infant care centre for more than half a year. However, our findings (the 2013 Summary Report) from six facilities indicate that from 30 to 70 percent of children stayed in the facility for a longer period of time. After three years, the child ends up in a children's home.

- The BSLPC should accompany the child throughout the process. This, however, is beyond the possibilities of the BSLPC.

**Costs of childcare:**

- in foster care: approx. CZK 20,000 per month;

- children's home: approx. CZK 25,000 per month;
- diagnostic institution: approx. CZK 45,000 per month;
- infant care centre: approx. CZK 45,000 per month;

## Relocation of prisoners – means of preserving the family

People commit crimes, they are convicted and imprisoned. Prison is seen as a punishment, the length of which is derived from our concept of justice. What we do not see is that many of the imprisoned people have families that are also affected by the punishment. Children lose contact with their parents, the family may lose a breadwinner. We do not punish just the prisoners but also their children, families and friends. However, punishment must also include rehabilitation.

Over the past 5 years, we received 338 complaints from prisoners or their families whose application for relocation to another prison had been denied. It is common that prisoners are placed "at the other end of the country" and it is often impossible for their children, families and friends to maintain contact and visit them. As a result, many families are entirely disrupted.

The prisoners have no place to return to after serving their sentence; they end up on the street and are prone to recidivism. The current recidivism rate in the Czech Republic is around 71%. Data of the Ministry of the Interior show lower recidivism rates in the countries of Western Europe, ranging from 60% in the English-speaking countries to between 30% and 40% in Scandinavia.

One simple solution which can partly help without additional costs is to locate and relocate prisoners so that they can preserve at least a basic contact with the family.

This relatively simple step may help to avoid, at least in some cases, far higher public costs in the future associated with the disintegration of the family and future homelessness and recidivism on the convict's part.

For a mother with children, it is nearly impossible to visit the father at the other end of the country using public transport. There is simply no way of getting there. Another difficulty is that they often cannot afford the costs of such travels.

The Příbram Prison is a good example illustrating this problem. The premises located outside the town are served by several buses on weekdays. There is not a single bus on weekends. The nearest railway station and bus terminal are seven kilometres away. The situation at the Odolov Prison is similar.

**The Defender's long-term recommendation was finally implemented in 2015.** Effective from mid-October 2015, new internal rules are in force at the Prison Service, stipulating that if a convict's application for relocation to another prison is dismissed due to a lack of capacity, the convict concerned is automatically put on a waiting list for relocation

applicants and the convict is relocated if a place is vacated in the target prison and the convict is still interested in the transfer.

However, the system is hindered by a long-term problem of Czech prisons – overcrowding (I pointed out this problem in this year's summary report on prisons). The waiting lists for relocation are very long; for example, the waiting time for relocation to the Padubice Prison ranges from 3 to 4 months.

## Summary of the Defender's activities in the role of the national preventive mechanism

**Over the past ten years**, the Public Defender of Rights carried out 365 visits to facilities all over the Czech Republic, which took about 792 days of inspections and 133,000 kilometres travelled. The Public Defender of Rights carried out:

- **128 visits to social services facilities** (retirement homes, homes for people with disabilities, etc.)
- **55 visits to healthcare facilities** (such as treatment facilities for long-term patients, psychiatric hospitals)
- **54 visits to facilities for institutional and protective education** (children's homes, diagnostic institutions, educational institutions, etc.)
- **80 visits to police cells**
- **31 visits to prisons**

The systematic visits carried out had a direct effect on the circumstances of **2,178 children, 8,714 elderly people, 12,300 prisoners, etc.**

In addition to this, the Defender's findings and recommendations have a preventive effect on **tens of thousands of people in various types of facilities** as the Defender raises awareness and takes action towards governmental authorities and the legislature.

For example, the decade of consistent efforts towards increasing the quality of social services led not only to formulation of **standards of treatment of elderly people** which are now used in the training of medical workers; it also invoked an open debate on new topics such as malnutrition, specific aspects of care for people suffering from dementia and, most importantly, the risk of care provided illegally by various accommodation facilities. The Defender also advised the Government of this pressing problem, and the Government has already requested that the Minister of Labour and Social Affairs seek a systemic solution.

Facilities for the elderly now **use the Defender's standards of prevention of disregard of pain and neglectful nursing care**. The Defender considers that the aspects surrounding pain, privacy and security are the key components of prevention of ill-treatment and the Defender concentrates on these matters. In this respect, the Defender points out

that the legal regulations lack a standard of material resources and personnel for social services.

The **lack of personnel** in facilities where people highly dependent on thehelp of others are placed is a major challenge for future improvement of conditions in psychiatric hospitals, facilities for long-term patients and people with disabilities. Individualised care is impossible without sufficient staff. Good will alone is not enough to ensure a high quality and dignity of care if the staff have insufficient time to do anything more than just dispense medicines and food and provide basic hygiene. At the time being, the implementation of fundamental rights depends on the work of overworked carers who do not receive support and appreciation.

A challenge for the future is the requirement for ensuring **community care for persons with mental illness or disability and for terminal patients and their close ones**. Institutional facilities always present an increased risk of ill-treatment, either as a result of abuse of the client's vulnerability or in the form of forced hospitalisations.

**Observance of the standard of care to be provided by social services facilities would be ensured if an independent control mechanism existed that would handle complaints of social services clients.** Users of social services represent an extraordinarily vulnerable group; it is difficult and lengthy for these people to protect and exercise their rights in court.

The greatest successes over the ten years of prevention of ill-treatment include **statutory rules regarding the use of restraints in medical facilities**. Even though the rules are now in place, the Defender still regards this as a topic of great importance. In psychiatric hospitals in particular, the Defender still encounters cases of preventive use of restraints. Consequently, the Defender endeavours to ensure introduction of mandatory records and control of the use of restraints.

**Based on the findings from the visits to facilities for children, the Defender developed standards for the provision of care to children in care homes and educational institutions.** The Defender does not seek to substitute for the inter-Ministry's inspection mechanism. The standards only represent guidelines for the Defender's activities.

Infant care is a lasting challenge. Regardless of quality, a facility cannot replace the security and care that the family provides. The Defender seeks to ensure, in particular, that **young children grow up in families and not in infant care centres** where the emphasis is on the provision of medical and nursing services.

Another success is the respect for the rights of persons detained in police cells. Following the Defender's recommendations, the Police adopted a **standard of providing advice to persons detained in cells**. In co-operation with the Defender, a document was developed containing advice regarding the detained person's right to notify the family or some other person about the detention, the right to a legal counsel and the right to be examined by a physician of the detained person's choice. These "safeguards" against ill-treatment are now also stipulated by law.

In 2015 the Defender significantly contributed to remedying the conditions in the Faci**lity for Detention of Foreigners**, unfortunately following a crisis caused by ill-treatment of the detained people including many children.

The **hygienic conditions** in prisons have **improved** and prisoners now have access to hot showers twice a week, which is the minimum standard in the EU. On the other hand, prisons still suffer from **overcrowding**, which results in infringement of human dignity and makes achieving the purpose of imprisonment impossible. The Defender continues to criticise indiscriminate strip searches and conditions for prisoners with chronic illnesses and disabilities.

During the ten years, the Defender published **23 summary reports** from visits to facilities of various types; the reports are available at http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode.

- Report on visits to facilities for institutional and protective education (2006)
- Report on visits to prisons (2006)
- Report on visits to institutions of social care for adults with disabilities (2006)
- Report on visits to police facilities (2006)
- Report on visits to treatment facilities for long-term patients (2006)
- Report on visits to facilities for detention of foreigners (2006)
- Report on visits to facilities for institutional and protective education (2007)
- Report on visits to social services facilities for the elderly (2007)
- Report on visits to psychiatric treatment facilities (2008)
- Report on visits to homes for people with disabilities (2009)*
- Report on visits to remand prisons (2010)*
- Report on visits to police cells (2010)
- Report on follow-up visits to psychiatric treatment facilities (2010)*
- Report on visits to facilities for foreigners (2010)
- Report on visits to school facilities for institutional and protective education (2012)
- Report on visits to infant care centres (2013)
- Report on visits to preventive educational care centres (2013)
- Report on visits to diagnostic institutions (2013)

- Report on visits to children's psychiatric hospitals (2013)
- Report on visits to sobering-up stations (2014)
- Report on visits to accommodation facilities providing care without authorisation (2015)*
- Report on visits to retirement homes and special regime homes (2015)*
- Report on visits to prisons (2016)*

* the report is also available in English

**On the occasion of the ten years in the role of the national preventive mechanism, the Defender organises the following events:**

- 30 November 2015 – Challenges in Prevention of Ill-treatment conference in Olomouc.
- 8 December 2015 – Public Defender of Rights' press conference on the 10th anniversary of prevention of ill-treatment in the Czech Republic, held on the occasion of the Human Rights Day.
- 29 April 2016 – Quarterly Report of the Public Defender of Rights for the Chamber of Deputies reflecting the activities of the national preventive mechanism; press release dedicated to the Defender's achievements and challenges in prevention of ill-treatment.
- 23 June 2016 – thematic meeting of the Public Defender of Rights, experts and people interested in prevention of ill-treatment on the occasion of the International Day in Support of Victims of Torture (26 June).