



## Information on activities for the 3<sup>rd</sup> quarter of 2016

Pursuant to Section 24 (1)(a) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended, I hereby inform the Chamber of Deputies of the Parliament of the Czech Republic on my activities.

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### **A. Number of complaints, inquiries**

A total of **2193** complaints were received in the third quarter of 2016, which is **535** more than in the same period last year. I was approached by 1491 persons in matters falling within my competence under the law, which is 409 more than in the 3<sup>rd</sup> quarter of the last year. Thus, **the proportion of complaints falling within the Defender's mandate increased to 68%** (the figure for the last year was 64%). Most complaints were related to social security (332 complaints); many complaints (186) concerned the area of construction proceedings and spatial planning and also the prison system, police and the army (156).

In **102** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints against discrimination within the meaning of the Anti-Discrimination Act reached **66**. In **10** cases, we also provided information and analyses related to discrimination to international parties and national bodies.

In the third 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 foreign nationals and performance of administrative expulsion, we monitored **1629** decisions.

### **B. Summary of main findings from the Defender's activities**

In the previous quarter, I completed the **inquiry I started on my own initiative in relation to some incidents occurring during the visit of the president of People's Republic of China in Prague in 2016**. In my conclusions I noted that on certain occasions, **the police acted disproportionately and chaotically in providing security during the visit**. The police were active in situations where they should have desisted and, vice versa, they failed to act where the circumstances and citizen's safety required it.

The Director of the Regional Police Directorate Prague accepted most of my arguments concerning the police officers' conduct and adopted adequate remedial measures. However, he disagreed with my conclusions concerning the police intervention at the Evropská street. For this reason, I exercised my power to refer the case to a superior authority and I also released the information to the public.

I was approached by a female college student who asked me to **render my opinion concerning a tuition fee**. The tuition fee was assessed to the student with respect to the period of her parental leave. The Act on Universities stipulates the duty to adopt suitable measures facilitating **studies of students with children during their maternal or parental leave**. It also stipulates the duty to subtract the period of the parental leave from the total length of studies when assessing tuition fees. The university's rector was supposed to take the complainant's parental leave into account also retroactively and not just from the moment when the complainant notified it. Had the university done that, it would have complied with its duty to implement suitable measures facilitating studies of students with children and would have upheld the complainant's right to equal treatment.



In my report, I thus concluded that discrimination had occurred. Since my inquiry revealed **inconsistent practices at various universities**, I also contacted the Ministry of Education, Youth and Sports and requested that it provide the universities and colleges with methodological guidance to ensure uniform application of the law.

I was also approached by a mother of an adolescent child with a request to inquire into the procedure of the Municipal Authority of Veselí nad Moravou (acting as the body for social and legal protection of children; hereinafter the “BSLPC”). The mother complained that the BSLPC **ordered her to regularly take her daughter to see a psychologist, despite the fact her daughter did not need or want it**. During my inquiry, I found errors in the conduct of the social worker responsible for deciding in the 15-year-old’s case as she failed to ask the girl for her opinion and did not advise her of the nature of administrative proceedings.

Based especially on my findings of the girl’s opinion, the Authority initiated administrative proceedings *ex officio* to cancel the decision to order the mother to ensure professional help for her daughter, now 17 years old. As the BSLPC carried out sufficient remedial measures, I closed the case.

In July 2016, the Supreme Administrative Court decided with final effect that the **permit for construction of a solar power plant in protected bird reserve in the Moldava municipality in Krušné hory was issued unlawfully**. This upheld the verdict of the Regional court in Ústí nad Labem, which annulled the planning and construction permit on grounds of unlawfulness. **The first ever action lodged by the Public Defender of Rights in public interest thus ended with ultimate success.**

## **C. Defender’s activities**

### **C.1 Public administration**

#### **C.1.1 Conduct of the Police of the Czech Republic during the visit of the Chinese president (File No. 2455/2016/VOP)**

Based on information provided by the media, I commenced an inquiry on my own initiative in relation to certain incidents occurring during the visit of the president of People’s Republic of China in Prague. I focused on the following:

- resolution of conflicts between the supporters of the Chinese president and a man with a Tibetan flag;
- police action against activists near the lampposts at the Evropská street;
- police conduct during the removal of a Tibetan flag from the office window near the Hilton building where the Chinese president was accommodated;
- police conduct in the building of the Academy of Performing Arts (FAMU).

My assessment was based on the file obtained from the Director of the Regional Police Directorate Prague and on publicly available videos. During the inquiry, I found out that on certain occasions, the police acted disproportionately and chaotically in providing security



during the visit of the Chinese president. The police detained persons without justification and transported them to the Bartolomějská police station and, furthermore, police actions at FAMU in connection with the displayed Tibetan flag were chaotic.

The police officers made serious errors, especially by failing to take action against the supporters of the Chinese president beating with flagstaves a nearby man carrying a Tibetan flag. Instead, the police officer used coercive measures to lead out the attacked man, detained him and transported him to the Bartolomějská police station. In my opinion, the use of coercive measures was justified as long as the man faced the risk of injury. However, his subsequent detention was erroneous. The police officers should have focused on the aggressive supporters of the Chinese president and should have taken steps to identify and detain the attackers. The police officers' explanation that they could not distinguish between the attackers and defenders just underscores the fact that they did not have the situation under control. The Defender suggests that the police should consider making video footage of similar events to make it possible to later evaluate the situation and identify the actors. Details of the individual cases mentioned above can be found in my press report of 5 October 2016, available on the Defender's website at [www.ochrance.cz](http://www.ochrance.cz).

The Director of the Regional Police Directorate Prague accepted most of my arguments concerning the police officers' conduct and adopted adequate remedial measures. However, he disagreed with my conclusions concerning the police intervention at the Evropská street. He believes the police officers' actions in this case were proportionate and in accordance with the law. I thus exercised my power to contact his superiors and asked the Police President to review the case. I also released the information to the public.

### C.1.2 Regulation of advertising in Prague (File No. 3794/2015/VOP)

The Public Defender of Rights was approached by a man who complained about the fact that the Capital City of Prague's advertising regulations include exemptions that confer advantages to Prague in comparison with other natural and legal persons. The regulation in question prohibits advertising in a specific area (the Prague Heritage Reservation and the surrounding area) on the grounds of its general inappropriateness in a location of this type; therefore, the person of the advertiser should be of no consequence. The complainant contacted the Ministry of Industry and Trade (MIT), which did not find any problems in the aforementioned exemptions.

My Deputy inquired into the matter and found errors in the procedure of the MIT and the Prague City Hall, whose original verdict was referenced by the MIT in its response to the complainant. The above authorities claim that Prague as the capital city is not and cannot be an entrepreneur in the area of advertising and that the events subject to the exemptions for the benefit of Prague stipulated by the regulation in question did not constitute a support for entrepreneurial activities, meaning no violation of the equality principle could possibly occur. However, my Deputy refuted their arguments and requested that the MIT initiate supervisory steps under Section 108 of the Capital City of Prague Act.



Upon receiving the inquiry report, the MIT came up with a new and unsubstantiated claim that “the law itself is based on the fact that the position of entities in the respective area will not always be equal.” However, this argument was emphatically rejected by my Deputy, who provided reference to the Constitutional Court case law. The inquiry report as well as the final statement were also sent to Prague City Hall in order for the City Hall to consider a remedy by means of an amendment to the relevant regulation.

Following the receipt of the final statement, the MIT requested that the Capital City of Prague, pursuant to Section 108 of the Capital City of Prague Act, ensure remedy of the cited regulation. The Chief Executive of the Prague City Hall subsequently informed my Deputy that the current exemptions will be left out from the prepared amendment of the relevant regulation and, consequently, my Deputy closed the inquiry into this matter.

### C.1.3 Failure of the BSLPC to get the opinion of a minor child (File No. 5288/2014/VOP)

I was also approached by a mother of an adolescent child with a request to inquire into the procedure of the Municipal Authority of Veselí nad Moravou acting as the body for social and legal protection of children (hereinafter the “BSLPC”). The complainant objected that the BSLPC ordered her as the mother to regularly take her daughter to see a psychologist, despite the fact her daughter did not need or want it. The parents have been involved in a long-term conflict.

During my inquiry, I found errors in the conduct of the social worker responsible for deciding in the 15-year-old’s case as she failed to ask the girl for her opinion and did not advise her of the nature of administrative proceedings. However, following the submission of my inquiry report, the BSLPC ensured remedy. It informed the social workers of the conclusions of my report and, subsequently, asked the girl of her opinion on the administrative decision. The social workers visited the girl at school, provided her with the text of Section 8 of the Social and Legal Protection of Children Act, contact details for the educational care centre and a direct telephone number of its expert employee, offered her psychological counselling and asked her for her opinion on this form of help and the general situation in the family.

Based especially on my findings of the girl’s opinion, the Authority initiated administrative proceedings *ex officio* to cancel the decision to order the mother to ensure professional help for her daughter, now 17 years old. As the BSLPC carried out sufficient remedial measures, I closed the case.

### C.1.4 Assessment of inappropriate conduct of a judge (File No. 5398/2016/VOP)

The Defender was approached by a complainant requesting inquiry into the procedure of the vice-chairman of the District Court in Kladno, who was responsible for dealing with complaints against inappropriate conduct of a judge in parole proceedings.

The complainant stated in his submission that the deciding judge allegedly called him a “disturbed” person when determining whether he would lead an orderly life in the future. The complainant felt insulted by this description and filed an inappropriate conduct complaint against the judge. The vice-chairman of the District Court in Kladno dismissed the complaint. The complainant was not satisfied with this outcome and, therefore, filed a



request for the review of the manner his complaint was resolved. The complainant likewise disagrees with the resolution of his review petition by the vice-chairman of the Regional court in Prague.

My Deputy inquired into the case and found that the procedure of the bodies of State Administration of Courts in resolving the complainant's requests was lawful. Parole proceedings have a number of specific features. The point of release on parole is not to automatically release convicts after a certain period on account of good behaviour (or the work performed during the prison sentence), without taking into account the convict's expected future behaviour. Release on parole is only possible if, after taking into account all relevant circumstances, there is a justified reason to expect that the convict will lead an orderly life out of prison and the risk of his recidivism for society is low. The assumption that the convict will lead an orderly life following his release on parole must be justified and based on comprehensive evaluation of the convict's personality and previous results of serving the prison sentence as well as the possibility of his reformation and his personal affairs. If a common court decides that the existence of a positive outlook with respect to the convict's future behaviour is not required, this represents an independent court decision.

A judge in direct contact with the parties to the proceedings and the public should avoid any conduct that could diminish the dignity of his office or jeopardise the trust in independent, impartial and just court decision-making. Under different circumstances, if the judge's comments concerning a party to the proceedings stating that the person is "mentally disturbed" were not based on expert opinion, they could potentially jeopardise public trust in independent, impartial, professional and just court decision-making. However, this was not the case in the matter at hand due to its specific circumstances and the inquiry was thus closed.

#### **C.1.5 Administrative punishment by the Labour Inspectorate (File No. 1147/2015/VOP)**

I examined the filing of a complainant who referred to the inconsistent procedure of the District Labour Inspectorate which, on the basis of the complainant's petition for the inspection of the employer, learned of the breach of the employer's labour-law duties and ordered the employer to remedy the shortcomings ascertained during the inspection. However, the District Labour Inspectorate did not impose any fine on the employer for an administrative offence, not even after inspections carried out repeatedly in the past.

After inquiring into the matter, I concluded there was an error on the part of the District Labour Inspectorate consisting in the failure to initiate administrative proceedings on administrative offences of the employer. I believe that once the District Labour Inspectorate learns of the facts of the case to an extent that allows for a preliminary legal assessment indicating a violation of the law, the District Labour Inspectorate is obliged to initiate administrative proceedings on an administrative offence, regardless of the imposition and potential performance of measures for the remedy of shortcomings ascertained during the inspection. Initiation of administrative proceedings on an administrative offence is therefore not a matter of discretion of the District Labour Inspectorate, but is rather governed by the principle of court-directed (*ex officio*)



proceedings. According to the principle of legality, the District Labour Inspectorate is obliged to investigate into all administrative offences ascertained.

It assesses the existence of the material criteria of an administrative offence only during the course of the initiated administrative proceedings. If the District Labour Inspectorate reaches the conclusion that the criteria were not met, there is no administrative offence and the administrative authority discontinues the proceedings. The District Labour Inspectorate takes into account any potential remedy of a shortcoming or repentance when determining the amount of the penalty only.

As the District Labour Inspectorate disagreed with the conclusions of my inquiry, I issued a final statement in this matter and proposed a remedial measure. Since the Inspectorate accepted the proposed measures subsequently, I concluded the inquiry.

## C.2 Supervision over restrictions of personal freedom and monitoring of expulsions

Within the scope of prevention of ill-treatment and supervision over restrictions of personal freedom, authorised employees of the Office of the Public Defender of Rights (hereinafter “the Office”) performed a total of **five** systematic visits to facilities during the third quarter of 2016.

This year, I focused on visiting **facilities for children requiring immediate assistance**. Employees of the Office visited such facilities in Chomutov, where the facility is operated by the Fund for Children in Need the Veská u Pardubic Children’s Centre.

Employees of the Office also carried out systematic **visits to police cells** in police stations in Mělník, Mladá Boleslav and Litoměřice.

I also organised a **seminar for public curators** from the Pardubice Region (ca. 40 persons), to whom the Office’s lawyers from the department of monitoring of good practice presented cases of good practice in the performance of curatorship.

On 26 September, the employees of the monitoring department **presented the activities of the Czech national preventive mechanism** at an expert conference organised by the Faculty of Law of Charles University at the occasion of the 10<sup>th</sup> anniversary of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In order to ensure professional qualifications and preparation for systematic visits, the monitoring department employees received training in the following areas:

- **psychiatric care;**
- **criminal proceedings leading to the imposition of a protective measure;**
- **case law of the European Court of Human Rights concerning matters of restrictions of personal freedom of mentally handicapped persons.**





The seminars were taught by practising experts including a judge, public prosecutor, psychiatric nurse and lawyers from the office of the Government's Agent for the Czech Republic before the European Court of Human Rights.

### C.3 Protection against discrimination

#### C.3.1 The requirement of non-existence of debts of a job seeker (File No. 7106/2014/VOP)

The complainant who addressed me had applied for the position of a car dealership branch manager. He won the selection procedure, but the employer learned of his insolvency before the execution of the employment contract and refused to employ him. The complainant considered this to be a breach of his right to equal treatment. He addressed the District Labour Inspectorate which found no errors on the part of the employer.

I initiated an inquiry in this matter and examined the procedure of the Inspectorate. I concluded that there was no error on its part that would affect the result of the inspection. However, I noted that the Inspectorate was supposed to advise the complainant of the possibility of a release from the confidentiality duty. While the anonymous inspection did not frustrate the purpose of the inspection in the case of the complainant at hand, this form of inspection could lead to unsatisfactory results in other cases. Advice on the possibility of a release from the confidentiality duty should be a part of the procedure of the Labour Inspectorate bodies in all planned inspections.

As the financial standing is not listed among the discrimination grounds, the Anti-Discrimination Act could not have been breached. With respect to discrimination grounds that are simultaneously not included in the Anti-Discrimination Act, the persons concerned cannot defend themselves by means of an anti-discrimination action within the meaning of Section 10 of the Anti-Discrimination Act. In my opinion, however, there is still a possibility of lodging an action for the protection of personal rights pursuant to the Civil Code.

Generally, I believe that if a job includes the responsibility for managing the employer's funds or planning and monitoring long-term cash flows and operations, the employer may consider the personal situation of a job seeker (personal bankruptcy) to be indicative of his/her abilities that are necessary for the performance of such activities. This, of course, does not mean that an indebted job seeker cannot find a job. The employer should carefully consider its procedure and reasonably apply this criterion only to such jobs where the employee must perform specific activities connected with financial operations.

#### C.3.2 Tuition fees assessed with respect to students with children (File No. 2695/2014/VOP)

I was approached by a university student who asked me to review a tuition fee assessed to her by the university's rector for a time when she was on the parental leave.

Under the Anti-Discrimination Act, a natural person is entitled to equal treatment in education. Equal treatment means active reduction of barriers disadvantaging certain groups of people. This right is further expanded by the Act on Universities, which





stipulates the duty to adopt suitable measures facilitating studies of students with children during their maternal or parental leave. One of these measures consists in the duty to subtract the period of the parental leave from the total length of studies time when assessing the tuition fees.

The rector assessed tuition fee to the complainant for the first semester of her studies. This happened despite the fact the complainant submitted a proof already during the semester that she had been on parental leave from the beginning of her studies. The rector argued that the complainant met the conditions for being assessed a tuition fee already upon her enrolment in studies. At that time, she did not submit a proof of her parental leave to the university.

I came to the conclusion that the rector was supposed to take the complainant's parental leave into account retroactively and not just from the moment when the complainant actually notified it. Had the university done that, it would have complied with its duty to implement suitable measures facilitating studies of students with children and would have upheld the complainant's right to equal treatment.

In my report, I thus concluded that discrimination had occurred. The complainant has already successfully completed her studies. She did not lodge an anti-discrimination action.

I also found an inconsistent practice at various universities and contacted the Ministry of Education, Youth and Sports with a request to provide the universities and colleges with methodological guidance to ensure uniform application of the law.

The Ministry notified rectors of all public universities and colleges that pursuant to the Universities Act, the whole recognised parenting period (i.e. from its outset) is to be subtracted from the total length of studies when assessing the amount of tuition fees. The Ministry asked the universities and colleges to revise their procedures in case their practice was different.

### C.3.3 Accessibility of the TV newscast "Události" for visually impaired persons (File No. 44/2015/DIS)

In the first half of 2015, I received a letter from Czech Blind United (Czech abbreviation: SONS) pointing out the practice of Czech Television which, since 2011, has been broadcasting foreign-language contributions in the main newscast in the original version with subtitles. Until 2011, these contributions had Czech voiceover, which is the standard practice of all other Czech TV channels. According to SONS, this practice is at variance with Article 9 of the Convention on the Rights of Persons with Disabilities, as it prevents visually impaired persons from accessing information.

In the case at hand, the disputed practice of Czech Television consists in translating verbal contributions of foreign-speaking persons in the main newscast (*Události*) solely by means of subtitles. Subtitling is a method of conveying information that is entirely inaccessible to visually impaired persons. Visually impaired persons can use the audio description technology, which is also used in the newscast *Události*. However, this technology can only



be used with the newer models of TV receivers and is not offered by all TV service providers.

Based on my findings, I have reached the conclusion that while Czech Television is not restricted with respect to the content and composition of the newscast, it must simultaneously respect the rights of persons with disabilities. In this case, I noted that the method selected by Czech Television unfavourably affects persons with disabilities. Furthermore, the procedure of Czech Television is not reasonably justifiable. I therefore recommended that Czech Television cease subtitling foreign-language contributions and prefer the voice-over method.

In early September 2016, I had a meeting with the director of Czech Television during which he promised that Czech Television would discuss the issue with SONS. I believe that including visually impaired persons in the process of preparing the newscast could improve its accessibility. In the beginning of 2017, Czech Television should inform me about the result of the discussion with SONS.

## **D. Legislative recommendations and special powers of the Defender**

### **D.1 Action for the protection of public interest against permission to construct a solar power plant**

Both I and my predecessor have provided information on lodging the action for the protection of public interest in 2012 and about the subsequent developments both in the individual quarterly reports for the Chamber of Deputies and in the annual reports on the activities of the Public Defender of Rights for the respective years.

**In July 2016, the Supreme Administrative Court decided with final effect that the permit for construction of a solar power plant in protected bird reserve in the Moldava municipality in Krušné hory was issued unlawfully.** This was upheld by the verdict of the Regional Court in Ústí nad Labem, which cancelled the planning and construction permit on grounds of unlawfulness. **The first ever action lodged by the Public Defender of Rights in public interest thus ended with ultimate success.**

The Supreme Administrative Court dismissed the cassation complaint of the Duchcov Municipal Authority, the defendant, and confirmed that the permit for the construction of a solar power plant had lacked the exemptions and environmental consents required by law. These authorisations did not exist as of the date of issuing the planning and construction permit in 2009, or as of the date when the Public Defender of Rights lodged an action in 2012, and the owner of the power plant does not have them now. Despite that, the plant has been in permanent operation since 2011. Therefore, this is a case of ongoing prohibited activity on the part of the owner, which continues to endanger a specially protected territory.

Furthermore, the solar power plant is located in an undeveloped territory without an approved land-use plan, which also constituted a violation of the Construction Code.

The Supreme Administrative Court also referred to the fact that the permits concerning the power plant were issued as a result of the criminal activities of office clerks, who were



convicted with legal force of misuse of office by a public office-holder for this conduct. The Supreme Administrative Court also pointed out to the pre-eminent interest of the whole society to review the lawfulness of such permits.

In my statement, I proposed to the Supreme Administrative Court to dismiss the cassation complaint, referring to the fact that the interest in generating electricity from this particular renewable source is not a public one. It primarily serves the economic interest of the owner of the power plant. A structure of this type cannot be located in an undeveloped territory without an approved land-use plan and the necessary environmental consents and exemptions.

The Supreme Administrative Court agreed with this conclusion as well. The permits for planning and construction of a solar power plant in Moldava have therefore been cancelled with final effect.

## D.2 Administrative termination of vehicles

In the past quarter, I issued a press report where I provided information on the issue of so-called **administrative termination of vehicles**.

I and my Deputy who addressed the relevant cases within the competence entrusted to him have been repeatedly encountering situations that are undoubtedly caused by errors on the part of the persons concerned, but the current legislation largely hinders or prevents their solution at all.

**Pursuant to Art. II (4)(b) of Act No. 239/2013 Coll.**, amending the Act on the conditions for operation of vehicles on roadways, **a large number of vehicles have been terminated** that were not properly entered or registered in the vehicle register. Although this amendment cleaned the register off long terminated vehicles, it also severely affected tens or hundreds of people, turning their, **usually leased**, vehicles into worthless property. People affected by this Act are aware of their share of fault, as they did not perform all acts required by the laws in due time, but they consider the “punishment” that ensued to be extremely severe, on which we must fully agree with them. The case of a complainant who bought a car for his (physically impaired) parents and did not manage to register the car in time aptly illustrates the whole situation. A car that was roughly three years old was administratively terminated and all attempts to make it available again for use by his parents failed. There are more cases like this.

For this reason, my Deputy sent a letter to the Minister of Transport, inquiring about potential mitigation of consequences of the said laws. Despite the fact that the Minister confirmed that many people address his office requesting to mitigate the harshness of the Act or asking for an exemption, he does not consider such solution to be appropriate and insists that the problems of persons with administratively terminated persons were caused by their negligence in performing the duties imposed by law.

With regard to the fact that these are valid and effective laws, the conduct of the vehicle register in cases of not registering administratively terminated cars cannot be considered unlawful and the Public Defender of Rights is not entitled to request the adoption of any remedial measures. As there are also cases of termination of relatively new vehicles worth



some hundreds of thousands of Czech crowns, **cases may occur of affected owners who will defend themselves before the Constitutional Court after exhausting their remedies.** Choosing this option (after exhausting the ordinary remedies) was also recommended by my Deputy.

I consider the afore-mentioned state of affairs to be serious, which is why acquainted the Chair of the Economic Committee of the Chamber of Deputies with my statement and **asked him to propose a corresponding legislative measure** (in the form of an amendment) **within the discussion of the amendment to the Act on the conditions for operation of vehicles on roadways** (parliamentary press No. 683) that would allow for the mitigation of the consequences of the legislation related to the administrative termination of a vehicle or, in certain specific cases, for the re-registration of such terminated vehicle.

In Brno, on 21 October 2016

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