Veřejný ochránce práv
OMBUDSMAN

Information on activities for the first quarter of 2017

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.

Contents:

A. Number of complaints, inquiries

A total of **2170** complaints were received in the first quarter of 2017, which is **60** more than in the same period last year. I was approached by 1462 persons in matters falling within my competence under the law, which is 79 more than in the first quarter of the past year. **Thus, the proportion of complaints falling within the Defender's mandate increased to 68%** (the figure for the last year was 66%). Most complaints were related to social security (399 complaints); many complaints (159) concerned the area of construction proceedings and spatial planning and also the prison system, police and the army (125).

In **88** of the complaints received, the Complainants claimed unequal treatment by public administration and private individuals. The number of complaints directed against discrimination within the meaning of the Anti-Discrimination Act reached **63**. In **16** cases, we also provided information and analyses related to discrimination to international parties and national bodies.

In the first 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 the performance of administrative expulsion, we monitored **1844** decisions.

B. Further in this report

I have resolved a case of an 18-year-old man who was institutionalised when he was a minor. After coming of legal age, **he entered into an Agreement on Voluntary Stay with the children's home**. He terminated the Agreement after six months, left the children's home and also withdrew from his studies. However, he changed his mind and wished to return to the home and resume his studies. The employees told him that he could no longer return.

I was also approached by a father in whose case **the body of social and legal protection of children** (BSLPC) **refused to submit an application to adjust his personal contact with his daughter**. The BSLPC was the *curator ad litem* of his daughter. **Court proceedings lasted for over two years.**

I examined a case where parents came to a hospital for a planned operation of their two children (less than 2 years old and 3.5 years old). They had an Agreement with the hospital that the father would remain with the children after the operation. **In the end, the hospital only offered the mother and grandmother to stay with the children in the hospital** and referred the father to its accommodation facility.

The Prison Service did not allow a convict to leave prison for the purpose of attending the funeral of his brother and did not duly justify its rejection.

In thousands of cases, the President and Vice-president of the Regional Court in Ostrava **removed the parties to the proceedings from the jurisdiction of their statutory judge** without *ad hoc* assessment of admissibility and outside of the rules of the schedule of work.

Within the prevention of ill-treatment and supervision over restrictions of personal freedom, authorised employees of the Office performed a total of **5 systematic visits to facilities** and **6 expulsion monitoring trips** during the first quarter of 2017.

C. Defender's activities

C.1 Public administration

C.1.1 Effective use of the statutory powers of the Czech School Inspectorate (File No. 4525/2015/VOP)

The Complainant had long been dissatisfied with the practices of some teachers and the head teacher at the school attended by her son. For this reason, she lodged a complaint against the school with the Czech School Inspectorate (hereinafter the "CSI"). Since the CSI agreed with the Complainant only partially, the Complainant lodged another complaint. In this case, the CSI found most points of the complaint to be justified and the Complainant was basically satisfied with the result of the inspection. However, she argued that the findings of errors by the CSI had no practical impact, the situation at the school remained unsatisfactory and the founder of the school (Municipal Authority) refused to take appropriate action.

As it is not within my competence to review the conduct of teachers or the head teacher of an elementary school (except for discrimination claims) or the actions of local government (which includes activities of the Municipal Authority as the founder), I focused solely on reviewing the CSI's practices. I have specifically examined whether the CSI efficiently used all of its statutory powers within the scope of the inspection activity carried out at the school.

During my inquiry, I found out that the CSI, in relation to the Complainant's new application to inspect the school's conduct, repeatedly carried out inspections pursuant to Section 174 (5) or (6) of the Schools Act (investigation of a complaint). During such investigation, the chief responsibility for taking remedial measures, adopted in the event of identification of errors, lies with the founder to whom the CSI submits the results of its inspection for further proceedings. However, the CSI could have proceeded in the regime of Section 174 (2) of the Schools Act (the so-called "state inspection") in response to the Complainant's new application instead of performing the so-called "investigation of a complaint." Such a procedure would be beneficial in that the CSI would have wider set of powers at its disposal, allowing it to directly contribute to remedying the situation at the school (in particular the possibility to impose fines on the head teacher in case he/she would fail to remedy the ascertained shortcomings).

Therefore, I came to the conclusion that the CSI should have reacted by carrying out a state inspection pursuant to Section 174 (2) of the Schools Act. All the more so that based on the Complainant's earlier complaints, the CSI had to be aware of her objections against insufficient activity of the founder in adopting remedial measures at the given school. By its conduct, the CSI breached the principle of effectivity of a good governance.

Furthermore, I found out that the CSI had partially remedied said error when it had carried out another inspection at the school (this time pursuant to Section 174 (2) of the Schools Act) during which it had focused, among others, on the implementation and effectiveness of remedial measures adopted at the school in relation to the previous inspection activity. I

deemed such measure to constitute an adequate remedy of the situation and I closed my inquiry.

C.1.2 Issuance of a parking card to the owner of a real estate located in a parking zone (File No. 7744/2016/VOP)

The Complainant complained against the procedure of the town of Znojmo in processing her application for issuance of a parking card that would have allowed her to park her vehicle in the paid parking zone defined by a municipal regulation. In her complaint, the Complainant stated that she owned a specific real estate in the city. The city informed her that pursuant to the regulation concerning the issuance of parking cards, only a natural person with his/her permanent address within the defined area was allowed to apply for the issuance of a parking card. As the Complainant does not have a permanent residence in the defined area, the Municipal Authority rejected her application for the issuance of a parking card.

Pursuant to the Roads Act, a municipality can issue a regulation defining zones for the purpose of organisation of traffic, in which the local roads or portions thereof can be used to park a road motor vehicle belonging to a natural person who has permanent address or owns a real estate within the defined zone for a price agreed in accordance with price regulations.

The cited legal provision cannot be applied in the sense the right to buy a parking card is granted only to a certain group of people. In other words, if a municipality decides to define an area for residential and subscription parking, it cannot exclude from the system a group of people referred to in Section 23 (1)(c) of the Roads Act.

During the inquiry, my Deputy notified the mayor of the fact that according to the applicable laws, the Complainant had the right to be issued a parking card as it was clear that she owned a real estate within the defined area. Following the Deputy's notice, the Municipal Authority began preparing a new regulation that would provide for paid parking and issuance of parking cards in accordance with the applicable wording of the Roads Act. Currently, the Municipal Authority is ready to issue parking cards to any potential applicant who owns a real estate within the defined area. The Complainant was directly informed in writing that should she be interested, she would be issued a parking card, on the basis of which my Deputy closed the inquiry.

C.1.3 Return to a children's home (File No. 15/2017/VOP)

I dealt with a case of an 18-year-old man who was ordered institutional care by court when he was a minor. After coming of legal age, he entered into an Agreement on Voluntary Stay with the children's home. He stayed at the home for about six month on the basis of said Agreement, then he terminated the Agreement and left the children's home. At the same time, he withdrew from his studies. The director of the children's home provided him with accommodation in a halfway home and paid him a one-off financial contribution. However, the Complainant changed his mind after a short time, wished to return to the children's home and resume his studies. He approached me when the children's home employees told him he could not return to the children's home.

I recommended to the Complainant to resume his studies, which he did. The director of the facility was subsequently advised that should she fail to enter into the Agreement with the Complainant, she would be in breach of legal regulations. The Institutional Care Act stipulates that the agreement with a dependant who is continuously preparing for his/her future career (i.e. he/she is a student) can be entered into at any time within one year of the termination of institutional or protective education of a minor, provided that the facility does not exceed the maximum allowed number of children in the facility. In this way, the law creates a certain protective period for students coming of legal age who leave the facilities for institutional and protective care, allowing them to return to the facilities. At the same time, it holds that according to the law, the director of a facility is not obliged to pay a severance (one-off financial contribution in the sense of Section 33 of the institutional Care Act) to dependents leaving the facility following termination of their voluntary stay. The director of the facility thus does not have to worry about a potential misuse of repeated conclusion of an agreement for the purpose of financial enrichment of a young adult.

The director of the children's home in question was grateful for the legal interpretation of the unclear legislation and subsequently entered into a new Agreement on Voluntary Stay with the Complainant. The Complainant returned to the children's home and I closed my inquiry.

C.1.4 Construction and technical survey (passportisation) (File No. 7192/2015/VOP)

The Complainants notified the Municipal Authority of Týn nad Vltavou of the existence of several non-permitted structures. These included a 55-year old well, a pipe from the same time that had been used to bring water from the well into a family house, and a pipe constructed in 2003 to drain water from the house into the river. The pipes lead through the land of Complainants who disagree with their placement. No documentation of the structures or a construction permit where they would be expressly mentioned was preserved.

However, according to the Municipal Authority, it was not possible to prove that the structures were not permitted. On the contrary, it was likely that the structures were permitted and constructed in the 1960's along with, and in relation to the use of, the family house. According to the Municipal Authority, the drainage pipe was merely "reconstructed" in 2003, i.e. the old pipes were removed and replaced with new ones. The Municipal Authority thus refused the Complainants' request and did not initiate proceedings on the removal of non-permitted structure. Instead, it verified the simplified documentation (passports) of the well and both pipes, which replaced the missing original documentation of the buildings.

In his report on the inquiry, my Deputy found that the Municipal Authority made several errors in verifying the passports. Even though neither of the pipes was a water work, the Municipal Authority dealt with them from the position of a water-law authority lacking substantive competence; a construction authority should have been acting in its place. The Municipal Authority did not inspect the structures in the field, failing to discover defects affecting the passports. My Deputy also pointed out that it was not sufficiently proven whether a brand-new drainage pipe had been constructed in 2003, or whether the original

drainage pipe had merely been reconstructed. However, if the reconstruction included removal of the original pipe and its replacement with a new pipe of the same diameter, made from identical material and laid along the same route, then such "reconstruction" constituted construction of a new structure, which was not permitted by the Construction Authority in 2003. An error was also made by the Regional Authority of the South Bohemian Region, which failed to remedy the incorrect procedure of the Municipal Authority.

The Municipal Authority admitted it had caused defects of the process of passportisation. It agreed with my Deputy in his opinion regarding the drainage pipe and stated it would no longer consider it a water work. However, both the Municipal Authority and the Regional Authority maintained that the pipe connecting the well with the family house was a water work. My Deputy therefore issued a final statement. He proposed that the Municipal Authority repeal the statement through which it verified the structures' passport by means of a resolution pursuant to Section 156 (2) of the Code of Administrative Procedure. Subsequently, the Municipal Authority repealed the notice. However, as the Regional Authority did not respond to the final statement and the Municipal Authority again disagreed with the opinion of my Deputy regarding the nature of the pipe connecting the well with the family house, the Deputy notified the Ministry of Agriculture. Simultaneously, he asked it to make a statement regarding the question of whether the pipe was a water work. The Ministry subsequently confirmed the stance of my Deputy, i.e. that the pipe bringing water from the well into the family house was not a water work but a general structure. The opinion of the Ministry was then submitted to the relevant authorities and the inquiry was closed.

C.1.5 Taking account of overpayments for utilities (File No. 4932/2016/VOP)

I was approached by a Complainant who referred to considerable differences in the amount of individual quarterly housing allowances; for the third quarter of 2016, she was granted a housing allowance in the amount of CZK 3,051, even though she received a higher overpayment for utilities in the decisive period than in the previous quarter when the housing allowance amounted to only CZK 1,949.

Having carried out an inquiry, I found that the amount of overpayment for the supply of electricity was not returned to the Complainant by the energy supplier, but was used to settle advance payments for the decisive period and future periods outside the decisive period.

The Labour Office thus erred as it took into account the overpayment for electricity, which the energy supplier did not return to the Complainant, when determining the amount of the housing allowance, which is at variance with the Section 25 (3) on the State Social Assistance Act. By taking the overpayment in account, the housing allowance was in fact granted in a smaller amount than what the Complainant was eligible to.

In response to my inquiry report, the Labour Office initiated proceedings on granting a contribution towards a the housing allowance benefit for the second quarter of 2016 and then issued a decision on granting a contribution towards the benefit in the amount of CZK 1,851 for the period from April to June 2016. After this, I closed the inquiry.

C.1.6 Incorrect procedure, inherent bias (File No. 3210/2014/VOP)

The Public Defender of Rights was approached by a Complainant requesting an inquiry into noise coming from a restaurant located below her flat; the Complainant objected to both the excessive noise from the establishment and its facilities and to the regular music performances taking place there. The Complainant claimed that the Construction Department of the Prague 1 Municipal Authority (hereinafter the "Construction Authority") was not sufficiently strict in addressing the lack of discipline and failed to act.

During the inquiry, my Deputy found that the Construction Authority, when taking a decision on the additional approval of a structure, did not accept the condition of prohibition of organisation of music performances on the premises, which was included in the binding statement of the Public Health Station of the Capital City of Prague as the relevant body for the protection of public health. At the same time, the Construction Authority made procedural mistakes when it made decisions regarding this fault of the building pursuant to different provisions of the Construction Code than those relevant to this matter. It did so repeatedly, despite the advice provided by the superior body, which caused unjustified delays in the case. Furthermore, in relation to the repeated findings of insufficient air noise-proofing, it failed to investigate whether the conditions for ordering necessary changes to the building are met. It was also demonstrably inactive in certain proceedings (for instance, in the proceedings on imposing a fine for an administrative offence). My Deputy considered it alarming that the Construction Authority failed to remedy the situation for over four years.

Considering that the Prague 1 City Ward acted as the landlord of the relevant non-residential premises and judging from other circumstances, there was a justified suspicion that the facts of the case and the result of the proceedings might have been influenced by its economic interests. For this reason, my Deputy recommended that the Municipal Authority of the Capital City of Prague as the superior body authorise some other subordinate body having subject-matter jurisdiction within its administrative district to address and make a decision in the matter due to possible inherent bias of all public officials of the Prague 1 Municipal Authority. The superior body accepted the recommendation and said procedure was subsequently confirmed by the Ministry for Regional Development during appeal proceedings. The inquiry was then closed.

C.1.7 The inactivity of the BSLPC during court proceedings on the extension of a father's personal contact with his child (File No. 6874/2015/VOP)

The Complainant requested an inquiry into the procedure of the Prague 10 Municipal Authority (acting as the body for social and legal protection of children, hereinafter the "BSLPC") in the performance of curatorship *ad litem* with respect to the child. The BSLPC refused to grant the father's request and to lodge a petition for interim arrangements concerning his personal contact with his daughter. The court kept rejecting father's petition in this matter.

During my inquiry, I found that the BSLPC was inactive when, as a *curator ad litem*, it failed to strive for interim extension of the daughter's personal contact with her father, which would have been in line with the recommendations of court experts. The BSLPC merely observed as the scope of father's personal contact with his child remained limited despite

the experts' recommendations, even two years after the expert report was issued. At the time of my inquiry, the court has satisfied the father's petition to extend the contact.

Subsequently, the Prague 10 Municipal Authority adopted the following measure: The social worker's discretionary extra pay was decreased for one month. At the same time, the BSLPC agreed that the period during which the court proceedings were pending was so long that it should have attributed a greater importance to this aspect and be active. Finally, an analysis of the case will be the topic of a supervision.

I concluded that the remedial measures were adequate and closed the inquiry.

C.1.8 Air pollution (File No. 5124/2016/VOP)

The inquiry concerned a complaint about incorrect procedure of the administrative authorities in the matter of investigation of a facility that operated without having obtained a permit to operate pursuant to the Air Protection Act. The application was based on a complaint that the facility continued its operation without having obtained a valid permit to operate a source of air pollution as the final permit issued by a Regional Authority had been revoked in review proceedings and a new permit was not yet obtained even though the operator had applied for it. In this respect, the Complainant pointed out that, pursuant to the Air Protection Act, such source of air pollution might be operated only on the basis of and in accordance with a permit to operate issued pursuant to the said Act. The Air Protection Act states that in case the operator operates a source of air pollution listed in the act without a permit to operate, the Czech Environmental Inspectorate (hereinafter the "Inspectorate") shall decide on terminating the operation of said source.

So far, the Inspectorate approached the termination of operations of a source of air pollution rather pragmatically and took the facts of the case at hand into account, reflecting the operator's attempts to obtain the permit and the actual impact of the operations on the surrounding environment. The Inspectorate and the Ministry of the Environment therefore attempted to overcome the shortcomings of the legislation regarding the termination of operations of a source of air pollution through a procedure that would take the specific facts of each individual case into account.

The Public Defender of Right perceives the concept of termination of operations pursuant to Section 22 (2) of the Air Protection Act in its current form (*inter alia*, the impossibility to impose a "mere" limitation of the source's operations under the currently applicable legal regulations, as was possible in the past, and the suspensive effect of an appeal, which is not allowed by the law) as an important and strong legal instrument for prevention applicable in cases of clearly excessive breach of the air protection legislation on the part of the source operator. In this context, the use of said concept should be reserved for ascertained serious cases which fully justify and substantiate such application. It is up to the air-protection body to reliably infer (and justify) such facts of the case in the proceedings on the termination of operations.

During the proceedings, my Deputy received an information that the Inspectorate imposed a fine on the operator for breaching the Air Protection Act and, at the same time, issued decision on the termination of operations. The purpose of the inquiry was achieved as both

the Complainant's application to issue a decision on the termination of operations and the application to address illegal conduct by penalty proceedings were satisfied by the Inspectorate.

Regarding the shortcomings of the currently applicable legal regulations concerning the termination of operations of a source of air pollution, my Deputy welcomed that the Minister of the Environment took the conclusion of the inquiry into account and ordered the Air Protection Department and the Legislation Department to prepare a draft legislative change that would remedy the shortcomings.

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 also referred to as the "Office") performed a total of **5** systematic visits to facilities during the first quarter of 2017 and **6** expulsion monitoring.

I have initiated a series of systematic visit of **psychiatric hospitals** with emphasis on the execution of protective treatment. During the first quarter, I appointed the employees of the Department of Supervision over Restrictions of Personal Freedom to visit Psychiatric Hospitals in Opava, Horní Beřkovice and Havlíčkův Brod. Furthermore, the employees performed a systematic visit to the **police cells** in Hlučín and the **children's home** in Čeladná.

On 7 March, the Office held a round table with the representatives of a facility for children requiring immediate assistance, who were visited by authorised employees of the Office during the last year. My generalised findings and recommendations, which I am going to publish as a Summary Report, were presented to the participants. The Office also organised a **seminar for public curators** from the Liberec Region, to whom the Office's employees presented good practice in the area of curatorship.

The prevention of ill-treatment was ensured by employees of the Department of Supervision, who presented the work of the Public Defender of Rights at **seminars for the students** of the Faculty of Law and the Faculty of Social Studies of Masaryk University and the Faculty of Law of Palacký University in Olomouc. On the other hand, the employees of the Department of Supervision **gained experience** in the area of working methods in the area of national preventive mechanisms at a seminar held in Strasbourg and in the area of monitoring forced returns of third-party nationals at a seminar held in Budapest.

C.2.1 Conditions for the performance of protective treatment; placement in an isolation room; strict regime measures (File No. 4174/2016/VOP)

I have initiated an inquiry on my own initiative to investigate the conditions for performance of protective treatment, specifically the justification and scope of regime measures, the justification and scope of placement in an isolation room, exercise of the right of access to the courts, handling of personal belongings and the behaviour of the hospital's medical staff after the patient's inclusion in one of the so-called remote monitoring groups.

The psychiatric clinic made an error when it unjustifiably placed and kept the patient in an isolation room, moreover under undignified conditions, and when it needlessly kept him under a regime of remote monitoring, limited activities and limited therapeutic action. Unjustified, prolonged and time-unlimited keeping of a patient under a remote monitoring within which he or she had to conform to a strict regime measures, including a stay in an isolation room, made such an impact on the personality and human dignity of the patient that I evaluated it as ill-treatment.

In its statement to the report, the psychiatric clinic stated that it could not refute some of the points given in the report However, it did not dispute my findings and assessments. The psychiatric clinic promised to take measures to prevent such errors from re-occurring. I subsequently closed the inquiry.

C.3 Protection against discrimination

C.3.1 "Concluding Registered Partnership in the Czech Republic" survey

One the occasion of **the anniversary of the adoption of the Registered Partnership Act** in 2006, I decided to take a closer look at the situation in the Czech Republic as a state regarding the respect for registered partners ten years after the adoption of the Act. Therefore, I focused on the issue of conditions that need to be met in order to conclude a registered partnership and on the obstacles that need to be overcome.

All fourteen registry offices authorised to accept declarations on concluding a registered partnership in the Czech Republic were included in the survey. I monitored their declared procedure of accepting declarations on concluding this type of union and compared it with the procedure of concluding marriages. The survey is mostly based on the public data available on the websites of the individual registry offices. In case of unavailability or ambiguity of the data, individually customised questionnaires were sent to the Heads of Registry Departments of the individual City Halls or City Wards/District Authorities for the sake of supplementing the data.

The survey revealed that most registry offices with the power to officiate made no differences between registered partners and spouses. I have found unjustified limitations regarding the possibility to change the place and time of the ceremony regarding concluding partnership in three regions. The registry offices themselves consider the current legal regulation to be questionable. Therefore I decided to **hold a round table on 7 June 2017** where I would discuss the possibilities to improve the legal regulations and close unintended gaps.

The entire survey is available in electronic form at www.ochrance.cz.

C.3.2 Recommendations for equal access to compulsory school education (File No. 14/2017/DIS)

First version of the recommendation was issued in January 2016 in reaction to the growing number of complaints and queries received by the Defender in 2016 from parents, non-profit organisations and local governments. I obtained the underlying documents for the

creation of the recommendation both as a result of my own activities (by investigating specific complaints) and from cooperating with the Czech School Inspectorate.

The legal regulations regarding education went through a major change in the autumn of 2016, and so it was necessary to update the original recommendation. The current recommendation is based on the legal situation as of 20 February 2017.

The recommendation evaluates the most common criteria used by head teachers to make decisions on admission to elementary schools. An integral part of the recommendation is a closer look at the procedure applied by head teachers in the actual process of accepting or refusing a child.

The objective of my recommendation is, in particular, to assess criteria in terms of compliance with the Schools Act and the Anti-Discrimination Act and their application to various groups of children, especially from and outside the "catchment area". The recommendation also contains instructions for assessing individual criteria and for pursuing administrative proceedings on (non)acceptance to primary education.

Recommendation is available in electronic form at www.ochrance.cz.

C.3.3 Entitlement to severance pay of an employee receiving pension (File No. 7077/2015/VOP)

The Complainant worked for a single employer for 36 years. Pursuant to the collective bargaining agreement, employees who worked for over thirty years were entitled to a severance pay in the amount of fourteen times the average monthly salary. However, the agreement made an exemption for employees who already became entitled to old-age pension. Those were only entitled to the statutory severance pay. The Complainant lodged an action in the matter and approached me when the Supreme Court was to decide on her application for appellate review.

I reached a conclusion that the contested provision of the collective bargaining agreement could violate the principle of equal treatment and could constitute discrimination on the grounds of age.

If the purpose of the severance pay is to indemnify the employee for a unilateral termination of the employment and reward the employee's loyalty, then the contested provision treats people in a comparable situation differently and is potentially discriminatory. No objective ground justifying the difference of treatment on the basis of the nature of the work arose from materials at my disposal. In addition, the difference of treatment is not appropriate. The contested provision thus cannot be classified as a permissible difference of treatment pursuant to Section 6 (3) of the Anti-Discrimination Act. The Complainant submitted my statement to the Supreme Court as a documentary evidence.

The Supreme Court granted the Complainant's application for appellate review (21 Cdo 5763/2015-124). It ruled that the severance pay as it was agreed upon in the collective bargaining agreement represented a certain kind of reward (benefit) for the employee's long-term work. Reasons that led the employer to discriminate against a certain group of

employees on the grounds of age could not be deemed justifiable and the means used could not be deemed adequate. The Supreme Court annulled the ruling of lower courts on account of variance with the prohibition of discrimination in remuneration on the grounds of age and returned the case to the District Court for further proceedings.

C.3.4 A father's stay with his children at a hospital (File No. 3973/2015/VOP)

I was approached by parents who complained against discrimination on the grounds of sex at the Motol University Hospital which did not allow the father to stay at the hospital as an accompanying person to children of 3 and less than 2 years of age during their hospitalisation. The hospital merely offered the father to stay in an accommodation facility. Only the mother and grandmother were offered to stay at the ward. The hospital justified rejecting the father by stating that there was another mother with her child accommodated in the room and the hospital was required to ensure hospitalisation of men and women in separate rooms.

I have reached the conclusion that the hospital was guilty of discrimination on the grounds of sex by failing to consider the possibility of father's stay with the hospitalised children and insisted that the accompanying person had to be female. Because the stay of legal representatives in a medical facility together with hospitalised children does not constitute hospitalisation, the rule stipulating the obligation to separate males from females in separate rooms shall not apply *ipso facto*.

Therefore I recommended that the hospital apologise to the Complainants, amend the materials regarding the provision of accommodation for parents of hospitalised children so that it would be clear that the service applies to both parents and define situations in the house rules when only the mother, or the father of the hospitalised children is allowed to stay at the ward (usually in cases when there is only a multi-bed room available, which is already occupied by an accompanying male or female who does not wish to share the room with a person of opposite sex).

The hospital did not acknowledge its error regarding the Complainants' case, but it amended the house rules of the ward in such manner to support accompanying persons of children regardless of the accompanying person's sex. At the same time, the hospital states that only accompanying persons of the same sex may be accommodated in the same room. If the hospital fails to provide accommodation due to operational or capacity reasons, it will offer the option to stay in an accommodation facility.

D. Legislative recommendations and special powers of the Defender

D.1.1 Disciplinary action

I have initiated **an inquiry in the matter of ordering insolvency incidental litigations** by the President of the Regional Court in Ostrava. I have issued an inquiry report on 16 December 2016 and sent it to the Court President to provide a statement; the Court President did not make any statement regarding the report. **The Court President rejected Public Defender of Right's mandate to inquire into the matter** and because, according to the President, the inquiry was not concerned with the protection of persons (parties to the proceedings) from

an unlawful conduct of authorities, the report did not have any legal effects and she could not deal with it any further.

In the course of my inquiry, I concluded that in thousands cases, **the Court President and Vice-President removed parties from the jurisdiction of their statutory judge** without assessment of admissibility of such a measure, arbitrarily, outside of the rules of the schedule of work, without consent of the entire court's administration and without cooperation with the judicial board. They assigned large amounts of files to incidental judges at once, in an unpredictable and irregular manner, and thus made organisation of their work more difficult.

Considering the **very serious findings of fact** I adopted an option of last resort on 24 February 2017 and pursuant to Section 8 (3)(c) of Act No. 7/2002 Coll. on proceedings in matters of judges, public prosecutors and court distrainers, as amended, **and filed an application for initiating disciplinary proceedings against the president and vice-president of the Regional Court in Ostrava** on the grounds of disciplinary misconduct pursuant to Section 87 (2) of Act No. 6/2002 Coll. on courts, judges, lay judges and state administration of the judiciary, as amended.

D.1.2 Comments on the amendment to the Legal Profession Act

Even though I consider the work on legal regulations, which would improve the accessibility of legal assistance for all who need it, to be necessary, **I unfortunately cannot agree with the submitted Draft Act in number of aspects.**

I already stated my disagreement with the draft substantive intent of the Act to introduce a regulatory fee (newly called regulatory compensation) in the amount of CZK 100 for a legal assistance in the form of oral discussion. I consider the introduction of a (regulatory) fee to be superfluous as I think that the abuse of said form of legal assistance will be adequately addressed by the expected time limit (maximum of 120 minutes per calendar year).

I have also expressed my disagreement with the intention to let the Czech Bar Association decide on the provision of legal assistance at the expense of the state (free legal assistance). As I already stated in my comments to the draft substantive intent, I consider the most suitable body for making such decision to be the public administrative body which is supposed to conduct or already conducts the administrative proceedings, as is the case with court proceedings. It would result in improved satisfaction of the right to legal assistance.

I also had a fundamental disapproving comment regarding the proposed range of providers of legal assistance in administrative proceedings, which is to consist exclusively of attorneys-at-law. I still believe that there is no reason for the state-guaranteed legal assistance in administrative proceedings to be provided exclusively by attorneys-at-law, as this task can in many cases be equally fulfilled by other entities (e.g. tax consultants in tax matters or non-governmental organisations in matters of consumers, domestic violence, environment or foreigners).

Having regard to fundamental shortcomings of the entire submitted document, I **suggested the submitter to rewrite it**.

Brno, 24 April 2017

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