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Public Defender of Rights

ANNUAL REPORT 2018

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FOREWORD BY THE PUBLIC DEFENDER OF RIGHTS

The Annual Report is a key document issued by the Defender to inform the Chamber of Deputies of her activities and findings in the previous calendar year. Its purpose it to remind the lawmakers of the problems that people face in their lives, areas where improvements are needed and situations where people's rights are being violated. In short, it brings relevant topics to the attention of the legislature.

This Report summarises my fifth year in office. It was a year when we were able to achieve remedies and help many people who asked us for support, and we also succeeded in changing the authorities' approach to certain situations, thus preventing the same problems from appearing again in the future. Over the year, some of our legislative recommendations from previous years were gradually put into practice. Certain promises made by the Government in the past are taking shape and are being transformed into draft legislation, but this is not always so. It appears that some of the contemplated bills only offer partial solutions to the problems we have brought to light.

The Defender's work is never done. New topics again appeared last year that must be addressed. Therefore, I submit to the Chamber of Deputies my recommendations for legislative amendments concerning the most serious problems which I encountered repeatedly and which cannot be solved otherwise than by changing the relevant laws and regulations, which could help scores of people.

In 2018, I gained a new competence which allowed me to focus more closely on problems faced by people with disabilities. Our society owes a debt to those people, especially in terms of ensuring availability of support and services which enable them to live independently and with dignity. In this regard, it perhaps comes as no surprise that the number of complaints received in the area of social security also grew significantly in 2018.

For me personally, the 2018 Report has a special significance as it is the last one submitted during my term in office. The next report will be presented by my successor. While it is still too early to reflect on my term in office, I should note that I am glad that the parliamentarians have so far mostly listened to my recommendations and accepted them. A majority of legislative amendments I wished to carry through have already been enacted, are currently under preparation or have been acknowledged as necessary. This clearly shows that the Defender's recommendations carry some weight. I believe this will be true in the years to follow.

I hope you find this an interesting read.

Anna Šabatová, the Public Defender of Rights
18 February 2019

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

1 RECOMMENDATIONS TO THE CHAMBER OF DEPUTIES, RELATIONS WITH CONSTITUTIONAL BODIES AND SPECIAL POWERS

JUDr. Stanislav Křeček
Deputy of the Public Defender of Rights

Legislative recommendations

Defender's recommendations for 2018

1/ Remote inspection of an administrative file

The Defender inquired into an inconsistent and highly varied approach of administrative authorities to the interpretation and implementation of the right of parties to various proceedings to inspect administrative files by remote means (through correspondence), which follows from the right to obtain copies. Remote inspection enables people to obtain information from the file – to which they are entitled – without having to appear at the office in person. The Defender's inquiry (File No. 2600/2018/VOP) found that the administrative practice was quite inconsistent. Some administrative authorities do provide (send) documents from administrative files but others refuse to do so, believing no such right exists under the Code of Administrative Procedure.

The Defender informed the Ministry of the Interior as the authority responsible for the Code of Administrative Procedure of her findings and requested methodological guidelines to unify the inconsistent (and hence unlawful) practice. The Defender believes that the right to remote inspection follows even from the current wording of Section 38 of the Code of Administrative Procedure. However, the Ministry of the Interior refused the Defender's arguments and noted that the right to remote inspection of the file with the associated duty of administrative bodies to send copies of the file did not follow from the Code. The Ministry cannot see any problem in the inconsistent administrative practice either.

The Defender is of the opinion that remote inspection would expedite proceedings and increase their efficiency. It would make it easier for parties to proceedings to learn about the contents of the file in cases where travelling to the office is difficult (see Defender's press release of 7 December 2018).

This solution is fully in line with recent efforts to make public administration more "user-friendly", especially in terms of digitalisation and eGovernment initiatives. It is necessary to remove barriers in the relationship between citizens and public administration, which exists primarily to serve them.

By the end of 2018, the Defender thus contacted the Government of the Czech Republic with a legislative recommendation to amend the Code of Administrative Procedure in order to explicitly incorporate the right to remote inspection of files into Section 38 (4) (File No. 15/2017/SZD). Regrettably, the Government rejected the recommendation in January 2019.

Nevertheless, the Defender is convinced that her interpretation is correct. Following unsuccessful attempts to reach an agreement with the Ministry, however, the Defender came to the conclusion that the difference in legal opinion should best be settled by means of a legislative amendment that would explicitly incorporate the right to remote inspection into the relevant law.

Consequently, the Public Defender of Rights recommends to the Chamber of Deputies to introduce a Deputies' motion to amend Section 38 (4) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended, by adding after the words "or its part" the following: "and the duty of the administrative authority to send copies of the file or its parts to persons indicated in paragraphs 1 and 2 at their request".

2/ Classification of unauthorised use of means of restraint in healthcare as an infraction

The use of means of restraint in provision of healthcare services restricts the patients' freedom of movement and constitutes a serious interference with their dignity and integrity. For this reason, means of restraints may only be used strictly under the conditions set out in the law (Section 39 (2) of Act No. 372/2011 Coll., on healthcare services). The law sets a number of further duties – provision of information, recordkeeping and observance of the required regime – on healthcare services providers regarding the use of means of restraint (Section 39 (3) and (4) of the Healthcare Services Act), where the principal aim is to reduce the risk of abuse in practice. Under current legislative rule, unauthorised application of means of restraint and failure to comply with other duties related to their use by a healthcare services provider cannot be punished as an infraction.

Given the potential severity of the interference with the integrity and the right of freedom from ill-treatment caused by the use of means of restraint, the Defender does not consider the potential defence in civil litigation (an action for the protection of personal rights) a sufficient form of protection. The State must appropriately punish – and thus deter – those violations of legal regulations that might result in serious interference with a fundamental human right. The Defender is thus of the opinion that unauthorised use of means of restraint should be legally classified as an infraction (as is already the case in the area of social services). Similarly, a possibility should exist within administrative proceedings to punish healthcare services providers for violations of other related duties.

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision (the Healthcare Services Act), as amended, introducing a new body of infraction to punish unauthorised use of means of restraint and non-compliance with other duties of healthcare services providers related to the use of means of restraint.

3/ The amount of remuneration for a foster parent temporarily caring for a child assessed as falling in dependency degree 2 to 4

Effective from 1 January 2018, the amount of benefits awarded to foster parents (fostering allowance) was adjusted in relation to an amendment to the Social and Legal Protection of Children Act.

The Defender believes the legislative change introduced an unfair inequality in the amount of fostering allowances – a "long-term" foster parent who cares for a single child assessed as falling in dependency degree 2 to 4 is entitled to receive an allowance in the amount of CZK 30,000. A temporary foster parent in an identical situation is, however, only entitled to CZK 20,000, which is an amount identical to the one awarded for care for children who are not dependent on care of another individual, and even to foster parents who do not currently have foster children to care for. The introduction of a flat rate for temporary fostering allowances represents the lawmaker's abandonment of the original concept which was to ensure that the amount of allowance corresponded to the demands of care. The Defender believes that the aforementioned situation is undesirable.

By adopting the Convention on the Rights of Persons with Disabilities, the State agreed to protect equal rights of children with disabilities to live in a family environment and to provide services and support to disabled children and their families. Supporting measures can assume various forms. The purpose of foster care is to provide care for a child for a temporary period until the child can return to live with the parents or their family, or until the child's situation is otherwise suitably resolved. Foster care for a temporary period of time is thus a transient instrument and an alternative to institutional care. For a limited period of time, foster parents help prepare conditions for the child's return to the original family or the child's transfer to other forms of substitute family care.

According to the Defender's findings (File No. 1313/2017/VOP), even prior to the effect of the aforementioned amendment, children with disabilities had a far lower chance of being placed in temporary foster care compared to non-disabled children. The amendment only makes their situation even more difficult.

The Defender regrets that such a far-reaching change was not discussed within a proper inter-departmental commentary procedure. The original

Government's bill submitted to the Chamber of Deputies (7th electoral term, Document of the Chamber No. 854/0) did not include the omission of increased allowance for temporary foster parents caring for disabled children. The problematic provision was incorporated into the draft amendment only during the 2nd reading of the bill in the Chamber of Deputies based on a Deputies' motion.

The current increased rate of temporary fostering allowance was defined as follows: a half of the basic fostering allowance was added to the basic amount of temporary fostering allowance. The basic amount of temporary fostering allowance under applicable laws equals CZK 20,000; the basic amount of fostering allowance equals CZK 12,000. According to the original proposal, a temporary foster parent taking care of at least one child assessed as falling in dependency degree 2 to 4 should be entitled to receive an allowance in the amount of CZK 26,000.

The Public Defender of Rights recommends to the Chamber of Deputies to include, by means of a Deputies' motion, new subparagraph (e) into Section 47j (1) of Act No. 359/1999 Coll., on social and legal protection of children as amended, in the following wording:

"(e) CZK 26,000 if the foster parent cares for at least 1 child entrusted to him or her for a temporary period of time and the child is dependent on care of other individuals in degree 2 (medium dependence), 3 (high dependence) or 4 (complete dependence)."

4/ Publishing court decisions in a public database

The Czech Republic, unlike many other European countries (including Slovakia), does not provide the public with a sufficient access to (anonymised) court decisions. While 2002 saw the Instruction of the Ministry of Justice No. 20/2002-SM, regulating the publishing of decisions of superior and regional courts in a public online database, the Defender's survey (File No. 4292/2015/VOP) revealed that lower courts rarely published their decisions. Providing for publishing of court decisions merely in a Ministry's instruction can hardly be deemed sufficient as the Ministry lacks effective means of enforcing it.

Publication of case law serves to increase transparency of decision-making and facilitates public control over the courts; it is also important to ensure predictability of law (as anticipated by Section 13 of the Civil Code) and thus uphold the principle of legal certainty. Publishing of court decisions can also significantly contribute to unification of case law. This is one of the reasons why the European Commission sees public access to court decisions as one of the key indicators for evaluation of the judiciary in the European Union. The ranking for 2016 placed the Czech Republic as one of the worst performers in comparison to other countries.

The Defender thus considers it important for the public database of court decisions to be actually filled by the courts and thus serve the above-mentioned functions. One of the key requirements for achieving that goal is to include the court's duty to publish their decisions directly in the Courts and Judges Act. Further organisational and technical measures related to operating the database of court decisions are currently being discussed between the Defender and the Ministry of Justice.

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 6/2002 Coll., on courts, judges, lay judges and State administration of the judiciary and on amendment to some other laws (Courts and Judges Act), as amended, introducing into the Act the duty of courts to publish their decisions in a public database.

5/ Fee for lodging an application with the Office for the Protection of Competition to initiate ex officio review of contracting authority's procedure

The Public Procurement Act entered into effect on 1 October 2016. As part of the proposed amendments suggested by the Office for the Protection of Competition, certain provisions were incorporated in Section 259 of the Act, introducing a fee of CZK 10,000 for an application to initiate ex officio proceedings with respect of each challenged public contract.

Section 259 of the Public Procurement Act thus introduced a fee for mere filing of an application for review, i.e. information provided by the applicant to the administrative authority that something potentially unlawful or illegitimate is taking place within the area of its competence. The fee is rather high, reaching nearly the amount of net minimum wage, and is applied indiscriminately with no exemptions or possibility of waiver. The citizens are thus paying an administrative authority funded from the public budget for helping it carry out its duties. The law does not even allow for a refund of the fee if the application is found substantiated, i.e. not even in the case where the citizen pointed out a demonstrably unlawful procedure on the part of the contracting authority.

Similarly, this provision excludes the application of the Administrative Fees Act, which means that the Office for the Protection of Competition also requires the payment of the fee from administrative authorities reporting maladministration identified as part of overseeing the activities of their subordinated bodies.

The Defender believes that the current legal rules for lodging applications with the Office for the Protection of Competition contradict the principle of officiality, which means it (like other supervisory bodies) is obliged to initiate proceedings when a circumstance anticipated by the law arises, regardless of how it learns about it. Indeed, the duty of the Office is not only to decide on specific disputes within proceedings initiated on application, but also to oversee the procurement environment as a whole (with the exception of small-scale contracts).

The introduction of the fee led to a significant decrease (93.5%) in the number of resolved applications (i.e. applications where the fee was paid and the Office subsequently inquired into the matter) from 2016 and 2017. The number of applications filed by non-profit organisations fell to single digits. The new legal provision thus aims to significantly reduce public control exercised by citizens and non-profit organisations and results in a decreased transparency of public contracts.

The Public Defender of Rights recommends that the Chamber of Deputies amend, by means of a Deputies' motion, Act No. 134/2016 Coll., on public procurement, as amended, by repealing its Section 259.

6/ Advice on the right to lodge court action against an administrative decision

Having regard of the constitutionally guaranteed right to exercise one's rights before an independent and impartial court (Article 36 of the Charter of Fundamental Rights and Freedoms; Art. 6 (1) and Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms), the Defender believes that for this right to be truly effectively exercised, all final administrative decisions should contain advice as to the possibility to file a legal action against the administrative decision in order to prevent expiry of the right to judicial protection due to ignorance of the law.

An example of good practice can be found in the procedure of the Czech Social Security Administration and several other cases where administrative authorities mandatorily provide advice about the possibility to lodge an administrative action, to comply with the Czech Republic's obligations under EU law (customs proceedings, detention of foreign nationals).

The duty to provide advice on possible administrative action has also already been introduced by other EU countries, e.g. Slovakia incorporated this duty in its Code of Administrative Procedure in 2004.

Providing mandatory advice would not carry an excessive financial or administrative burden. It would consist in a single standardised sentence added to the existing advice on the inadmissibility of lodging an appeal.

Similar recommendation was already delivered to the Chamber of Deputies by the previous Defender, Pavel Varvařovský, in the Annual Summary Report on the Defender's activities in 2011. The aforementioned recommendation was also included in the Defender's Annual Summary Reports for 2012 and 2013.

The Chamber of Deputies' resolution adopted in 2014 acknowledged the Defender's recommendation and requested that the Government address it. In the same year, the Government then agreed with the recommendation and undertook to propose this modification as part of the next suitable amendment to the Code of Administrative Procedure. Over the past 4 years, the Government has failed to deliver on its promise.

The Defender therefore recommends to the Chamber of Deputies to make the following amendments by means of a Deputies' motion:

1. add into Section 68 of Act No. 500/2004 Coll., the Code of Administrative Procedure, after paragraph 5, new paragraph 6 of the following wording (including footnote):

"(6) A non-appealable decision shall include advice on whether it is possible to lodge a court action pursuant to a special legal regulation,[1] the deadline for lodging the action, the date from which the deadline is counted, and the court holding substantive and local jurisdiction to accept and hear the action."

Former paragraph 6 shall be designated as paragraph 7.

2. add into Section 181 of Act No. 361/2003 Coll., on the service relationship of members of the security corps, as amended, after paragraph 6, new paragraph 7 of the following wording (including footnote):

"(7) A non-appealable decision shall also include advice on whether it is possible to lodge a court action pursuant to a special legal regulation,[2] the deadline for lodging the action, the date from which the deadline is counted, and the court holding substantive and local jurisdiction to accept and hear the action."

Former paragraphs 7 and 8 shall be designated as paragraphs 8 and 9.

3. add into Section 247 of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, after paragraph 1, new paragraph 2 of the following wording (including footnote):

"(2) The deadline is deemed met if the action was filed after the lapse of the two-month period because the applicant proceeded according to incorrect advice provided by the administrative body.[3] If an administrative body's decision does not contain advice on the possibility to lodge an action, the deadline for doing so, or identification of the court where it is to be lodged, or if the decision contains incorrect advice on the admissibility of lodging a court action, the action may be filed within 3 months of the delivery of the administrative decision."

Former paragraph 2 shall be designated as paragraph 3.

4. add into Section 72 of Act No. 150/2002 Coll., the Code of Administrative Procedure, as amended, new paragraph 5 of the following wording (including footnote):

"(5) The deadline is deemed met if the action was filed after the lapse of the two-month period, unless a special law specifies a different deadline, because the applicant proceeded according to an incorrect advice provided by the administrative body.[4] If an administrative body's decision does not contain advice on the possibility to lodge an action, the deadline for doing so, or identification of the court where it is to be lodged, or if the decision contains incorrect advice on the admissibility of lodging a court action, the action may be filed within 3 months of the delivery of the administrative decision."

By the end of last year, the Defender again reminded the Government of its commitment. However, in January 2019, the Government only repeated its general statement that it would take her recommendation (File No. 25/2018/SZD) into account when submitting the next suitable amendment to the Code of Administrative Procedure.

7/ Handling complaints against the procedure of healthcare services providers

If patients are dissatisfied with healthcare services provided, they can file a complaint against the healthcare services provider. The complaint is to be delivered to the healthcare services provider, who is also responsible for its proper resolution within the statutory period. Only providers of in-patient

1 Act No. 150/2002 Coll., the Code of Administrative Justice, as amended. Part Five of Act No 99/1963 Coll., the Code of Civil Procedure, as amended.

2 Act No. 150/2002 Coll., the Code of Administrative Justice, as amended.

3 Section 68 (6) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

4 Section 68 (6) of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

or one-day care are obliged to set up internal rules for handling complaints. These rules ensure that a complaint is not handled by the healthcare worker against whom the complaint is directed.

In cases where a complaint is directed against a healthcare services provider who is a single physician (e.g. a general practitioner), the physician has to handle the complaint against him/herself by him/herself. The Defender believes that such a way of organising the complaint procedure is ineffective and inappropriate. It is often the case that physicians themselves are often unsure about how to handle such a complaint and do not proceed according to the law.

The Defender is of the opinion that the most effective way for the patients to achieve a more effective and quicker response to their complaints in the case of out-patient care is for the law to stipulate the option to send the complaint either to the healthcare provider (current procedure) or directly to the administrative authority which registers the physician.

Another problem affecting the effectiveness of complaint proceedings consists, in the Defender's opinion, in unnecessary restrictions regarding the administrative authority's access to the patient's (complainant's) medical documents. When handling a complaint against a healthcare services provider, the administrative authority usually needs to access the contents of the patient's medical documents, e.g. to provide them to an independent expert/independent expert commission. According to the current legislation, the administrative authority first has to ask the complainant for consent to inspection of his or her medical documents. If the complainant does not grant it, the administrative authority may terminate the inquiry.

The Defender believes that the duty to ask for consent is superfluous as the complainants are obviously aware of the fact that the administrative authority will have to learn about the contents of their medical files, i.e. the basic material necessary for handling the complaint. Requesting the complainant's consent and insisting on all its requisites can needlessly prolong the complaint proceedings. For this reason, the Defender proposes that the administrative authority should have the right to inspect the complainant's medical documents without his or her written consent in relation to handling a complaint against a healthcare services provider.

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 372/2011 Coll., on healthcare services and the conditions for their provision (the Healthcare Services Act) , as amended, which would:

— stipulate that lodging a complaint against a provider of out-patient care with the administrative authority which authorised that provider to provide healthcare services does not depend on an unsuccessful previous complaint lodged with the provider,

— add to Section 65 (2)(b) that the patient's medical documents may be inspected to the necessary extent without the patient's consent provided that this is in the patient's interest or necessary for another reason following from this Act or other legal regulations, by persons carrying out tasks of the relevant administrative authority in relation to an investigation into a complaint; and abolish Section 94 (2) without replacement.

8/ Change in the provision of reasonable satisfaction in money for intangible damage caused by discrimination

Pursuant to Section 10 of the Anti-Discrimination Act, courts award satisfaction in money to discrimination victims if other solutions (refraining from further discrimination, remedying its impacts, apology, etc.) are not sufficient to compensate interference with the victims' human dignity, good reputation or respect in society. This is a claim of subsidiary nature, which is at variance with EU law and case law of the Court of Justice of the European Union, indicating that as a rule, financial satisfaction should be awarded to discrimination victims in each case.

Although the government proposed the necessary amendment to Section 10 of the Anti-Discrimination Act, it withdrew it in 2017. The Czech case-law shows that the amendment is still necessary. The courts either do not award compensation for intangible damage at all or they disproportionally reduce it with reference to Section 10 (2) and (3) of the Anti-Discrimination Act. Such a court award thus ensures neither prevention, nor satisfaction or a sanction.[5]

This is true in spite of the fact that the Civil Code does include rules compliant to the requirements of EU law and case law (Sections 2956 and 2957). For this reason, it would be helpful to ensure compliance of Section 10 of the Anti-Discrimination Act with the Civil Code by making sure that the Anti-Discrimination Act refers to the Civil Code with regard to determination of the manner and amount of reasonable satisfaction.

The Public Defender of Rights recommends that the Chamber of Deputies amend, by means of a Deputies' motion, Section 10 of Act No. 198/2009 Coll., the Anti-Discrimination Act, as amended, to replace the existing paragraphs 2 and 3 by new paragraph 2 in the following wording, including footnote:

"(2) The manner and amount of reasonable satisfaction is governed by provisions of civil law." [5)]

9/ Transparent pay and salaries as a prerequisite for fair remuneration

The Labour Code guarantees the right to fair remuneration. One of only a few limitations the employers face in determining the remuneration of their employees consists in the ban on unjustified differentiation between individual employees. If two employees carry out the same work equally well, they deserve equal remuneration. While the law has protected the employees for many years now, this right is rarely claimed in court as the employees are often unaware of the employer's unlawful conduct. Access to information is a basic prerequisite for ensuring that employees can achieve fair remuneration – either through negotiation with the employer or in court. Greater awareness on the part of the employees can also increase pressure on raising salaries for worst-paid jobs. However, the existing legislation essentially does not ensure transparency of remuneration at all and many employers actively try to prevent the information on salaries from spreading by including clauses in employment contracts binding the employees to keep the amount of their salary confidential.

Unfair remuneration can affect employees for various reasons (e.g. employees ask for low remuneration during the job interview, new employees receive better salary without the same benefit being extended to existing employees, etc.). Unequal remuneration often affects groups of employees who are disadvantaged on the labour market, especially people with disabilities, older employees or women returning from a maternity leave. Transparent remuneration is also necessary in terms of gender equality. This was stressed by the European Commission (Commission Recommendation 2014/124/EU of 7 March 2014), which recommended that the Member State adopt measures in this area. While some Member States started taking specific steps, the Czech Republic has done nothing.

The Defender believes that the Czech legislation should explicitly establish a nullity of legal acts through which employees undertake to maintain the amount of their remuneration confidential. Transparency would also be boosted if the employers had the duty to indicate the salary offered in their jobs advertisements, disclose on an employee's or trade union's request the average remuneration of men and women carrying out the same work (without indicating specific salaries of the individual employees); larger employers

5 Sections 2956 and 2957 of Act No. 89/2012 Coll., the Civil Code, as amended.

should be obliged to regularly publish information on differences in their employees' remuneration. Failure to meet these duties would exclude the organisations from participating in public contracts.

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Act No. 262/2006 Coll., the Labour Code, as amended, Act No. 435/2004 Coll., on employment, as amended, Act No. 251/2005 Coll., on labour inspection, as amended, and Act No. 134/2016 Coll., on public procurement, as amended, incorporating measures towards greater transparency in remuneration.

10/ Modification of Czech language examinations for children with different first languages

The existing legal regulation of entrance examinations and school-leaving ("maturita") examinations is excessively strict with respect to children with different first languages as they have to pass the examinations on the same difficulty level as native speakers of Czech. Despite minor concessions, many of these children find it nearly impossible to pass such examinations. Successful secondary education is key for people's future employment and integration into society.

Successful passing of the two examinations requires mastering the Czech language on a cognitive or academic level, which is very different from everyday language of communication that suffices for the purposes of everyday life and most jobs. According to available scientific data, mastering the academic form of the Czech language usually takes non-native speakers at least 5 to 7 years.

Legislation relating to the unified entrance examination in the Czech language (Section 20 (4) of Act No. 561/2004 Coll., the Schools Act) stipulates that the examination can be waived in respect of person who attended the entire primary education abroad. In case of these students, the necessary language skills are established on the basis of an interview. The prepared amendment to the Schools Act expands the waiver option also to persons who have attended school abroad for at least three out of previous six years. In the common part of the maturita examination in the Czech language, students who studied abroad for at least four out of eight previous years may ask for more time to complete the test and to use a bilingual dictionary and a dictionary of standard written Czech.

However, neither of the two accommodations reflects the proficiency level required and especially the time needed (according to scientific data) to pass the exam. If foreign-language students only attain primary (or secondary vocational) education, they will likely only have access to low-skilled jobs carrying lower social prestige. This may lead to their frustration, stigmatisation and even social exclusion with ramifications reverberating through the entire society. For this reason, it is necessary to ensure that foreign-language students are enabled to successfully pass through the education system – otherwise, the society would be needlessly wasting the intellectual, educational and labour potential these people can offer.

The Public Defender of Rights recommends that the Chamber of Deputies invite the Government to submit a draft amendment to Section 20 (4) of Act No. 561/2004 Coll., on pre-school, primary, secondary, higher vocational and other education (the Schools Act), as amended, to change the exemptions related to the unified entrance examination in the Czech language and the common part of the maturita examination in the Czech language in order to take into account the period necessary to master the language at the required proficiency level, i.e. 5 to 7 years.

Evaluation of recommendations for 2016 and 2017

The Government has responded in detail (Report on implementation of recommendations for legislative changes put forward by the Public Defender of Rights in the 2017 Annual Report) to the Defender's individual legislative recommendations proposed in the Annual Reports for 2016 and 2017, in relation to their discussion in the Chamber of

Deputies (Resolution of the Chamber of Deputies No. 292 adopted on 28 June 2018, 16th session). In the following text, the Defender takes note of the Government's response and evaluates the progress achieved in implementation of the individual legislative recommendations in the period from their submission to the Chamber of Deputies to the end of 2018. With regard to one of the recommendations, the Defender decided to propose further steps to the Chamber of Deputies to achieve its successful implementation.

Recommendations for 2017

1/ Exemption from real estate acquisition tax should also apply to residential units in private homes

The Defender recommended to exempt residential units in private homes from real estate acquisition tax, since the generally applied non-exemption currently leads to unjustified different treatment of tax entities. The exemption is applied to private homes as a whole and to residential units in large residential buildings. This discrepancy was created by the tax administration's insistence on narrow interpretation of the law. By contrast, the Defender believes that exemption from tax can be inferred even from the current wording of the law. In order to promote legal certainty on the part of tax entities, the Defender thus proposes to amend Statutory Measure of the Senate No. 340/2013 Coll., on real estate acquisition tax, to explicitly exempt residential units in private homes from real estate acquisition tax and use a transitory provision to extend the amendment's effect also to cases where the ownership title to a residential unit is acquired before the amendment comes into effect.

In response to the Defender's recommendation, the Government pointed to the Deputies' bill submitted to the Chamber of Deputies (8th electoral term, Document of the Chamber No. 179/0) which it had supported and which corresponded to the Defender's recommendation, except for the transitory provision establishing the law's retroactive effect. The Government prefers to apply the existing regulation to tax obligations arising prior to the effect of the amendment.

The Defender generally welcomes the proposed amendment, but is concerned that without the transitory provision proposed by her, the unjustified inequality between individual taxpayers in a similar situation will persist as the acquisition of residential units in private homes will continue being subject to taxation in the period from 1 January 2014 to the effective date of the amendment. For this reason, the Defender recommends to introduce a motion to amend the discussed Deputies' bill in order to add the transitory provision.

The Public Defender of Rights hereby recommends that the Chamber of Deputies introduce a motion to amend the discussed Deputies' bill amending Statutory Measure of the Senate No. 340/2013 Coll., on real estate acquisition tax, as amended by Act No. 254/2016 Coll. (Chamber of Deputies, 8th electoral term, Document of the Chamber No. 179/0), to add a transitory provision of the following wording:

"Statutory Measure of the Senate No. 340/2013 Coll., as amended by this amendment, shall apply to tax liabilities concerning real estate acquisition tax, as well as the related rights and duties, arising prior to the date of effect of this Act, unless the tax liability has already been assessed by a final decision of the tax administrator."

2/ Obligatory registration in the Special Registry

The Defender recommended to adopt legislation abolishing the obligation to present in any official dealings a certificate issued by the Special Registry ("zvláštní matrika") of the City Ward Authority of Brno-Centre. This requirement applies to Czech citizens and to foreigners who entered into a marriage or registered partnership with a Czech citizen abroad, and poses a significant obstacle in the process of obtaining personal documents. The Defender believes that the Czech legislation goes against the EU trend to reduce formal requirements on presenting documents in official dealings and their automatic recognition among the Member States.

The Government disagrees with the Defender's recommendation and believes that the Special Registry serves a good purpose and that the obligation to present a Special Registry certificate is less intrusive than having to submit a properly authenticated and translated document issued by another jurisdiction. The Government also emphasised the expertise of the employees of the Special Registry and its unifying

role in overseeing transcriptions from foreign languages. The Government is aware of the growing number of submissions, but this is being addressed by increasing the staffing of the Special Registry.

The Defender emphasises that the main motivation behind her recommendation is to reduce the overly long process of issuing passports for children born abroad. Meanwhile, the existing regulation became even stricter due to the introduction of the duty to present a certificate issued by the Special Registry in each case where the law specifies the duty to produce a document issued by an official registry. The Defender disagrees with the assertion that the existing regulation is less of a hassle for the citizens than authenticating and translating documents issued abroad since citizens must undergo all these steps anyway. Ordinary registry offices also come into regular contact with foreign documents, and therefore the Defender rejects the Government's arguments referring to the impossibility to guarantee the professional expertise of staff outside the Special Registry and their unifying role in foreign language transcription. A comparison with other countries shows that passports for children born abroad are issued much faster. The Defender is of the opinion that further strengthening of the Special Registry will not address this systemic problem.

3/ Sterilisation as a precondition for administrative gender reassignment in cases of transgender persons

Based on a complaint received against a mandatory surgery associated with sterilisation and modification of sex organs as a prerequisite for administrative gender reassignment, the Defender recommended to amend Act No. 89/2012 Coll., the Civil Code, and Act No. 373/2011, on specific healthcare services, to abolish these conditions for administrative gender reassignment.

The Ministry of Justice has already submitted a bill enabling administrative gender reassignment without the need to undergo a sex reassignment surgery. Both Defender's suggestions were accepted within the bill's commentary procedure. Discussions are currently ongoing with regard to important suggestions raised by other institutions. The Defender appreciates the helpful approach of the Ministry of Justice and fully agrees with the proposed bill in its current form as it corresponds to the requirements following from case law of the European Court of Human Rights (AP, Garçon and Nicot v. France (application nos. 79885/12 and others, judgment of 6 April 2017) and resolutions of the European Committee of Social Rights (resolution of 15 May 2018, no. 117/2015).

4/ Proceedings on reimbursement of certain healthcare services from public health insurance

Neither Act No. 48/1997 Coll., on public health insurance, nor any other special law or regulation specifies the insurance companies' procedure with regard to an insured person's application for reimbursement. According to administrative courts, the procedure constitutes administrative proceedings and the Code of Administrative Procedure thus applies. However, given the circumstances, this is not necessarily in the interest of an insured person wishing to quickly obtain a decision and access to health care. Moreover, health insurance companies often do not apply the Code of Administrative Procedure to the full extent, contrary to the conclusions of administrative courts.

The Government noted that it was aware of the lack of procedural uniformity and that it was working on a solution. A working group on a draft amendment to the Public Health Insurance Act was set up and the employees of the Office of the Public Defender of Rights participate in its activities. The bill should be submitted to the Government by June 2019 and come into effect by 1 January 2020. The Defender welcomes the activity of the Ministry of Health to implement the recommendation.

5/ Reclassification of interference with personal dignity in provision of social services as an infraction

Clients of social services facilities are often very vulnerable and can be exposed to interference with their privacy, safety and integrity or other forms of degrading treatment. Such conduct does not necessarily reach the intensity of a criminal offence, but still constitutes a serious interference with human dignity; the State is obliged to protect citizens against such conduct and punish it effectively where it occurs. The Defender has thus recommended to amend the legislation in order to introduce a body of infraction in order to punish unlawful conduct against clients of social services.

The Government fully agreed with the recommendation and promised to introduce a punishable infraction of unlawful interference with the privacy, safety and integrity of clients of social services in 2019 via amendment to Act No. 108/2006 Coll., on social services.

Recommendations for 2016

1/ Supervision by the Public Prosecutor's Office in other detention facilities

The Defender recommends to introduce the supervisory powers of the Public Prosecutor's Office in respect of the facilities for detention of foreigners, reception centres and psychiatric hospitals providing forensic treatment. In relation to the first two types of facilities, the Defender's recommendations were accepted by the Government and supervisory powers of the Public Prosecutor's Office were incorporated into the Government's bills amending Act No. 326/1999 Coll., on the residence of foreign nationals, and Act No. 325/1999 Coll., on asylum, submitted to the Chamber of Deputies (8th electoral term, Document of the Chamber No. 203/0). Preparations for the legal regulation of supervisory powers of the Public Prosecutor's Office with regard to forensic treatment in psychiatric hospitals have not started yet. The Government is not opposing such supervision, but considers it necessary to determine whether the Public Prosecutor's Office has sufficient staff and resources to manage the expanded scope of non-crime-related responsibilities.

The Defender reminds that the supervisory powers are not new powers conferred on the Public Prosecutor's Office; they merely represent an implementation of powers envisaged by Act No. 283/1993 Coll., on the Public Prosecutor's Office, that have so far lacked authorisation through a special law. The Defender emphasises that the absence of an independent supervisory authority with adequate powers means that the Czech Republic fails to create conditions for compliance with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Legislative implementation of supervisory powers of the Public Prosecutor's Office is thus deemed essential.

2/ Patient's right to file a complaint about healthcare in social services facilities

If clients of social services facilities receive professional healthcare, they are unable to pursue complaint proceedings under Act No. 372/2011 Coll., on healthcare services, if they are dissatisfied with the care received. Indeed, under the current legal regulation, only patients of registered healthcare services providers (typically hospitals) may lodge complaints with the provider against the quality of care, and have the provider's procedure reviewed by administrative authorities, if appropriate. In most cases, social services facilities are not registered as healthcare services providers since providing healthcare is not conditional on a valid licence granted by the registering authority; it is sufficient for a social services facility to simply notify the fact that some healthcare is provided.

The Government promised in its statement to prepare a draft of a broader amendment to the Healthcare Services Act. According to the Government's plan, the provision of healthcare services in social care facilities should be linked to an authorisation to provide healthcare services issued by the registering authority. The possibility to use the complaints mechanism pursuant to Sections 93 to 94 of the Healthcare Services Act would thus also encompass healthcare in social care facilities. While the Government agrees with the Defender's recommendation, it has not set any specific timeframe for its implementation, and notes that the submission of the aforementioned amendment depends on a consensus within the expert community.

3/ Allowance v. increasing minimum salary

The Defender has received, in the long term, a number of complaints concerning problematic calculation of the compensation for a loss of earnings after the end of a period of unfitness to work or in case of granting a disability allowance ("renta") in connection with an accident at work or occupational disease to aggrieved employees registered with the Labour Office. Calculation of the allowance was based on the fiction of earnings at minimum salary level, which was, however, used differently by the insurance companies. If the minimum salary increased, the allowance paid to many persons decreased or they lost it altogether.

This issue was only partially solved by an amendment to Act No. 262/2006 Coll., the Labour Code, which – effective from 1 October 2018 – calculates the amount of compensation for a loss of earnings on the basis of the amount of minimum salary valid as of the day when the aggrieved job applicant was first entered into the register of jobseekers, instead of the attained earnings. The amendment ensures that the amount of fictitious earnings will no longer change with the increase of minimum salary, thereby unifying the insurance companies' procedure. The Defender notes that the amendment does not affect those becoming eligible to receive the allowance prior to 1 January 2007. In their case, the probable earnings will still be assessed, i.e. earnings in the amount of the current minimum salary, whose increase will continue to diminish the amount of allowance. The amendment also introduced a significant

inequality among the individual beneficiaries of the allowance, who will "forever" be subject to different fictitious earnings based on the date of their first registration in the register of jobseekers. Therefore, the Defender is of the opinion that the partial adjustments of the rules for calculating the allowance do not constitute a sufficiently comprehensive solution as they only help some beneficiaries while causing impermissible inequality with respect to others; the entire system should be completely reformed.

4/ Independent complaints mechanism in social services

The Defender recommended to create an independent complaints mechanism to protect the rights of social services clients by investigating complaints against the quality of social services. She noted the vulnerability of social services clients, the seriousness of the harm that can occur to them and the insufficiency of the existing supervisory mechanisms to address their individual rights. Each client should be entitled not only to receive social services in accordance with the basic principles of Act No. 108/2006 Coll., on social services, and fundamental human rights and freedoms, but also to effective defence in cases where a service is at variance with the defined principles and standards. The Defender suggested to make regional authorities responsible in this area, similar to the existing complaints mechanism in the area of healthcare services. The Government's response to the Defender's recommendation indicated that the Government, too, perceives the need to strengthen the rights of clients of social services, but nonetheless disagrees with entrusting this responsibility to regional authorities due to their potential conflict of interest. The Ministry of Labour and Social Affairs subsequently promised to the Defender that it would prepare a draft amendment to the Social Services Act in 2019, introducing the required complaints mechanism also in the area of social services, where the Ministry would handle the client's complaints itself. The Defender agreed with the proposal put forward by the Ministry.

The Defender and the Parliament

Chamber of Deputies

On 28 June 2018, the Chamber of Deputies discussed the Annual Report on Activities of the Public Defender of Rights in 2017 (Document No. 134), asked the Government to address some of the legislative recommendations put forward by the Defender and inform the Chamber of Deputies of its further steps in this regard.

The Defender continued working closely with the Chamber of Deputies, especially through its individual Committees and by co-operation with individual Deputies.

Petition Committee

The Petition Committee discussed the Defender's Annual Report for 2017 and the individual quarterly reports, including reports on cases where the Defender had not achieved remedy even after using all her statutory procedures, as well as the national account for 2017 and the budget of the Office of the Public Defender of Rights for 2019.

The Committee also actively inquired into the selected areas of the Defender's activities, studied the individual Defender's legislative recommendations and was interested in her opinion on the Government's response to these recommendations (see Evaluation of recommendations for 2016 and 2017, p. 15).

Public Administration Committee and the Committee on Legal and Constitutional Affairs

The Defender approached both of these committees in relation to the Deputies' motion to amend the Population Records Act (Document of the Chamber No. 19), introducing the requisite of written consent of the real estate owner to the registration of a person's permanent address. The Defender informed them of the experience of many citizens (complainants) who are unable to register their permanent address at a place where they live because they are afraid of the landlord's reaction. She thus informed the committees about the risks posed by the amendment, i.e. deterioration of existing problems resulting from the growing

discrepancy between citizens' official and actual addresses of residence. The Public Administration Committee recommended to reject the amendment.

Social Policy Committee and its subcommittee

The Defender informed the committee about her activities in selected areas. She subsequently contacted the committee during the discussion of two Deputies' motions to amend the Assistance in Material Need Act (Documents of the Chamber Nos. 89 and 99). She informed the committee of the practical problems caused by the indiscriminate payment of a part of the subsistence support in vouchers, introduced by the previous legislative change (Act No. 98/2017 Coll.). Despite the undisputed benefits of the later changes and the Defender's comments, some unfair impacts of the legislation on specific persons in material need were not addressed, notwithstanding the considerable administrative demands of the whole process (for more information, see Chapter 03 Social security, p. 41).

The Defender informed the Subcommittee for Social Services and Persons with Disabilities about her activities in the new area of her competence, i.e. monitoring the protection of rights of people with disabilities (since 1 January 2018).

Senate

On 18 July 2018, the Senate discussed and took due note of the Annual Report on Activities of the Public Defender of Rights in 2017.

Committee on Legal and Constitutional Affairs Committee for Education, Science, Culture, Human Rights and Petitions

These two committees closely monitor the activities of the Public Defender of Rights and discuss her annual reports.

Communication with individual Deputies and Senators

The Defender appreciates that the Deputies and Senators make use of their right to convey to the Defender the complaints they receive from individuals, and that they are actively interested in the real-world impact of laws on society. In these areas, the Defender is able to provide valuable insights and information.

The Defender and the Government

The Public Defender of Rights advises the Government whenever a ministry fails to adopt adequate measures to remedy a certain failure or general maladministration. The Defender may also recommend that the Government propose the adoption, amendment or abolishment of a law, or adopt, amend or abolish a Government regulation or resolution. In 2018, the Defender proposed to the Government two amendments; she also twice reported the Ministries' unlawful practices. The Defender regards her participation in commentary procedures as a simplified form of legislative recommendations provided to the Government.

Recommendations to amend laws

Remote inspection of an administrative file (through correspondence)

The Defender identified a non-uniform procedure of administrative offices in dealing with requests to inspect a file by remote means (sending documents by post or electronically). Some offices grant these requests, some do not and insist on the presence of the person during inspection and copying of the file. The Ministry of the Interior refused to issue methodological guidelines to unify the procedure. For this reason, the Defender asked the Government to make remote inspection of files unambiguously possible by adding into the Code of Administrative Procedure the right of parties to proceedings to have the administrative authority send them the file or its part. The Government rejected the recommendation (for more information, see Legislative recommendations, p. 8).

File No. 15/2017/SZD of 3 December 2018

Advice on the right of a party to proceedings to lodge a court action against an administrative decision

Each person has a right to be heard by an independent and impartial court. Final administrative decisions usually only contain advice on the impossibility of appeal. The recipients are thus often unaware that they can lodge a court action against the decision and fail to do so in time. To prevent the expiry of the right to judicial protection due to ignorance of the law, the Defender recommended that the Government introduce the duty of administrative authorities to advise parties to proceedings of their right to lodge a court action against the administrative decision. The Government rejected the recommendation (see Legislative recommendations, p. 11).

File No. 25/2018/SZD of 17 December 2018

The Defender's notifications to the Government

Unlawful procedure of the Ministry for Regional Development in reducing subsidies

The Defender found several instances of malpractice in reduction (non-payment) of subsidies. Moreover, the relevant decisions were issued by the Centre for Regional Development, which was not authorised to do so as the Ministry may not delegate decision-making without a basis in law. Nevertheless, the Ministry refused to declare its decisions null and void and took no further steps to remedy the situation. Furthermore, the mistaken opinion of the Ministry, if persistent, could serve as an example for other subsidy providers. For this reason, the Defender informed the Government.

The current legislative rules should stop similar cases of maladministration in the future.

File No. 10/2018/SZD of 23 April 2018

Unlawful procedure of the Ministry of Education, Youth and Sports in reviewing school-leaving ("maturita") examinations

The Defender has been monitoring the procedure of the Ministry in reviewing maturita examinations in the long-term and, already in 2012, criticised the process for its formalistic approach to test reviews. An inquiry carried out in 2016, comprising an analysis of 500 cases, confirmed that the problems were persisting.

The Ministry did not ask the students to specify their complaints about how their tests had been assessed. In cases of organisational incidents, the Ministry failed to properly establish the facts – it did not ask the students present, but rather only the persons who could themselves have committed errors. The Ministry did not provide the students with all materials and did not enable them to issue a statement prior to making a decision. The decisions often lacked a proper reasoning and up to one third of the responses were formulaic (addressed issues not raised by the student and did not respond to specific complaints). Proper handling of requests for review was not provided for by the decree on maturita examinations, nor other documents of the Ministry. The situation may have also resulted from the lack of staff at the Ministry.

The Defender informed the Government of the systemic unlawful practices and requested a remedy. The Government tasked the minister to consult the Defender and respond to the Defender's criticism (Government Resolution No. 462 of 18 July 2018).

The Ministry first rejected most of the criticism, pointing out that it had already changed its practice. The Defender thus reviewed a sample of 350 cases of examinations reviewed in spring 2018. The results confirmed that the practice had not changed significantly over the previous three years. Furthermore, it was found that the Ministry was not keeping proper records of the requests for review.

The Ministry subsequently admitted that certain critical remarks were justified and promised to remedy the situation (amendment to the maturita examination decree and the instructions to schools; more specific reasoning in decisions; inspection of evidence used to issue a decision; adjustment of the students' results portal, and amendment to the instructions for the review guarantors).

File No. 13/2018/SZD of 27 June 2018

The Defender's suggestions to the Government

84 suggestions were provided by the Defender in relation to **18** materials of the Ministries

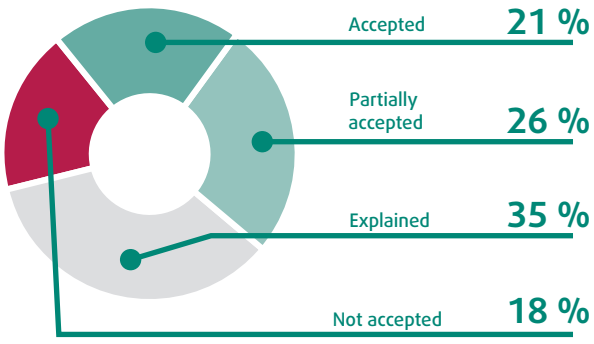
In 2018, the Public Defender of Rights raised a total of 84 suggestions concerning 18 materials of the Ministries (of which 15 were draft pieces of legislation). The submitters have so far responded to two thirds of the suggestions and they at least partially accepted almost one half (47%) of the suggestions; differences persist with respect to 18% of suggestions. The Defender was successful especially with those suggestions she considered absolutely crucial or crucial. The success rate of the suggestions raised slightly decreased in comparison to the previous year.

In 2018, the Defender commented on 18 drafts (as compared to 18 in 2017, 25 in 2016, 34 in 2015 and 30 in 2014). She was successful in about one half of the cases – 21% of the suggestions were accepted fully, while 26% were accepted at least partially (as compared to 32% and 18%, respectively, in 2017).

The Defender commented, inter alia, on the draft Act on Compensation for Damage Caused by Mandatory Vaccination, draft amendment to the Forests Act, and draft amendment to Local Fees Act.

The overview of results only includes the suggestions to which the submitters have already responded.

Resolution of suggestions provided within commentary procedures in 2018



The Defender and the Constitutional Court

Proceedings on abolishing laws

Effective from 1 January 2013, the Public Defender of Rights may join proceedings on abolishing laws or their individual provisions as an intervening party. In 2018, the Defender joined five of twenty-one such sets of proceedings.

Saving administratively expired vehicles

An amendment to the Road Traffic Act was supposed to clear long defunct vehicles from the Register of Road Vehicles by giving owners 6 months to register their vehicles. The vehicles whose owners were not registered by 30 June 2015, became administratively extinct. The owners thus effectively lost the ability to use the vehicles or re-register them.

The Defender was unsuccessfully trying to mitigate the disproportionate effects of the failure by certain owners to perform the necessary administrative tasks. Therefore, she joined the application of the Regional Court in Hradec Králové to abolish the provision leading to administrative expiry of vehicles, pointing out the potentially disproportional interference with the right to property protected by the Charter of Fundamental Rights and Freedoms.

The proceedings before the Constitutional Court are pending.

File No. 12/2018/SZD

File No. Pl. ÚS 21/18

Reopening judicial review of certain cases of non-granting of Czech citizenship

The Defender supported the application filed by the Supreme Administrative Court to abolish Section 26 of the Citizenship Act, which rules out judicial review of administrative decisions to deny Czech citizenship on the grounds of national security. The Defender believes it is at variance with the Czech constitutional order as it violates the right to a fair trial guaranteed by the Charter of Fundamental Rights and Freedoms and contradicts the principles of a democratic State governed by rule of law under the Czech Constitution.

The Defender is not disputing that there is no legal entitlement to be granted Czech citizenship. However, rejected applicants cannot even access the evidence suggesting they could constitute a risk for the State's security, and are thus unable to respond effectively. A judicial review is a prerequisite for independent and impartial supervision of the exercise of executive powers. Moreover, there is no oversight at all in this regard because the Ministry currently refuses to disclose the relevant information even to the Defender, at variance with the law. This is the case even though previous inquiries revealed malpractice on the part of the Ministry as it failed to take into account the security risk level posed by individuals, at variance with case law of the Constitutional Court.

The proceedings before the Constitutional Court are pending.

File No. 2/2018/SZD

File No. Pl. ÚS 22/17

Cancelling the CZK 10,000 fee for lodging an application with the Office for the Protection of Competition

The purpose of a democratic State governed by rule of law is to serve its citizens. This service includes the right to approach governmental bodies with matters of public interest as well as the right to have a competent body inquire into complaints and inform the complainant on the manner in which the complaint was resolved and why. Section 259 of the Public Procurement Act, however, introduces a fee of CZK 10,000 for filing an application with the Office for the Protection of Competition.

The Defender thus supported an application to repeal the contested provision, referring to the restriction of the right to petition and potential indirect discrimination on grounds of property (i.e. insufficient funds to pay the fee).

The Constitutional Court rejected the application because it was lodged by a person lacking the authority to do so and has thus not addressed the constitutionality of the contested decision so far. Indeed, the applicant filed the application for abolishing the provision together with a constitutional complaint against a court decision in case of surrendering of unjust enrichment corresponding to the administrative fee. According to the Constitutional Court, he should have claimed a refund of the administrative fee (in administrative proceedings) and, if not successful, filed an administrative action.

File No. 17/2018/SZD

File No. Pl. ÚS 28/18

Cancelling the municipalities' power to designate areas where a contribution towards housing is now awarded

The Charter of Fundamental Rights and Freedoms guarantees assistance to all people in material need to meet their basic needs. The contribution towards housing is a form of welfare benefit awarded to these people and serves to pay the costs of housing. Section 33d of the Assistance in Material Need Act gives municipalities the power to designate areas with increased occurrence of socially pathological phenomena. Pursuant to Section 33 (9) of the Assistance in Material Need Act, persons moving into such areas are not entitled to receive a contribution towards housing, even if it constitutes their only (or main) source of money for housing.

The Defender believes that the challenged provision goes against the sense and essence of the constitutional right to assistance in material need. Indeed, the State currently does not support access to adequate housing by other means than through welfare benefits (see Chapter 3 Social security, p. 41).

The proceedings before the Constitutional Court are pending.

File No. 5/2018/SZD

File No. Pl. ÚS 40/17

Ensuring proper judicial review of restrictions of personal freedom

During the legislative process, the Defender already objected in vain to the problems posed by the Deputies' amending motion prepared by the Ministry of the Interior in order to circumvent the commentary procedure which would surely have blocked the motion. Therefore, she later joined proceedings before the Constitutional Court and thus supported the application brought forward by a group of Senators to abolish certain provisions of law which significantly reduced the right of foreign nationals to judicial protection against interference with their right to personal freedom, denying them (at variance with EU law) the option to file

an application for a permanent residence permit, thus infringing their right to private and family life.

A judgment of the Constitutional Court of 27 November 2018 abolished all four contested provisions of the Foreigners' Residence Act and the Asylum Act due to violation of the fundamental right to fair trial, consisting in denial of access to judicial review and violation of the principle of reviewability of the legality of public administration's decisions within administrative justice. The introduction into law of a duty to discontinue proceedings was also at variance with the key principle of a democratic State governed by rule of law, i.e. that fundamental rights and freedoms are subject to judicial protection.

File No. 3/2018/SZD

File No. Pl. ÚS 41/17

Proceedings on constitutional complaints

The Constitutional Court can request assistance in seeking the necessary underlying materials for its decision-making. In exceptional cases, the Defender is appointed as guardian ad litem with respect to parties to proceedings, especially children.

International parental child abduction

The Defender, acting as a guardian ad litem for a child, requested that the Constitutional Court grant her constitutional complaint requesting annulment of a judgement ordering a return of a minor child to the USA pursuant to the Hague Convention.

Indeed, she believed that the Regional Court might have interfered with the constitutional right of the minor child to a fair trial guaranteed by the Charter of Fundamental Rights and Freedoms as it had failed to provide advice, insufficiently established the facts of the case and provided insufficient reasoning for its decision, all within the assessment of the risk that the child would be at risk of a serious harm upon return.

The Constitutional Court rejected the constitutional complaint and argued that the contested judgement had not interfered with any constitutionally guaranteed rights and freedoms.

File No. 8/2018/SZD

File No. I. ÚS 735/18

Foster care and a child's contact with parents

The Constitutional Court appointed the Defender as guardian ad litem for a 2.5-year-old girl entrusted by court into long-term joint foster care after terminating temporary foster care and rejecting the parents' application to have their daughter returned to their care. The parents claimed that the foster parents were preventing them from seeing their daughter.

The Constitutional Court agreed with the Defender's opinion and granted the request by annulling the judgement whereby the child had been entrusted into long-term foster care, taking into account the significant interference with the right to family life by unlawful restriction of the parents' contact with their daughter. The girl's emotional ties to parents proved to be very strong and the parents' situation had improved sufficiently for the daughter to be able to return to them. Neither was further change of carers recommended by a clinical psychologist (for more details, see chapter 2 Family, healthcare and employment, p. 33).

File No. 18/2018/SZD

File No. II. ÚS 2344/18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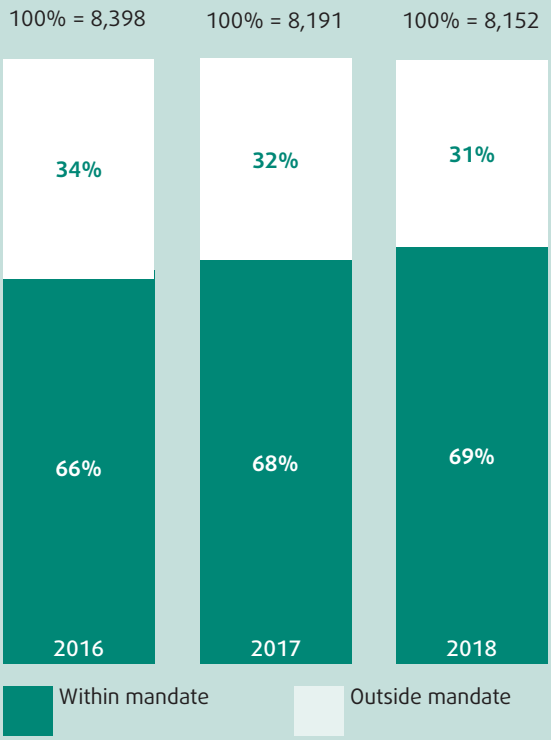
Activities of the Public Defender of Rights in numbers

Complaints received in 2016–2018



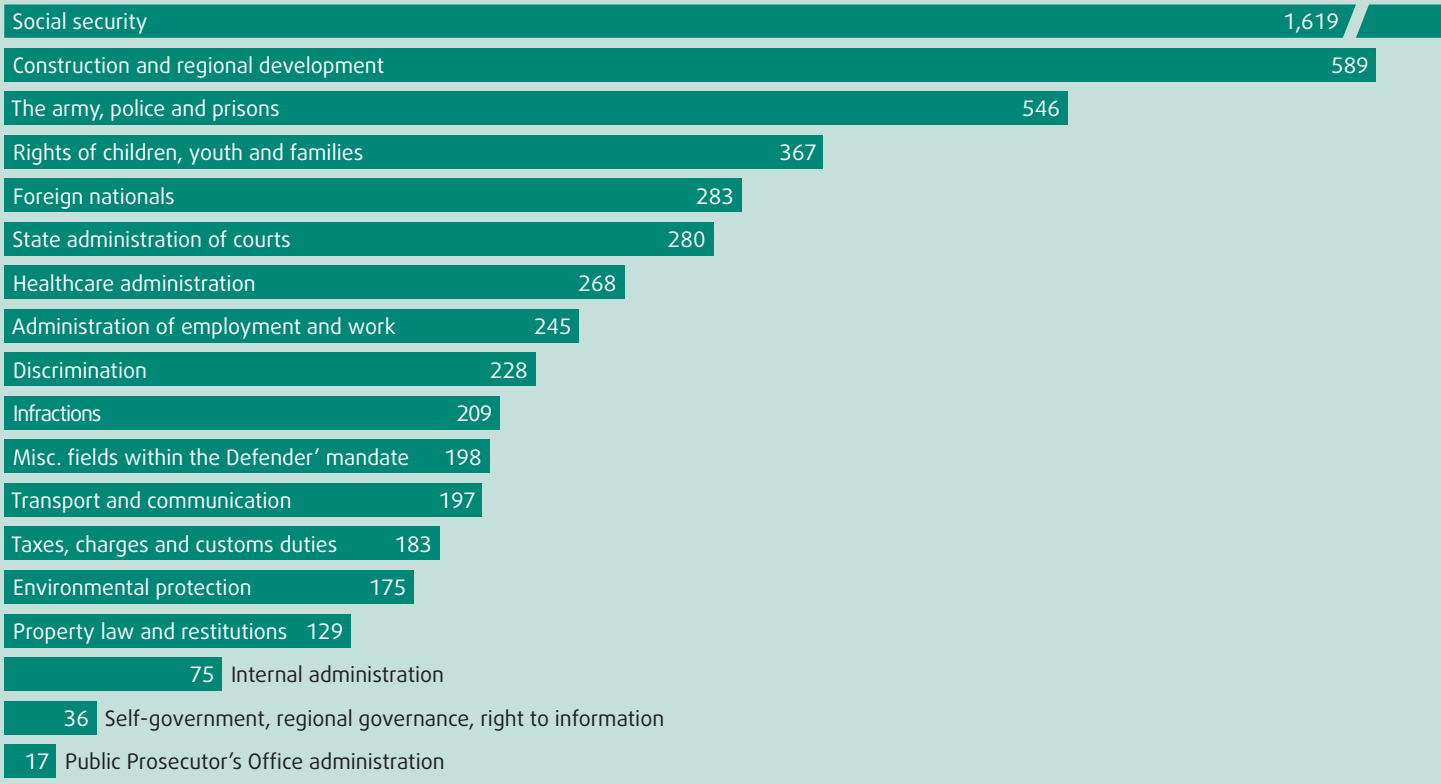
In 2018, we received 8,152 complaints, of which 69% fell within the Defender's mandate. The number of complaints within our competence again slightly increased and we were thus able to help more people deal with their problems.

837 people in total came to the Office of the Public Defender of Rights in Brno in person to seek advice and ask for information about the Defender's competencies; 418 filed their complaints orally on the record.

7,181 people called our information line to find out whether their problems fell within the Defender's mandate, obtain information on how to deal with their problems, or to check on the progress of inquiry into their complaints.

654 inquiries were initiated, of which 33 on the Defender's own initiative

Complaints received within mandate by area



8,152 complaints were received

8,115 complaints were resolved (including complaints from previous years that were closed in 2018)

513 cases were justified (malpractice was found) In 488 cases, we managed to achieve a remedy.

13 sanctions were imposed (i.e. the Defender used her power to inform a superior authority or the public)

Important moments and events in 2018

— From 1 January, we started systematically monitoring the protection of rights of people with disabilities and protection of migrant EU citizens.

— We organised a conference on the current findings and questions concerning protection of animals against cruelty.
— We organised a series of working meetings in regions on the issue of monitoring of the rights of people with disabilities.
— After years of trying, we achieved a softening of the conditions for awarding orphan's pensions.

— We submitted our Annual Report for 2017 to the Chamber of Deputies.
— We took part in the global event Light it up blue! on the occasion of the World Autism Awareness Day.
— The Supreme Court agreed with our opinion and decided that survivors of a deceased person could also lodge an anti-discrimination action.

— We issued an updated recommendation on enrolment of children in kindergartens.
— The Petition Committee of the Chamber of Deputies visited us to learn about our activities and held a meeting on our premises.

— We helped a seriously ill man to achieve a substantial increase in his disability pension and also payment of owed pensions in an unprecedented amount of over 1 million Czech crowns.
— In the Constitutional Court, we defended car owners whose cars have become administratively extinct and unusable due to an omission on their part.
— The Defender appointed her advisory body for conducting tasks under the Convention on the Rights of Persons with Disabilities.
— We presented to the UN Committee Against Torture our opinion on the 6th periodic report of the Czech Government on the performance of commitments following from the UN Convention Against Torture.

— The Defender, Anna Šabatová, received the Legion of Honour from the President of France for protection of human rights.
— We became an interested party in proceedings before the Constitutional Court on abolishing the CZK 10,000 fee for lodging an application with the Office for the Protection of Competition.
— We advocated the right of women to reimbursement of midwives' services all over the Czech Republic, not only in some regions as has been the case up to now.

July

— In co-operation with SMÁci, a patients' organisation, we joined a campaign to help people with spinal muscular atrophy (SMA).
— We noted the incorrect practice of the Ministry of Education, Youth and Sports in reviewing maturita examinations.

August

— We informed new ministers about long-term issues in their sectors and asked them to seek solutions.
— We successful completed the "Bespoke Civil Service" project aimed at work-life balance in the civil service.

September

— We participated in the annual conference of Visegrad Group (V4) ombudspersons, focusing on the role of ombudspersons in meeting the States' international obligations and combating hate speech.
— Our recommendation ensured that the allowance compensating the loss of earnings after an accident at work or occupational disease would no longer be reduced in relation to the increasing minimum wage.
— We repeatedly brought attention to the extreme length of proceedings concerning awarding the allowance for care, especially in appellate proceedings.

October

— The Ministry of the Interior heeded our recommendation and enabled foster parents to file an application for issuing a passport to their foster children without the need to seek court approval.
— In relation to municipal and Senate elections, we prepared information materials on the participation of people with mental disabilities.
— We participated in the annual IOI conference on access to information, transparency of ombudsman institutions and the role of ombudspersons as guarantors of the State's human rights obligations.
— We called attention to delays in construction proceedings caused by organisationally mismanaged change of the Construction Code and the lack of available staff.

November

— We warned about insufficient availability of social services for clients with autism. According to our surveys, this kind of support is often completely inaccessible for them.
— We organised a two-day conference on current issues concerning legal capacity.
— We participated in a meeting of European ombudspersons responsible for monitoring the rights of people with disabilities dealing with the topic of employment of disabled people.

December

— We asked that the Government enable parties to administrative proceedings to inspect the file remotely and that the administrative offices inform citizens of the possibility of judicial review of official decisions.
— We issued a recommendation on inclusive education of Roma and non-Roma children.
— We co-operated with the UN Information Centre to organise an exhibition on the occasion of the 70th anniversary of the Universal Declaration of Human Rights.
— On the occasion of the International Human Rights Day, we co-operated with the Centre for Human Rights and Democracy to organise a screening of the Before the Flood documentary and a debate on climate change and our rights.

2 FAMILY, HEALTHCARE AND LABOUR

In 2018, we often inquired into the procedures of health insurance companies in assessing reimbursement of treatment or medical aids from public health insurance. We continue to emphasise that decisions of the Labour Offices in the area of active employment policy must include proper reasoning and be subject to an appeal. We represented a two-year-old girl in proceedings before the Constitutional Court. The girl had seen three changes in care and we thus sought continuation of temporary foster care; the Constitutional Court agreed. We also managed to bring about a change in the internal regulation of a children's home, so that the children's rights would no longer be restricted during the adaptation period.

We also dealt with the frequency and form of contact of children in foster families with their biological parents. We commented on the topic in our publication titled A Good Foster Parent, issued by the Czech Association of Social Services Providers, and in an article titled Problematic Aspects of Contact between Parents and Children in Foster Care (published in Právo a rodina – 5/2018).

We dealt with

1,337 complaints,

of which

→ **755** within the Defender's mandate

582 fell outside the Defender's mandate

We help change the rules

Your application is denied. Why? We won't tell.

We were contacted by the executive director of a limited liability company (the complainant) who objected against the procedure of the Labour Office, which had rejected the company's application for a contribution towards so-called "socially purposeful employment position" (hereinafter "SPEP") for a selected jobseeker. The reason for the rejection was the Labour Office's assumption that the jobseeker might soon be deleted from the register of jobseekers as he had failed to appear for the agreed appointment. It should be noted that the request for a contribution towards SPEP and the job mediation for the applicant were handled by two different departments of the Labour Office, which were not sharing information.

We concluded that the Labour Office had committed malpractice because it had not decided about the complainant's application for SPEP in administrative proceedings and had not provided a proper reasoning for its decision. The Labour Office did not even base its decision on properly established facts – it believed that the jobseeker had already been deleted from the register of jobseekers without checking whether this was true. The Labour Office admitted the malpractice.

We are in discussion with the Ministry of Labour and Social Affairs on whether or not the Labour Office should decide on matters involving contributions towards active employment policy in administrative proceedings. Unfortunately, we are yet to reach an agreement. We believe that even in such cases, the Labour Office is issuing a decision, and therefore a procedure preceding the actual decision should be defined. It is a matter for discussion whether the Code of Administrative Procedure should apply or whether a "bespoke" procedure governing these situations should be incorporated in the Employment Act.

Defender's Report: File No. 2514/2017/VOP

New temporary foster care term can benefit the child

The Defender was appointed as a guardian of a 2.5-year-old girl in proceedings before the Constitutional Court. The girl had originally been entrusted into the care of temporary foster parents. The foster mother had enabled frequent contact with the biological parents and built a strong relationship with the child. In the meantime, the biological parents had tried to improve their material situation in order for the girl to be able to return to them.

After expiry of the maximum statutory period of temporary foster care (1 year), the child was placed into long-term foster care. This decision, confirmed by the Regional Court, was then challenged by the parents' constitutional complaint.

The Defender met the girl and her new foster mother, as well as the biological parents in their new home, spoke with the social worker, contacted the original temporary foster mother, and also studied the entire file. She then concluded that there had been a significant interference with the right to family life consisting in unlawfully restricted contact between the girl and her parents, which was supported by the bodies for social and legal protection of children. The Defender also found that the parents had indeed improved their situation significantly and their ties to their daughter were established and strong. A report drawn up by a clinical psychologist also indicated that a further change in care (she had already seen three previous changes) would not be recommended until at least 3 years of age as the girl was diagnosed with avoidant attachment.

The temporary foster mother was undoubtedly the person to whom the girl had developed the strongest and longest-lasting attachment. The Defender thus concluded that it was in the child's best interest to be placed into the care of the temporary foster parents again, which is permissible in extraordinary cases according to the commentary on the Social and Legal Protection Act. The Defender suggested that the Constitutional Court grant the complaint and cancel the decision on placing the child into long-term foster care.

The Constitutional Court first suspended the enforceability of the decision on placing the child into long-term foster care, and so after 2 months, the child returned to the temporary foster mother who supported her contact with biological parents. The Constitutional Court subsequently annulled the decision on placement into long-term foster care.

Defender's Statement: File No. 18/2018/SZD

Judgment of the Constitutional Court: File No. II. ÚS 2344/18

Effective inspections in facilities for children requiring immediate assistance II

In 2017, we wrote that the Ministry of Labour and Social Affairs had still not adopted a methodology for more effective inspections in facilities for children requiring immediate assistance (FCRIA). Despite our repeated reminders, the situation has not changed. We insist on our conclusions concerning the need to update the methodology and we will continue reminding the Ministry of Labour and Social Affairs of this fact.

Defender's Report and Opinion: File No. 2481/2016/VOP

We also had doubts about sufficient social work with the families of some children placed in FCRIA, and the reasons and purposefulness of their stay in such facilities. Through studying the files of over 20 children placed in FCRIA, we found that some children had stayed there even for several years, over the course of which there had occurred various events that unsuitably prolonged their stay in the FCRIA.

We have thus contacted the Ministry of Labour and Social Affairs and defined four recommendations which we believed would help to improve the state of social and legal protection of children. For instance, we believe that the body for social and legal protection of children (BSLPC) cannot remain passive if a court is inactive in proceedings on institutional arrangements for a child, as a result of which the child is staying in FCRIA based on automatically extended preliminary injunctions and circular application of other legal instruments. The Ministry agreed with our recommendation, with minor reservations.

Defender's Report and Opinion: File No. 164/2017/VOP

Proving things in the absence of evidence

We were unsuccessful with our comments on the amendment to the medical records decree. The decree enumerated the minimum contents of the written consent to provision of healthcare services, record on refusal of healthcare services, record on prior wish and record on consent to provision of information. The amendment abolished all these parts, which we criticised.

We believe that the previous wording of the decree protected the healthcare services providers as well as patients and prevented disputes about what advice the patients actually received. With the new wording, there is a risk that if a patient claims he or she was insufficiently advised, the healthcare services provider will have great difficulties proving that it provided the patient with all relevant information.

We are here to help

We helped and advised:

264 families

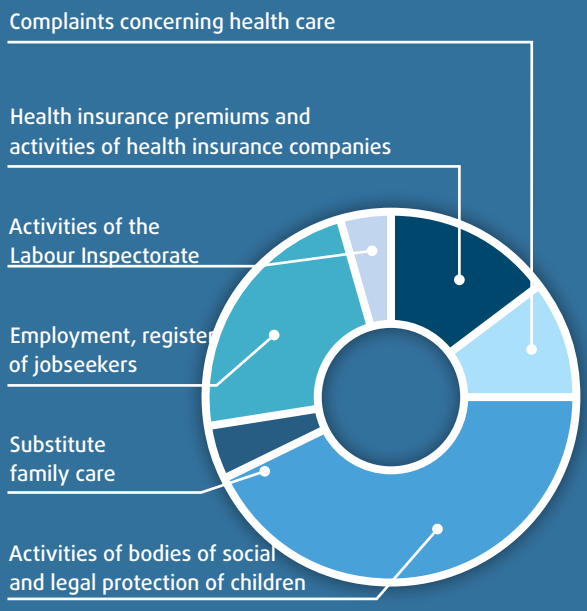
168 people who had problems with the Labour Office

151 people with problems concerning health insurance and complaints against healthcare

82 inquiries revealed malpractice and we achieved a remedy in each case

53 children contacted us asking for help or advice

People most often sought help in the following areas:



25% more complaints relating to health insurance premiums than last year

11% less complaints relating to removal of a child from care than last year

Stable marriage? We'll see in three years

We were approached by a complainant who objected to delays on the part of a regional authority which had failed to arrange the adoption of a child by her and her (male) partner over a period of several years. At the time of preparation for future adoptive parents, the woman was 46 years old and her partner was 51. They had been a couple for 5 years. The regional authority included her and her partner in a register of persons suitable to become adoptive parents. Since they were not married, they did not meet the statutory conditions for joint adoption or irrevocable adoption. We concluded that the regional authority's decision to include them in the register constituted malpractice because it had given the complainant and her partner a false hope that they could become joint adoptive parents.

We also found that the regional authority set up a "probationary" period of 3 years in case they would become married to verify the stability of their marriage. This 3-year period was set unlawfully. No law or regulation specifies the length of marriage of potential adoptive parents. It is obvious that marrying without previous cohabitation could constitute an attempt to circumvent the law and would represent a potential instability for the child. However, the length of relationship outside marriage cannot be discounted.

The regional authority disagreed with our opinion and only changed its practice after we issued our final statement. Chiefly, it abandoned the 3-year period of marriage that it had previously considered an obligatory condition for arranging substitute family care. The regional authority also issued a written apology to the complainant.

Defender's Report and Opinion: File No. 2582/2016/VOP

Children belong with their parents

We were approached by the head of a shelter who informed us about the case of an 18-month old boy who had been supposed to be entrusted in his mother's care immediately after she had arranged for her stay in the shelter. However, the BSLPC had not taken the planned steps and had not requested

a preliminary injunction enabling the placement of the child in his mother's care. Her own application in court had also failed.

We discussed the case with BSLPC workers and found misconduct. The child's protection plan stated that the BSLPC would lodge an application with court to return the child to his mother immediately after the mother secured a place in a shelter where she would receive support and assistance in child care (necessary because of her light mental disability). Unfortunately, the BSLPC had failed to do so and left the mother to deal with her child's situation on her own. We immediately agreed to remedy the situation by lodging an appeal against the decision to reject an application for injunction whereby the child would be returned into his mother's care. The court granted the appeal and the boy returned to his mother and is doing fine living with her.

Defender's Report: File No. 7015/2017/VOP

The BSLPC must inform the court of domestic violence

We were approached by a mother of three who complained against the procedure of the BSLPC. She claimed that domestic violence had been insufficiently taken into account when the parents had been recommended to undergo couples therapy and that the court had been insufficiently informed of these problems (violence in front of children and accusation of rape for which the father of the children was eventually sentenced).

We closed the inquiry with the conclusion that the BSLPC had committed misconduct. We requested that the body provide proper information to the court on domestic violence involving children and take violence into account when recommending a specific form of therapy to the parents (in these cases, an individual therapy as opposed to couples therapy is obviously more suitable).

The authority did not accept our conclusions and the remedial measures we proposed, and we therefore issued our final statement on the case. Only then did the authority inform us that BSLPC officers would inform the court of all reliably established circumstances in the family backed by evidence that could be of relevance for the court's independent decision-making. We noted that even if the BSLPC lacked information about domestic violence, it was necessary (given the seriousness of the case) to at least covey the information to the court as to important circumstances indicated by the parties to the proceedings. We also insisted that ordering a couples therapy and mediation is inappropriate if there is even a mere suspicion that domestic violence is at play. In such cases, couples therapy and mediation should be implemented exclusively voluntarily.

Defender's Report and Opinion: File No. 5821/2016/VOP

Interview with a child is not absolutely confidential

We were approached by a mother whose son had been removed from joint custody and entrusted to the sole custody of the father by virtue of a court decision. Among other things, she complained about the procedure of BSLPC, which had supported this radical change in the child's affairs without giving the court details on what the boy had told the social worker as to his preferences. Not even the parents were able to learn more as the social worker had filed a detailed record of the interviews with the boy in a "special restricted folder" that is inaccessible to the parents; the file accessible by the parents did not indicate any information on the interviews.

Even if a detailed record of an interview with a child needs to be filed in a "special restricted folder", the BSLPC should provide a summary in the regular file. If the BSLPC's conclusions are based on interviews with the child, the detailed records of which are filed in a "special restricted folder", the BSLPC's report to the court should indicate the substantive contents of the interviews. The information obtained in the interview with the boy was especially significant because it served as a basis for the social worker to support the major change in the boy's affairs, i.e. being entrusted into the sole custody of his father by a court decision. In our opinion, the BSLPC should have provided the court with a summary of essential contents of the interview with the child, based on which the body proposed a change from joint custody to the sole custody of the father.

The authority agreed with our opinion; all BSLPC officers were informed about it and the head of the department drew up the recommended procedure as part of the relevant quality standard for social and legal protection of children.

Defender's Report: File No. 1024/2017/VOP

We communicate

Adapting to life in a children's home

We were approached by a 17-year-old girl placed in a children's home. She objected to being placed in the facility after the BSLPC and her guardians ("poručníci") disagreed with her staying with her boyfriend (young man of similar age, but already adult). After arriving at the children's home, the facility's director banned her from seeing her boyfriend, the facility employees took away her phone and she lost access to the Internet. The BSLPC further placed the girl in a different facility than that she wanted and which had been promised to her.

We found that the BSLPC committed misconduct when it had proposed to place the girl in a different facility than the one she wanted to stay at, without sufficiently checking the possibility of placing her in the children's home which she preferred, or in a boarding school. We considered this way of dealing with the girl to be inappropriate on the part of the BSLPC. The body was also wrong when it failed to ensure proper protection of rights when it had not addressed (despite our notifications) the fact that the facility had banned the girl from receiving visitors, going out on her own, carrying her phone except for 1 hour a day and having access to the Internet.

Misconduct was also committed by the children's home. The director of the facility did not decide on the girl's boyfriend's request that she stay out of the facility by means of an administrative decision with a proper reasoning (instead, he rejected him on the phone and in writing by stating completely irrelevant reasons) and interfered with the girl's rights (using a mobile phone, computer and Wi-Fi, time outside the facility, visits of her boyfriend).

The BSLPC promised to monitor whether the regime measures applied by the homes complied with the law and the standards of child care in school facilities for institutional education or protective education and to ensure remedy if necessary. The social workers would also communicate with the child placed in a facility sooner than in one month and would check whether the child's rights were respected.

Subsequently, a new director of the children's home was appointed. The new director adopted

all the proposed remedial measures and promised not to restrict children in the early stages of their stay; also, the director promised to issue a proper decision in cases where she rejects a request for the child's stay outside the facility.

Defender's Report and Opinion: File No. 6064/2017/VOP

Defender's Report and Opinion: File No. 6135/2017/VOP

In relation to this case and other findings, we organised a roundtable discussion titled Problematic aspects of contemporary institutional education. With the founders of school facilities for institutional education or protective education (Ministry of Education, Youth and Sports and the regional authorities) and the directors of some children's homes and educational institutions, we discussed topics related to current practical needs: evaluation systems in place in school facilities, adaptation period for newly arrived children involving some restrictions, testing for drugs and addictive substances and body searches of children. We also discussed systemic topics, such as co-operation between school facilities and bodies for social and legal protection of children and the effect of court decisions on children's stay in facilities.

Compensation for prenatal and postnatal care provided by midwives

In relation to a specific complaint, we inquired into whether the healthcare provided by midwives was balanced and comparable across regions. In order to establish the facts on the ground, we contacted health insurance companies and requested information on the number of contracts concluded with midwives.

We found that in some areas of the Czech Republic, pregnant women and mothers had more freedom to choose between a gynaecologist's and midwife's care. In these regions, health insurance companies had contracts not only with gynaecologists but also midwives, which meant that their services were also covered by the public health insurance. Pregnant women and mothers in other regions had to pay for midwife's services themselves.

We discussed the situation and approach to prenatal and postnatal care provided by midwives with the Ministry of Health and within the Working Group on Obstetrics.

In 2019, we plan to promote easier access to prenatal and postnatal services provided by midwives. In the meantime, we called attention to the issue in our press release of 22 June 2018.

An insured person should know how much he owes on health insurance premiums

We organised a meeting of representatives of health insurance companies and the Ministry of Health with the aim of sharing information on the insurance companies' practice related to payment and enforcement of health insurance premiums. We found that extracts concerning payments and potential debts on health insurance premiums were so complicated that insured persons could hardly understand how much they owed and as of when. However, to make the extracts more comprehensible, it would be necessary to adapt their IT systems, which would be a technologically demanding and expensive solution. We therefore recommended that the insurance companies communicate with their clients well to ensure that information was comprehensible, complete and up to date.

Promises, promises...

We contacted the Ministry of Health, Ministry of Labour and Social Affairs and Ministry of Education, Youth and Sports to inform them that it was necessary to unify and reform the institutional and protective treatment system and share information among the Ministries. We welcomed the promise made at the roundtable discussion titled System of care for vulnerable children (Ministry of Labour and Social Affairs, Prague, 13 November 2018) consisting of unification of the methodology and creation of a collegium at the level of Ministers and representatives of the individual departments to jointly report on the overall functioning of the system of care for vulnerable children and to propose potential changes.

3 SOCIAL SECURITY

In 2018, we received a substantially higher number of complaints related to pensions, the allowance for care and benefits for people with disabilities. In relation to the allowance for care, people most often complained about the excessive length of proceedings caused by the lack of medical assessors.

We handled a total of

1,595 complaints;

which is 100 more than last year

there was a 57% increase in the number of complaints concerning the allowance for care

there was a 37% increase in the number of complaints concerning disability pensions

→ **92** of our inquiries revealed malpractice,

in **1** case, we did not manage to achieve a remedy.

We help change the rules

"Benefit-free" zones

At the end of 2017 and the beginning of 2018, cities and towns started designating areas with an increased prevalence of socially pathological phenomena. Persons moving into such areas are excluded from receiving a contribution towards housing. According to the authors of the relevant law, the objective was to prevent further growth in poverty business and deepening of social exclusion when people dependent on housing benefits move into areas where the flats are cheap but there are not enough employment opportunities.

In late 2017, we began monitoring the procedures of cities and towns in designating these areas; we also used statistical data provided by the Labour Office on withdrawn contributions towards housing to assess the impacts on the social situation of individuals. Based on the information thus obtained, we decided to become involved in proceedings before the Constitutional Court on annulment of those provisions of the Assistance in Material Need Act that permitted designation of areas with an increased prevalence of socially pathological phenomena. We agreed with a group of Senators that these provisions were at variance with the Czech Constitution and should be abolished. We objected to the interference with the constitutional right of persons to assistance to meet their basic living needs. We expressed our concern that people moving into such a designated "benefit-free" zone would lose housing support provided by the welfare system. Designating such zones could also hinder usual movement of people with lower income within the relevant municipality. We called attention to the risk of a "domino effect" where once one town declares such a "benefit-free zone", other towns nearby will follow suit to prevent an inflow of people in material need unable to afford housing in the neighbouring city. This could eventually lead to a "blockage" of payment of the contribution towards housing even in the whole administrative region, which would only push social problems elsewhere. The Constitutional Court has not decided the case yet.

Statement before the Constitutional Court and its Supplementation: File No. 5/2018/SZD

Vouchers force people to buy expensive items

Based on an amendment to the Assistance in Material Need Act, since December 2017 the Labour Office started paying a part of subsistence support benefits to people who had been in material need for over 6 months in the form of vouchers for goods at the specified value. The Act requires that at least 35% of the benefit must be paid in the form of vouchers. The remaining part of the benefit can be paid in money (postal order, transfer to the person's account) if there are no reasons to use vouchers in a larger scope (e.g. reduced ability to manage personal finance). The vouchers used by the Labour Office are intended only for people in material need and are marked as such.

In early 2018, we received dozens of complaints against the new and indiscriminate manner of benefit payments in vouchers. People primarily argued that payment in vouchers restricted their freedom of choice as to where to shop (some establishments do not accept the vouchers). There were also problems caused by the fact that shops did not give back change when a person was paying with a voucher. This forced people to buy goods at exactly their nominal value, which – in fact – forced them to buy more expensive items. The vouchers also could not be used for extraordinary expenses, e.g. co-payments for reimbursable medicines. Many people considered paying with vouchers degrading and were ashamed to use them.

In February 2018, two motions were submitted to the Chamber of Deputies to introduce exemptions from payment of benefits in the form of vouchers (Documents of the Chamber Nos. 89 and 99). The proposed exemptions were to cover people living in social services facilities, persons staying in healthcare facilities and people with restricted legal capacity. When discussing the draft laws in the Social Policy Committee, we informed the Deputies of our findings (see chapter The Defender and the Parliament, p. 20). We recommended to completely abolish the generalised payment of benefits in vouchers and keep it only in cases where the recipient abuses the benefit or could not manage money. In such cases, the Labour Office should deal with the situation on an individual basis and order payment in vouchers (as was the case until November 2017). However, this solution did not obtain sufficient support in the Chamber of Deputies. We thus urged the Deputies to at least expand the exemptions to people with disabilities, the elderly and people with special dietary requirements.

During the discussion on the draft law, some of our recommendations were accepted and the exemptions were expanded to help the most vulnerable people (degree 3 disabled persons and people assessed as falling in degree 3 to 4 of dependency on care) and the elderly. In cases where shops accepting vouchers are unavailable or where goods have to be purchased in specialised outlets (e.g. due to special dietary requirements), the Labour Office will be able to grant an individual exemption.

Why would you want to know why the medical assessor has prohibited unlimited outings?

The treatment regime with respect to a person who is temporarily unfit to work (on sick leave) comprises "permitted outings" when the person can leave home. Such outings are not permitted automatically but are subject to approval by the examining physician.

The law limits the scope of the outings (maximum 6 hours a day) and the time when people can leave home (7 a.m. to 7 p.m.), while the examining physician must specify the time when outings are permitted. Indeed, without such specification of time, it would not be possible to inspect adherence to the treatment regime.

However, there might also be cases where the medical condition or difficult or intensive treatment and its side effects prevent the insured person from using the specified outing time. For this reason, the examining physician may permit the insured person to choose his or her outing time based on the current medical condition without limitations, i.e. the statutory limits will not apply in such a case. The physician may do so, however, only subject to previous written consent of the relevant district social security administration.

The problem is that medical assessors often do not provide any reasoning as to why they rejected the request for unlimited outings. A statement of reasons is not required, either, under the current methodology of the Czech Social Security Administration, which is based on the notion that deciding on the consent is not subject to the Code of Administrative Procedure.

It is true that the Sickness Insurance Act indeed excludes the application of the Code of Administrative Procedure. However, decision-making in matters of temporary unfitness to work constitutes performance of public administration. In cases where a special law disapplies the Code of Administrative Procedure but lacks provisions corresponding to the basic principles for the activities of administrative authorities, the basic principles of the performance of public administration apply.

Medical assessors have a fairly broad discretion in approving unlimited outings, but must not act arbitrarily. Administrative discretion does not entail complete freedom to make any kind of decision. Medical assessors must adhere to the principle of prohibition of abuse of administrative discretion and the principle of legitimate expectations, which implies that they must provide reasoning for their decisions. It must be possible to discern retroactively the considerations followed by the medical assessor in his/her decision-making on the request for unlimited outings and how the assessor addressed the evidence available and the arguments of the persons concerned.

We recommended that the Czech Social Security Administration amend the relevant methodological guidelines. Since the Administration rejected our recommendation, we contacted the Ministry of Labour and Social Affairs. The Ministry ordered the Czech Social Security Administration to amend the methodology in that the medical assessor would have to provide at least a brief reasoning for their decision to not allow unlimited outings.

Defender's Opinion, Report, and Sanctions: File No. 2440/2017/VOP

We are here to help

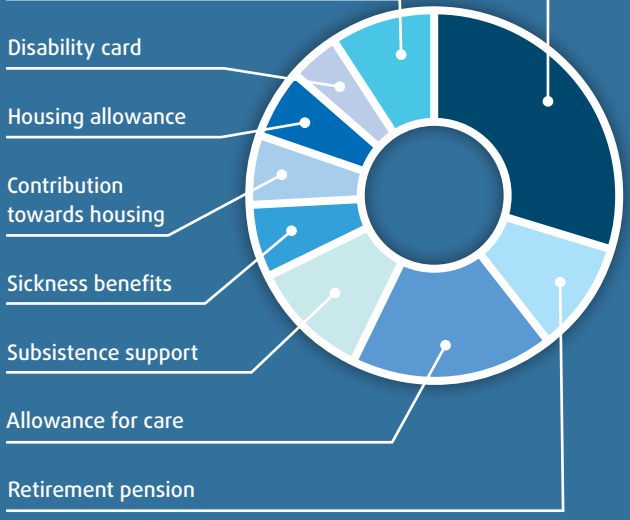
Refunded overpayment of a benefit must be deducted from the whole family's income

We were approached by a complainant who had been ordered by the Labour Office to refund an overpayment of parental allowance, since she had failed to notify that she had received maternity benefits for a younger child. She also objected to the fact that the Labour Office had not granted her housing allowance because it had considered the refunded parental allowance to be a part of her overall income.

We did not find any malpractice in the Labour Office's procedure with regard to the request for refunding of overpayment as the complainant indeed had had the duty to notify the receipt of maternity benefits. However, we found the procedure of the Labour Office in assessing the refunded overpayment as the family's factual income incorrect. In determining the amount of housing allowance, the Labour Office only deducted the refunded parental allowance from the income of the complainant herself, not her entire family. Such a procedure is, however, unlawful. Indeed, the State Social Assistance Act clearly provides that if an entitled person (a "person assessed together [with others]" under Czech laws) refunds overpayment of the parental allowance, the assessed family income (not just the individual's income) has to be reduced by the amount of the overpayment for the relevant period in which the overpayment was refunded.

The Labour Office refused to admit and remedy its malpractice. We asked the Ministry of Labour and Social Affairs to order the Labour Office to initiate proceedings and reassess the amount of allowance. The Ministry agreed with our arguments and upon its intervention, the Labour Office reassessed the amount of housing allowance and paid an additional amount of CZK 2,016 to the complainant.

People most often sought help in the following areas:



Defender's Opinion, Report, and Sanctions: File No. 4636/2017/VOP

Withdrawal of allowance for care must be based on convincing evidence

We were approached by a man with a disability who had been receiving allowance for care since 2008. He explained that his medical condition had been deteriorating and he had become more dependent on the care of other people. Originally, he had been receiving an allowance for care for degree 1 of dependency; in 2010 this was reassessed to degree 2 and in 2013 to degree 3. Based on expiry of the original medical assessment, the Labour Office initiated new proceedings in 2016, carried out an official inquiry and asked the district social security administration for assessment of the man's dependency degree. The medical assessor then came to the conclusion that the complainant was not dependent on the care of others at all and the Labour Office subsequently withdrew the allowance. The decision was subsequently upheld by the Ministry of Labour and Social Affairs.

We considered the conclusions of the medical assessors to be surprising as only months before they

had awarded a disability card to the complainant. Such a serious change of the medical assessment, however, required further evidence to establish the complainant's actual situation. The medical assessors could have, for example, requested a new social inquiry or examine the complainant in person, or request that he undergo medical examination at a healthcare facility specified by them. Since the shortcomings of the assessments issued at both stages of the proceedings could have resulted in incorrect decisions, we asked the Minister of Labour and Social Affairs to initiate review proceedings in the case. The Minister agreed with our arguments, repealed the appellate decision in review proceedings and referred the case back to the Ministry to issue a new decision.

Defender's Report: File No. 815/2018/VOP

Premature withdrawal of a widow's pension

We were approached by a woman requesting assistance as she had lost her widow's pension and the processing of her objections to the decisions had been taking disproportionally long. The Czech Social Security Administration had not decided on her objections despite the fact that the statutory deadline for issuing a decision had already expired. The complainant was in a difficult situation due to the absence of pension payments.

According to the Czech Social Security Administration, the complainant had failed to prove that her son had been a dependent child or that she herself had been entitled to a widow's pension for some other reason than taking care of her son. The Administration incorrectly assumed that the son's completion of a Bachelor's degree meant he was leaving the education system and would thus no longer be considered a dependent child. However, the son subsequently commenced his follow-up Master's studies at the same university, which the complainant documented with a certificate issued by the university.

One of the preconditions for receiving widow's pension even after the period of one year since the husband's death is taking care of a dependent child. For the purposes of the Pension Insurance Act, a "dependent child" means someone who has completed compulsory school education and then continued pursuing further education until the maximum 26 years of age. We thus found malpractice in the procedure of the Czech Social Security Administration as the conditions for withdrawal of the widow's pension had not been met and the Administration had not decided on the complainant's objections in a timely manner.

The Administration had then annulled the decision to withdraw the widow's pension and resumed paying it, while also sending the owed payments to the complainant. It also sent a letter of apology to the complainant.

Defender's Report: File No. 7584/2017/VOP

Disability pension in case of missing medical reports

We were approached by a complainant who requested an inquiry into the amount of her disability pension. The complainant had been acknowledged as disabled in the 3rd degree of disability due to suffering from severe paranoid schizophrenia. The Czech Social Security Administration had awarded her a disability pension of CZK 3,110 on this ground. The medical assessor had specified the date when the disability arose as identical to the date when the examining physician had completed the form that served as evidence for determining disability.

We reminded the Czech Social Security Administration that brief identification of the disability onset date as the date when the relevant form was completed could not, without proper reasoning, be considered a convincing determination of the moment when the disability arose, especially not with regard to gradually progressing illnesses.

In response to our advice, the Czech Social Security Administration ordered a new medical examination in which the medical assessor assessed the complainant's medical condition in detail. While it was impossible to find some of the missing medical reports, the medical assessor set the disability onset date to three years prior to the date identified by the previous assessment. The medical assessor made an expert estimate of the disability onset date taking into account the character of the illness and also using the information indicated in the overview of reimbursements for medical care.

The complainant's disability pension was thus increased by CZK 700 per month and the Czech Social Security Administration paid her the owed pension for the past seven and a half years, i.e. from the newly assessed disability onset date.

Defender's Report: File No. 5188/2017/VOP

We communicate

As part of the Legal Clinic on Social Rights taught at Palacký University Olomouc, we acquainted the students of the Faculty of Law with our findings in the area of pension insurance, allowance for care and benefits for people with disabilities.

Under our supervision, the students then conveyed their newly acquired knowledge to the elderly in a lecture within the University of the Third Age. They explained to them the requisites for being granted the allowance for care and definitions of the individual basic needs. They described the course of the proceedings on the allowance, including the deadline for the assessment of medical condition and issuing a decision, the options open to parties to proceedings should the proceedings take disproportionally long or should the party disagree with the review decision. We also explained to the students the scope in which the Defender could inquire into the allowance proceedings. A part of the lecture was also devoted to issues related to pensions. We finished the lecture with a discussion, answering questions concerning the topics of the lecture.

International Conference on Current Challenges in 21st Century Social Security

In November, we attended the international conference titled Current Challenges in 21st Century Social Security organised by the Institute of State and Law of the Slovak Academy of Sciences. The conference is a regular meeting of experts on social security representing constitutional and administrative courts as well as persons from the academia and civil servants.

We presented a paper titled "Period of Insurance and Entitlement to Retirement Pension" including our findings in this area and cases we often dealt with. We explained the Czech legal regulation of retirement pensions in the Czech Republic, where an extraordinarily long period of insurance was required for a person to become entitled to the retirement pension, compared to other countries. The presentation also mentioned looking for potential ways of ensuring access to the benefit within the applicable legislation and potential small-scale adjustment of the entitlement using

a broader crediting of a voluntary insurance period and the study period. The conference conclusions thus also emphasised the need of timely advice to the insured persons on the conditions of entitlement to the retirement pension and the necessary periods of pension insurance. The conference paper will be published in the conference proceedings.

Procedure of the Czech Social Security Administration in permitting instalments

In December 2018, we talked with the Czech Social Security Administration (CSSA) on systemic issues concerning administration of overpayments on pension benefits. The need for the talks arose in relation to the different view of the nature of the proceedings on approval of payment in instalments in cases of benefit overpayments. The CSSA had already previously accepted our conclusions and abandoned the practice of concluding instalment agreements under the Property of the Czech Republic Act. On the other hand, we were unable to find agreement on the matter of the scope of application of the Tax Code. We will thus continue dealing with these issues of interpretation also in 2019; it is possible that legislative changes will be necessary.

Intolerable situation concerning allowance for care awarded to people with disabilities

The number of complaints in the area of social security keeps growing. We were thus asked by the Petition Committee of the Chamber of Deputies of the Parliament of the Czech Republic, which we regularly inform of our findings, to submit our own proposals of systemic measures that could improve the situation.

We informed the committee about the substantially higher number of complaints related to the allowance for care and benefits for people with disabilities (one-third increase in comparison to 2017). People most often complain about an excessive length of proceedings regarding these benefits. The longest delays are related to the assessment of the applicants' medical condition by the assessment commission of the Ministry of Labour and Social Affairs within appellate proceedings. In some regions, there are cases where just the assessment takes more than a year. This is caused by the lack of medical assessors.

We informed the Minister of Labour and Social Affairs of this alarming situation in person and in writing and requested immediate action. The Ministry of Labour and Social Affairs relied on the adoption of an amendment to the Organisation and Implementation of Social security Act, which was supposed to transfer the responsibility for medical assessment within appellate proceedings to the Czech Social Security Administration. This would increase the number of available medical assessors involved in the case as some of these experts had so far only been involved in proceedings on objections within social insurance. Unfortunately, the amendment failed to secure sufficient political support and the assessment of medical condition in appellate proceedings remained within the purview of assessment commissions. The only change that was adopted concerned excluding the medical assessors from the Civil Service Act. Starting from 1 January 2019, medical assessors may work as ordinary employees and are not subject to the age limit of 70 years. The aforementioned change should ensure a greater flexibility in employment of medical assessors (enabling part time work and agreements on work outside an employment relationship).

However, we are concerned that the amendment might not be sufficient to shorten the length of medical assessment to a reasonable period of time. We would therefore welcome if the proceedings on benefits for people with disabilities were further simplified. The proceedings would be shortened if only one official body was responsible. Furthermore, the assessment of medical condition separately for the individual claims of people with disabilities (allowance for care, disability card, medical aid contribution) is administratively demanding and represents a burden both for the applicant and the medical assessors. This situation would be helped if the first assessment of the medical condition of a person with disabilities also included all the person's claims within one comprehensive report, which is how this is done e.g. in Slovakia.

4 PUBLIC POLICY

In 2018, we managed to meet representatives of the regional authorities and discuss the problem of an administrative "ping-pong" – we wish to stop the practice where these authorities repeatedly return cancelled decisions of roads administration offices for a new hearing, without making their own decision in the matter. We created new information leaflets on civil service and employment within civil service and adjusted some of the existing ones to be more understandable and of more help to people in their particular circumstances. Although we were not very successful in our dealings with the Ministry of the Interior, we are not giving up and continue to promote increasing the number of offices where people can enter into a registered partnership (civil union of same sex couples) and adjusting the fee for issuing replacement residence permit card to a reasonable amount.

We handled

2,162 complaints;

→ **934** fell within the Defender's mandate,

1,228 fell outside the Defender's mandate.

there was a 33% increase in the number of complaints concerning infractions against public order, civil cohabitation and property.

→ **77** of our inquiries revealed maladministration,

in **6** cases, we did not manage to achieve a remedy.

We help change the rules

You will now receive the decision on land-use measures in your mailbox

We mentioned in the 2017 Annual Summary Report that the State Land-Use Authority would change its methodological guidelines so as to deliver decisions on approved land-use measures into the landowners' mailboxes. The State Land-Use Authority kept its word and amended the methodological guidelines effective from 1 January 2019.

Defender's Opinion: File No. 24/2017/SZD

Unsolved vehicle re-registrations

Since 2016, we have been in talks with the Minister of Transport concerning the possibility of re-registering a vehicle (i.e. notifying a change of the vehicle's owner and operator) in a situation where the buyer does not co-operate and fails to register as the new owner, despite having received the power of attorney from the seller to do so. The existing solution consisting in the possibility of unilateral re-registration of the vehicle has proven ineffective in practice. This is because the seller must submit a record of a technical check of the vehicle not older than 30 days, which is impossible to obtain if the vehicle is already used by the new owner. The effective impossibility to re-register the vehicle to its actual owner and operator often leads to a situation where the original owner and operator (still officially registered as such) receives notices and fines given by various authorities for infractions committed by the buyer or other persons, which the seller is unable to do anything about.

The Ministry has prepared an amendment to the law which unfortunately failed to pass through the Parliament. For this reason, we expect the Ministry to offer a new solution.

You need not tell your superior where you are going for holiday or that you have got divorced

We have found that the Czech Social Security Administration (CSSA) requests information on the marital and personal status of its employees and the exact address where they are staying when on holiday. The reason for this procedure is to ascertain potential impediments to work and calculate income taxes of individuals. This would be understandable in a situation where the employees claimed such impediments to work or referred to their marital status in their tax statements. However, if they do not, such reasons lack any basis and the Administration is asking its employees for unnecessary details.

The CSSA argued that knowing the exact address of stay during employee's holiday was necessary in case the employee needed to be recalled from leave or delivered an urgent letter. We believe that the right of the employer to recall an employee from leave does not entail the employee's duty to indicate an exact address of stay – employees face no sanctions for non-disclosure of the address or stating an incorrect address. The place of stay on holiday should not be relevant for the employer's decision-making on whether the employee should be recalled from leave or not; the reasons for such a recall should be paramount. We also believe that within civil service, employees should be substitutable by others when on leave, i.e. there should not in fact be any operational reasons for recalling employees back to work.

The Czech Social Security Administration agreed with our arguments and is no longer requesting that the employees indicate their marital status and exact address of stay when on holiday.

Defender's Report: File No. 4073/2017/VOP

Foster parents and tutors may apply for passports on behalf of children placed in their care without court approval

We repeatedly encountered situations where foster parents or guardians (i.e. people who have been given physical custody of a child by the court) had to apply to the court to be issued passports for the children, as this was not considered an "everyday matter" they could decide on by themselves. Since we do not consider traveling abroad from the Czech Republic to be a serious matter (school and family trips abroad are commonplace), we believe that a court approval is unnecessary for such a step.

After discussing the matter with the Ministry of Justice, the Ministry of the Interior changed its legal opinion. It is now possible for a tutor to apply for the child's passport and identity card without needing court approval. Foster parents and other "carers" can lodge the application in accordance with the law with consent of the child's legal representative attached. In case there is an insurmountable obstacle preventing them from obtaining the consent, this fact should be documented by means of a confirmation issued by a body of social and legal protection of children.

Defender's Opinion: File No. 14/2018/SZD

Ineligibility to use a car even after expiry of a ban on driving

If a court accepts a driver's promise not to drive a car for a certain period of time and conditionally discontinues criminal prosecution and sets a probationary period, the driver can get into a difficult situation. In some cases, the period for which the driver promises not to drive a car is shorter than the probationary period. Therefore, even after the voluntary period expires, the driver cannot apply for the return of his driving licence, since that is only possible after the court issues a resolution that the punished driver has successfully completed the probationary period. Naturally, such a resolution can only be issued after the completion of the entire probationary period. This means the driver is deprived of the right to drive for a longer period than specified by the court in its decision based on the voluntary promise.

This is a result of the lack of co-ordination between the Code of Criminal Procedure and the Road Traffic Act. The Minister of Transport promised to prepare a legislative amendment to address the issue.

Houston, we have a problem – systems are still not integrated

We repeatedly dealt with a situation where some Czech citizens (or former citizens) living abroad for many years were not aware that Czech information systems had records of their permanent address in the Czech Republic, sometimes even using their old surnames. If they inherited real estate, the information on their permanent address would correctly be changed in the Land Registry information system. Unfortunately, this was only temporary. Since the details indicated in the basic population registry entry are automatically considered to be the "correct" details, after some time, the incorrect details in the Land Registry information system are restored. The Czech Office for Surveying, Mapping and the Land Registry was aware of the problems but argued there was no unified method for reporting errors. In response to our suggestions, the Office found that services enabling easy reporting of errors had not been implemented in its system. Therefore, the Office proposed to remedy the omission.

Defender's Report: File No. 5629/2017/VOP

We are here to help

We helped and advised:

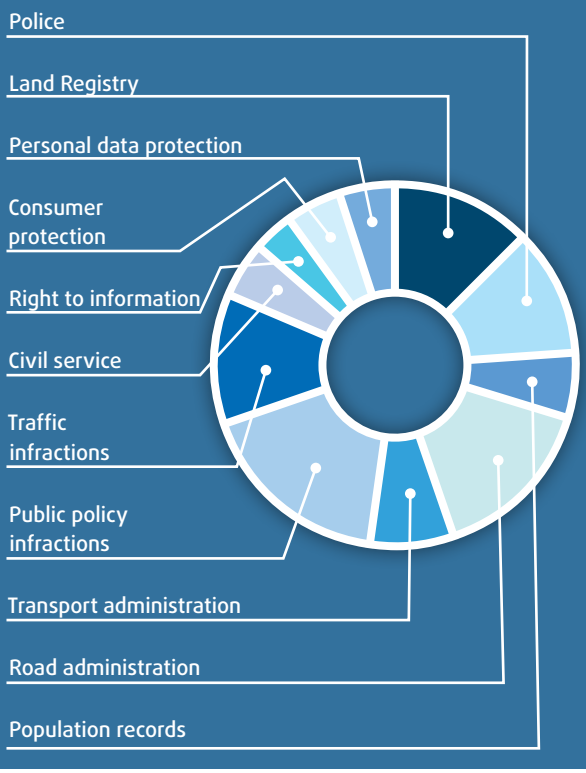
99 people with problems involving the Land Registry and land-use authorities

66 people with problems concerning the police

57 people with problems concerning registry offices and population records

97 people with problems concerning the use of roads

People most often sought help in the following areas:



In the end, an official was found who could decide to provide compensation for damage

In our 2016 Annual Summary Report, we mentioned a case of a complainant who had incurred damage in the amount of CZK 34,193 because the Ministry of the Interior had incorrectly levied a tax on an additionally-paid retirement contribution. We agreed with the Ministry that the State Liability for Damage Act was not applicable in the case and that it was necessary to use the Service Relationship Act and transfer the request for compensation of damage to a security corps official responsible for deciding in the matter. Based on our legal analysis identifying the provisions of the law according to which the request for compensation should have been assessed, the Ministry provided the compensation to the complainant in the full amount.

Defender's Opinion: File No. 2954/2016/VOP

We'll first make sure you are eligible for participation in the selection procedure

We found that a remand prison had committed malpractice when it had assessed the suitability of a candidate for a position of a judicial guard outside a regular recruitment procedure. The Prison Service noted that such an interview "was a method of selecting the best candidate for the recruitment procedure".

However, a security corps such as the Prison Service is not allowed to decide on whether or not to a recruitment procedure will be initiated with a specific person. This is simply a matter of whether a candidate sends a written application, where the delivery of said application automatically initiates the recruitment procedure.

The prison refused to stop conducting "preliminary interviews" and "pre-selections" prior to the recruitment procedure proper. We thus informed the Director General of the Prison Service, who adopted measures to avoid pre-selecting applicants prior to the recruitment procedure. He also ordered to discuss the matter during a country-wide meeting with staffing department officials to prevent recurrence of such situations.

Defender's Report and Opinion: File No. 1142/2017/VOP

The sole witness should be able to testify in his home town

An applicant complained that he was constantly being called to provide a witness testimony, despite

having repeatedly excused himself due to health reasons preventing him from going to an office in another town.

We found that the witness testimony was essential because only the complainant was present when the relevant infraction had occurred. The relevant authority was within its right to request a proof of health problems preventing the complainant from attending. However, in a situation where the office lacked a physician's approval for requesting the complainant to travel and attend the hearing, it could have asked another authority, i.e. a municipal authority in the complainant's place of residence, to obtain the testimony in its stead.

The municipal authority promised to proceed in this way in the future.

Defender's Report: File No. 6966/2017/VOP

Want to record important meeting of municipal representatives and their guests? Get ready to be arrested!

A complainant attended an informative meeting in a neighbouring municipality concerning construction of a sewer system. The meeting was called by the municipality's mayor to inquire about the citizens' opinions. The complainant was making a ideo recording of the meeting. At the start of the meeting, the mayor introduced the head of the relevant department of environment, the author of a study on the sewer system and an investment consultant. He then informed the participants that according to the Police of the Czech Republic, the complainant had no right to make a video recording of the meeting. Since the participants also disagreed with being filmed, he asked the complainant to stop recording. When complainant refused, the mayor called in the police who asked him to cease and desist from unlawful conduct. The complainant again refused to obey and was consequently arrested, handcuffed and taken to a police station.

We notified the relevant regional police director that making a recording of a meeting of public interest was not illegal. A meeting between municipal representatives and invited guests and citizens on building a sewer system had to be considered a meeting regarding a matter of public interest.

The police admitted they had committed malpractice and the police officers were instructed on how to proceed in similar cases in the future; the police apologised for their actions.

Defender's Report: File No. 3278/2017/VOP

Why should we apologise for making your life difficult for over a year?

A complainant lives in a cottage. The owner of neighbouring properties built a fence which prevents cars and partly even persons from using the only access road. The complainant is elderly and has serious difficulties to arrange for transport of items of daily use. She uses wood stove for heating, but the blocked road prevents her from bringing the wood to her cottage.

The relevant roads administration authority correctly ordered the removal of the fence from the road. However, this did not happen and for another 19 months, the authority did nothing to enforce its decision, even though it was obliged to do so after the expiry to no effect of a 7-day period for the removal of the fence.

The authority mistakenly argued that it could not enforce the decision because the owner of the fence had filed an administrative action (in 2016). We advised the authority that the fact that an administrative action had been filed did not mean that the authority should stop enforcing its decision. That would have been the case only if the court had granted a suspensory effect to the action, which was not the case at the time. The fence owner applied to the court for a suspensory effect only in November 2017, i.e. after we advised the authority that in the absence of a court decision, the enforcement of its decision should continue.

The authority remained inactive for 19 months, did not apologise to the complainant, did not train its staff and otherwise failed completely to adopt any remedial measures. Therefore, we contacted the city hall as the authority's superior body. The city hall then ordered the road administration authority to immediately enforce its original decision as, in the meantime, the court had dismissed the administrative action against the decision to remove the fence. The city hall further ordered the authority to apologise to the complainant and train its officers correctly. The authority complied.

Defender's Report and Opinion: File No. 6721/2016/VOP

We communicate

What is the invoicing period for utilities?

We talked with employees of the Energy Regulatory Office about their price calculations concerning one of the components of the bill for renewable sources of energy.

As the Subsidised Energy Sources Act lacks an authoritative definition of the term "invoicing period", there are two commonly used definitions. The first interpretation of "invoicing period" understands the term broadly as a billing period, i.e. a period for which individual payments made for supplies and the overall amount of payments for supplies are assessed. According to an inquiry of the Energy Regulatory Office, over a half of all electricity distributors adhere to this interpretation.

The second, narrower interpretation is favoured by the Energy Regulatory Office, among others, and is reflected in the price calculator. Under this interpretation, the "invoicing period" means the individual parts of the billing period indicated on the energy bill, where these parts are defined e.g. by individual user readings and estimates made at the end of a calendar year reflecting changes in the fees for transmission/distribution network services.

Employees of the Energy Regulatory Office promised to check whether and, if so, under what conditions it would be possible to adjust the calculator to use the interpretation favoured by most electricity distributors for calculating the prices of electricity.

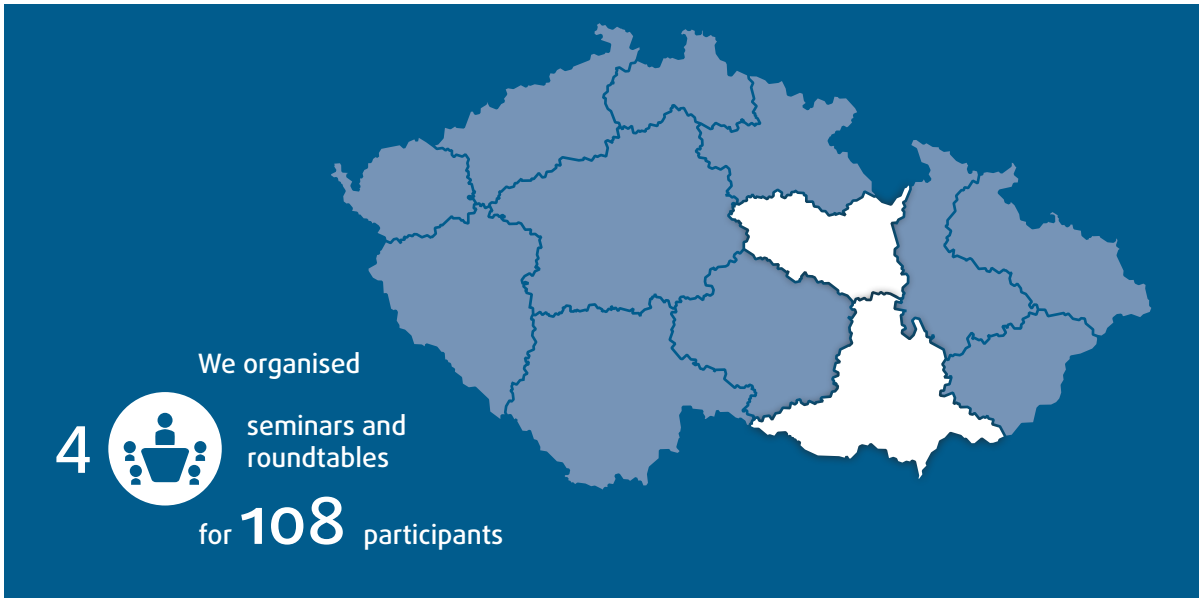
We simultaneously suggested within the commentary procedure on and amendment to the Subsidised Energy Sources Act to introduce a legal definition of the term "invoicing period".

When officials play "ping-pong"

We encountered cases of regional authorities dealing with appeals against decisions of roads administration authorities. Indeed, we have long been dealing with complaints against excessively long proceedings caused by repeated procedures on the same matter. We call this an official "ping-pong" (usually in cases involving determination whether a road constitutes a publicly accessible special-purpose road) and it consists of repeated annulment of decisions of the roads administration authorities by regional authorities and returning the cases back to the roads administration authorities for new procedure.

The goal of the meeting was to support regional authorities to not refer the matters back and decide themselves in cases where there have been repeated appeals. If the matter is clear cut and there are no doubts (e.g. it is not necessary to consider further evidence), regional authorities may make their own legal conclusions, even different than the first-instance authority. By changing the decision, they will more effectively promote their legal opinion and help achieve a final resolution of the administrative proceedings. Unsuccessful parties will also finally get a chance to exercise their right to lodge an administrative court action.

The discussion revealed that regional authorities preferred to annul the decisions instead of changing them, and return the matters for a new hearing. While they also tried to provide comprehensible reasoning to make it clear to first-instance authorities what needed to be corrected, they often encountered unprofessional approach of officials who ignored their binding legal opinions. Regional



authorities usually avoid supplementing evidence because they do not want to do the work of the first-instance administrative authorities. Another reason for restraint is the fear of the so-called "damage committees" at regional authorities which decide on liability of officials for lost court cases.

When the Ministry of the Interior takes its time

We have long been unable to achieve solutions to a number of topics within the responsibility of the Ministry of the Interior. We asked the newly appointed Minister for a personal meeting, similarly as with his colleagues at other Ministries (of education, health, justice and social affairs). Unfortunately, months later such a meeting is yet to take place and we continue to discuss systemic matters only in writing.

We wished to make it possible to conclude registered partnerships in all municipalities with extended competence; the Ministry believes that the number of registering authorities is sufficient (14) and is not planning to change it. It did, however, agree with us that a change of surname in relation to concluding a registered partnership should not be subject to administrative fees. An amendment to the Civil Registries Act being prepared should make it possible.

We have repeatedly been unable to reach an agreement on the issue of Defender's right of access to the contents of files concerning the granting of Czech citizenship, including parts containing a detailed opinion requested for the decision of the Minister of the Interior on appeals.

We have long been promoting a reduction of the fee collected from third country nationals for issuing replacement residence cards (in cases of damage, destruction, loss or theft or non-functional biometric data carrier). The fee is CZK 4,000, even though a similar fee for replacing citizens' identity cards is only CZK 100. The Ministry of the Interior believes the fee is proportionate; we believe there are no objective reasons for the fee to be 40 times higher than the fee for a new ID card. We will seek support from the Ministry of Finance as it is the one responsible for collecting the fees.

The Ministry admitted the possibility of looking into the matter of enforcement of payments for police escorts of children who have escaped from school facilities for institutional and protective education. The costs of police escort back to the facility should be paid for by the school facility. In extraordinary cases, the facility may claim the amount from the child, i.e. the child's parents; however, the costs should not be borne by the police. The Ministry promised to pay attention to the issue as part of the planned amendment to the Police Act to be adopted in 2019.

Other problems being discussed by our colleagues with regard to the Ministry of the Interior include the area of the right to vote, deporting of foreign nationals, supervision of local and regional governments etc.

5 RULES OF CONSTRUCTION PROCEDURE

We organised the first ever conference on animal protection, which raised topics and suggestions we used, inter alia, in the commentary procedure on the Animal Protection Act, as well as a number of further recommendations. The conference proceedings are available in our archive at (http://bit.ly/konference-ochrana-zvirat). We also discussed the impact of an amendment to the Construction Code, which made the life more difficult to many developers. We called attention to the key problems in our press release of 22 October 2018. We also commented on various pieces of legislation, including amendments to the Animal Protection Act, Water Act, Forests Act and others. The comments are available on the Defender's website.

We handled

966 complaints;

which is 100 more than last year

→ 116 of our inquiries revealed malpractice,

in 5 cases, we did not manage to achieve a remedy or satisfaction.

We help change the rules

Decaying houses continue to threaten lives

In our Annual Report for 2017, we noted that the Ministry for Regional Development was to submit by 31 January 2018 a subsidy programme to the Government that would address situations where construction authorities were not enforcing their decisions (to demolish a structure or to carry out repairs and maintenance) with respect to buildings that threatened people's health or lives because the municipalities lacked the necessary funds. Further Government meetings led to several postponements of the deadline, ultimately to the end of June 2018. Given the continuing inactivity of the Ministry, it comes as no surprise that there are no indications that the Ministry has completed the assignment. Over the time when we have been trying to convince the Ministry about the urgency of the problem, there have even been deaths associated with unsecured structures. Further delays will only make the problem worse. The construction authorities are prepared to make use of the subsidy programme and keep asking about it. For this reason, we will continue to pursue this topic and insist that the Ministry completes its assignment.

What infraction is committed when one animal attacks another?

In 2016 already, we informed that based on our initiative, the Ministry of Agriculture was co-operating with the State Veterinary Administration to create a unified methodology for dealing with situations where one animal attacks, injures or even kills another. The Ministry published the methodology on its website at the end of 2018 (see http://bit.ly/napadeni-zvirete-zviretem). We will notify its existence to the authorities of municipalities with extended competence, regional authorities and regional veterinary administrations. In the future, there should be no doubt whether or not an animal-to-animal attack can be qualified as the infraction of (deadly) animal abuse.

Defender's Report: File No. 7227/2016/VOP

Putting an end to unregulated drilling

In the Annual Report for 2017, we noted the non-discussion of the amendment to the Water Act that should prevent e.g. loss or pollution of water in wells as a result of an exploratory borehole (which is subject to no permission). The amendment was finally discussed in 2018 and the Water Act now includes the duty to obtain a permit from a water-law authority to carry out exploratory drilling. We believe that this will help protect the quantity and quality of underground water and the rights and obligations of the affected persons.

Obstacles to effective animal protection

At a conference on animal protection we organised, critical voices noted the deficiencies of the Animal Protection Act hindering effective animal protection in practice. This issue was brought to the attention of many people by highly publicised cases of a lion kept in a village, an escaped cougar and a cyclist attacked by a lioness who was being walked by her owner. The breeding of exotic animals was one of the sensitive topics at the conference. The problem concerns both the conditions in which the animals are kept and security measures preventing their escape. Within a commentary procedure, we requested that the breeding facilities for such animals be also assessed by regional veterinary administrations and that it become possible to seize the animal in case the facility is found insecure until the owner remedies the problem. However, even if the animal is seized, there is the problem of where to put it. Zoo capacity is limited and privately-owned facilities lack space and money to help. This is the chief reason why especially large predatory animals continue to be kept in bad conditions by their owners. We believe that it will be necessary to enact adequate legislation to regulate (among other things) the creation of shelters for animals requiring special care.

Defender's Comments:
File No. 42766/2018/S

You should hurry or the State will determine the expropriation price of your land

We commented on a planned amendment to the law on accelerated construction of transport and energy infrastructure and waterways, which amends a number of other laws, including the Expropriation Act. According to the amendment, the owner of a property to be expropriated has only 15 days to submit an expert report determining the price to be paid for the expropriated property. If the owner does not manage to submit such a report in time, the price will be determined by the State. Such a time limit is completely impossible to meet, putting the owner in an unacceptably unequal position. We request that the deadline for the submission of an expert report be prolonged to at least 60 days.

The amendment would also make it impossible for the property owner on whose land a structure belonging to someone else is going to be built to participate in any way in the occupancy permit proceedings. Such a concept might, in our opinion, be unconstitutional. Indeed, the Constitutional Court has previously concluded that exclusion of property owners from such occupancy permit proceedings constitutes an error on the part of the lawmaker.

Defender's Comments:
File No. 51130/2018/S

More students will have the opportunity to become foresters

We noted a legislative gap in the Forests Act concerning the possibility of obtaining a professional forester licence to ensure expert forest management. The licence was being granted only to graduates of secondary schools and universities with a Master's degree with a certain period of experience. Thanks to our commentary on the amendment to the Act, it will also be possible to grant such a licence to university graduates with a Bachelor's degree and graduates of higher vocational schools, again after they have obtained certain experience.

Defender's Comments:
File No. 42765/2018/S

We are here to help

We helped and advised:

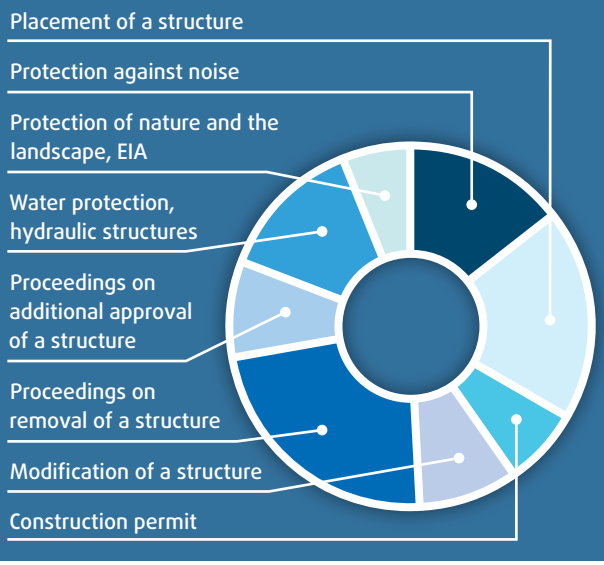
326 people with problems regarding planning or construction permit proceedings or using a structure

166 people with problems concerning removal or additional approval of a structure

84 people with problems concerning water mains, sewers or water protection issues

74 people with issues related to excessive noise

People most often sought help in the following areas:



Malodorous and dusty glass crushing works

We were approached by a woman who requested inquiry into the procedure of a construction authority in relation to repeated extensions of trial operation of a glass recycling and shard crushing facility. After the facility's technology had changed, people in the neighbourhood of the plant were bothered by odours and dust coming from the facility.

We found that the construction authority had permitted the operator to perform construction modifications and that separators of individual glass components and a rotary dryer of glass shards had been added to the production line. Having regard to the potential environmental impacts, the construction authority permitted a 9-month trial operation to conduct measurements of pollutants and noise. The regional authority subsequently issued a permit for operation of a pollution source. The construction authority subsequently extended the trial operation period twice without checking the results of the previous period and without taking into account complaints from the people about odours and noise. Around the same time, moreover, the Czech Environmental Inspectorate found that the company was operating the shard dryer at variance with the manufacturer's instructions. The manufacturer subsequently adjusted the operation and implemented measures to reduce noise and odours.

We noted to the construction authority that it should have approached the situation with maximum caution if there were serious problems with the operation. If the construction authority was aware of people's complaints about noise and odour, it should not have extended the trial operation without discussing the matter first with the regional authority, which is responsible for the area of environmental protection. The regional authority could have set specific conditions and evaluated whether the trial operation could at all be extended. After we issued our inquiry report, the complainant informed us that the situation had improved significantly and the operator was implementing dust and noise reducing measures.

Defender's Report: File No. 7217/2016/VOP

We've never seen the well, but it surely is there...

A complainant was unsuccessful with her application lodged with a municipal authority (acting in the role of the competent water-law authority) requesting that a protection zone preventing her from managing her land be cancelled. The protection zone had been established to protect a well. However, the well was remote from the complainant's land and was only being used to collect polluted water. The complainant correctly pointed out that protection zones were only established for drinking water sources. The water-law authority noted, inter alia, that the well was situated on the complainant's land, but we found that the authority had made no on-site inspection and based its procedure solely on information from its archives. If it had carried out an inspection on site, it would have found that the well was indeed not located on the complainant's land. After we issued our report on the inquiry, the authority mapped the position of the well and had its correct co-ordinates included in the spatial plan, together with the correct position of the protection zone. However, we were not satisfied with this because the mere inclusion into the spatial plan had no significance for the well's protection zone and had not addressed the complainant's problem. We were also not content with the subsequent cancellation of the protection zone on the complainant's land where there was no well. We criticised the water-law authority for addressing merely the position of the protection zone; we wanted it to find out whether the well with polluted water even needed protection at all. Indeed, the aim of protection zones is to protect the output, quality and health safety of water sources that are or can be used to collect drinking water. Even though the authority had not obtained any evidence, it insisted on maintaining the protection zone. For this reason, we applied sanctions against the authority by informing the superior authority, i.e. the Regional Authority of the South Bohemian Region. Not even this authority managed to correct the malpractice on the part of the water-law authority, however.

Defender's Opinion, Report, and Sanctions: File No. 2121/2017/VOP

"Crooks" on the phone

We inquired into the procedure of the Czech Agriculture and Food Inspection Authority (CAFIA) concerning the commercial practices in concluding consumer contracts over the phone. The case involved an offer to purchase a food supplement. The complainant was sure he did not agree with regular deliveries of the product. However, the company insisted he had entered into a purchase contract over the phone and requested payment. The complainant withdrew from the contract and requested an inquiry into the company's activities. CAFIA claimed there had been no unfair commercial practices involved and advised the complainant that he needed to be careful in communicating with similar telemarketing companies. We analysed audio recordings of the telephone calls and came to a different conclusion. We thus initiated a meeting with CAFIA and insisted on more effective punishment of unfair commercial practices and correct future practice. CAFIA subsequently opened an inquiry into further complaints against this company and proved unfair commercial practices. The company was ordered to change the information provided during phone calls, in written materials and on its website to comply with the legal requirements. The company complied with the order.

Defender's Report: File No. 6418/2016/VOP

Clean dwellings and toilets are not enough to ensure animal welfare

We were approached by a member of an animal protection association who complained against a regional veterinary administration and a municipal authority. Both authorities had allegedly been inactive in dealing with her complaint against animal abuse by Ms M.M., who donated to the association 13 cats of the total of 21 cats living with her and her dog in a two-room flat. According to a veterinarian, the condition of the cats was bad (they were malnourished and diseased); the association thus approached the regional veterinary administration to conduct an inspection of Ms M.M.'s flat. The woman herself was not self-sufficient and required an all-day support of her partner.

In our opinion, the administration failed to inspect the situation correctly because it did not check the cats' medical condition and all aspects of their welfare. Animal welfare is not just about having enough food, water and clean cat toilets (which were the only things the administration checked). Animal welfare also means their physical and mental well-being, which the owner must provide by ensuring proper living conditions and care (including veterinary attention). The staff of the veterinary administration must be able to evaluate other

conditions in which the animals are kept, especially those related to their basic natural needs. While the regional veterinary administration proposed to place the cats in substitute care, it did not indicate under what conditions they could return. It also lodged an application with the municipal authority to inquire into potential animal abuse. The municipal authority is obliged to act upon the administration's application and it therefore took over the case. However, it committed malpractice when it gave Ms M.M. a disproportionally long period for producing evidence, thereby completely negating the meaning of the proceedings, i.e. improving the conditions in which the animals were kept. It was also wrong to have referred the administration's application to the police for investigation, merely in relation to a police request for documents on Ms M.M. The municipal authority proceeded inconsistently when, on the one hand, it referred the case to the police while, on the other hand, it did not take the animals away from Ms M.M. (even if only temporarily). The municipal authority did not commence infraction proceedings even after the police had set the case aside.

The regional veterinary administration informed us that, while it disagreed with some of our conclusions, it would keep them in mind for future cases. The municipal authority itself requested an opinion of the city hall. The city hall agreed with our conclusions and the municipal authority informed us it would heed our recommendations in its future cases relating to animal protection. Infraction proceedings were not opened as Ms M.M. had died in the meantime.

Defender's Report and Opinion:
File No. 3591/2017/VOP

»»»»» We communicate

Conference on animal protection

In February 2018, we organised a conference titled Current findings and issues in animal protection.

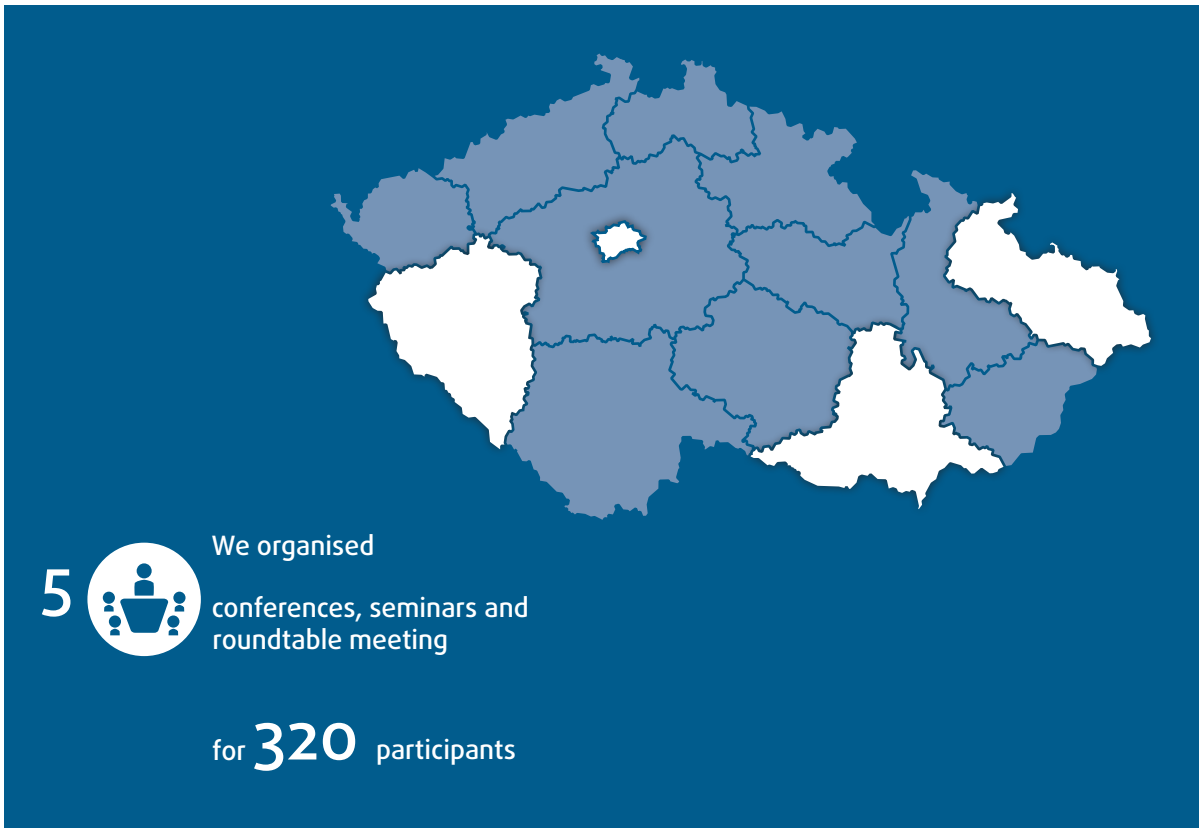
Some of the conclusions reached at the conference have already been put in practice (see above). Other recommendations concerned the practice of some authorities and defining what constituted animal abuse and what were unsuitable conditions (especially in cases where dozens of cats or dogs were kept in flats, or in cases of breeding of large predatory animals). We believe it would be helpful to create welfare standards for certain kinds of animals, such as exist in other countries. These standards would serve as information for breeders on how to take care of the animals. Inspection authorities will use them as guidelines on how to assess various situations, which would help unify their approach and evaluation.

There is an increasing number of cases where dozens of animals are being abused at once (especially dogs and cats) by being kept in human dwellings (flats or private homes, garages etc.). Finding about these cases is often nearly impossible since the inspection bodies are not allowed to enter people's homes under the law.

The conference participants also agreed that it was necessary to look for ways to help municipalities with extended competence to finance special measures under the Animal Protection Act. These are cases where a municipal authority agrees to seize an animal (temporarily or indefinitely) and has to take care of it.

An amendment to the Construction Code brought delays

If someone wishes to build something, they must obtain a binding opinion on the planned structure's compliance with the spatial plan. Until the end of 2017, this matter was assessed by the construction authority conducting the proceedings; since 1 January 2018, this responsibility was conferred on the spatial planning authorities. The shift in responsibilities was not accompanied with adequate staffing, which led to delays in processing of the developers' applications. According to our findings, the problem concerned especially the authorities in large cities and their fast-growing satellite towns. Due to a significant increase in the number of applications, the processing times often exceeded six months. As a result, the developers were unable to start building and repeatedly approached us



with complaints. The spatial planning authorities warned about the amendment's negative impacts as they would be distracted them from their main task, which is to draw up spatial plans, regulatory plans and land-use studies. This demonstrated the lack of preparedness and insufficient evaluation of the difficulties brought by the amendment. Since 1 September 2018, the Construction Code was therefore amended again and certain cases where excluded from the requirement to obtain a binding opinion. Even though it is too early to evaluate this change, the authorities only expect a few percent decrease in their workload. The attempts by a group of Deputies to shift the responsibility back to construction authorities have so far not brought results. We will continue monitoring the situation.

Defender's Report: File No. 4521/2018/VOP

Why are people complaining about construction authorities?

We regularly present our results to the Petition Committee of the Parliament of the Czech Republic. The committee asked us to explain why complaints against construction authorities have in the long term been the most common ones. Based on our findings, we identified the following interrelated reasons.

The existing Construction Code is too complicated, not only for the developers, but also for the construction authorities themselves. The Code deals with a range of different procedures and acts which deal essentially with the same right, i.e. the right to build a structure. And when someone wants to build? Then the traditional administrative proceedings await (planning, construction and occupancy procedure) or another, simpler form of procedure is sufficient (planning approval, approval of the notification of construction, occupancy permit, public-law contract, certificate issued by an authorised inspector, simplified planning procedure), or multiple procedures can be combined (e.g. joint planning and construction proceedings). Newly, these proceedings can be merged with environmental impact assessment (EIA).

Although the lawmaker argued that the changes introduced by the current Construction Code (effective from 2007) and its major amendments would lead to a simplification of the procedures of construction authorities and expediting construction, the opposite has happened.

The solution to the problem certainly does not lie in depriving the persons involved in the proceedings of their rights. Indeed, it turned out that attempts to do so were at variance with Czech and European legislation. Moreover, our own findings show that public participation in construction proceedings has no significant effect on their length. The problem lies rather in the frequent changes and amendments to the Construction Code. The complex and obscure legislation directly affects the length of the individual processes and the authorities' maladministration rate.

Another fact that directly affects the length and quality of proceedings is the staffing situation at construction authorities. The constantly changing legislation, its complexity and the officials' remuneration result in a situation where construction authorities lack sufficient and competent staff as many potential candidates are not interested in this kind of work. This problem affects larger cities and regional capitals in particular, especially their metropolitan areas (in the South Moravian Region, Prague, Central Bohemian Region etc.). It concerns not only the first-instance construction authorities, but also regional authorities and the Ministry for Regional Development.

The above facts may also be the reason behind the proliferation of "illegal" buildings. In reality, there are only very few cases where it would not pay off for the developer to build a structure without a permit as the building would really have to be demolished. For this reason, there is a general belief in society these days that building without a permit is normal and advantageous. Administering unauthorised structures by the construction authorities also takes time and effort the officers could use to deal with and monitor properly authorised building projects. The ultimate result is that those who proceed in accordance with the law pay the price.

Should the Ministry for Regional Development decide to introduce further changes to the Construction Code, it should only do so on the basis of a thorough analysis of the problems faced by the construction sector and the practice of the construction authorities. This should in no case happen only on the basis of input from the Czech Chamber of Commerce and private companies.

6 JUDICIARY, MIGRATION, FINANCE

During 2018, we inquired into how the Tax Administration used retention orders. Our findings led to the issuing of new methodological guidelines improving the entrepreneurs' position. We also managed to resolve the long-inconsistent courts' procedure in collecting so-called judicial receivables (judicial fees, costs of criminal proceedings, costs of legal representation etc.). In the near term, these should be collected by the Customs Administration instead of the courts, based on an amendment submitted by the Ministry of Justice. We welcome this result.

We handled

1,231 complaints;

Of which:

→ **787** fell within the Defender's mandate,

444 fell outside the Defender's mandate.

→ **76** of our inquiries revealed maladministration,

We managed to achieve a remedy **in all** cases.

We help change the rules

Why shouldn't an authorised attorney be allowed to peruse the probationary file of a client?

The Probation and Mediation Service did not allow a complainant to peruse the file of her brother who was serving a prison sentence, despite showing a power of attorney. The reason was that the filing rules did not allow such a procedure. After our inquiry, the Probation and Mediation Service changed its filing rules and clients' authorised attorneys are now able to inspect their files.

Defender's Report: File No. 6761/2017/VOP

Reasonable rules for tax collection

We conducted a systemic survey into the use of retention orders by the Tax Administration. While the available statistical data supported the conclusion that retention orders were not applied indiscriminately or even abused, it cannot be excluded that in some cases, the Tax Administration indeed committed malpractice and caused damage to an honest entrepreneur. We thus welcomed a new methodological guideline on retention orders, which specifies stricter conditions for their application. We see further room for improvement in the practice of the Tax Administration in the matter of checking the conditions for continuing retention. We pointed out the need to resolve the issue of accrual of interest in case of unlawful conduct of the tax administrator with regard to retention orders. The interest should compensate aggrieved entrepreneurs for the damage incurred. Both methodological guidelines are to be issued in early 2019.

Defender's Report: File No. 4452/2017/VOP

A single phone call from the court could have helped

We encountered a case of a seriously ill convict to whom the court had granted his application for postponement of imprisonment one day before he was about to commence his sentence. The convict had late-stage cancer. Unfortunately, neither he nor the prison learnt that the postponement had been granted, so the convict commenced imprisonment and continued to wait for the resolution of his application. He only learnt about the postponement several weeks later. However, he then found out that the postponement decision had lost all legal effect after he had commenced serving his sentence, so he applied for a suspension of imprisonment. He died on the next day. Based on our inquiry, the court agreed to set up rules for timely informal communication with the convicts and the prison. Should the court grant an application for postponement of imprisonment shortly before the convict is to commence serving the sentence, the court shall inform the convict of the fact by phone or e-mail in addition to the formal service

of documents. The court will also suitably notify the relevant prison that a postponement has been granted. To prevent such cases from happening again, we asked the Ministry of Justice to amend the relevant instruction regulating the procedure of all courts.

Defender's Report: File No. 7176/2017/VOP

Fair procedure for everyone

We inquired into the procedure of the Ministry of the Interior in decision-making on administrative expulsion in the case of foreign nationals from countries where armed conflicts are ongoing. In such cases, it is necessary to determine whether a return would not threaten the foreigner's life. We analysed 34 cases involving foreign nationals from Afghanistan, Iraq, Somalia and Syria, i.e. the main source countries of successful applicants for international protection at the time. We found systemic shortcomings in the proceedings making it difficult for the foreign nationals to tell the officials about the danger they fled from. In autumn 2015, foreign nationals lacked legal advice and often did not understand the purpose of expulsion proceedings. Some received information in a language they did not speak. In other cases it was impossible to prove whether they had received certain advice. In some cases, they were not asked about the dangers they could face in their country of origin following their return. Their statements demonstrated they did not understand the way the Schengen zone operated and the principle that they needed to apply for international protection in the first EU country they entered. The assessment of the dangers they faced in their home countries after their return was completely insufficient. The Ministry of the Interior justified the possible returns by pointing out that the foreign nationals had not applied for international protection in the Czech Republic, although some had expressed their wish to do so. The Directorate of Immigration Police and the Ministry of the Interior adopted a number of systemic measures to enable foreign nationals to express their concerns about returning to their home countries. They will also enable the police and the Ministry to focus only on high-risk countries.

Defender's Report: File No. 6610/2015/VOP

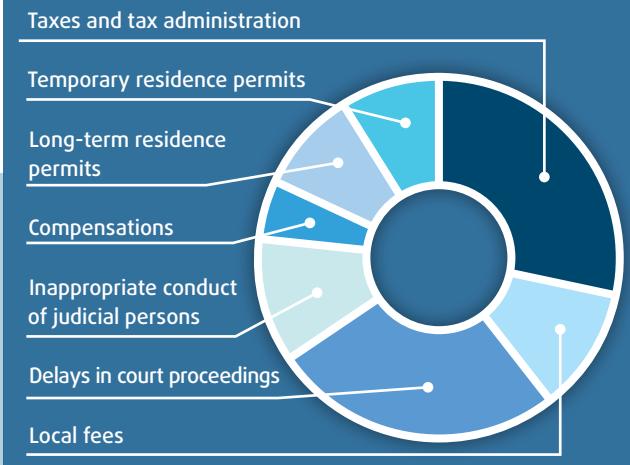
We are here to help

We helped and advised:

113 people with problems concerning taxes and customs duties

100 people dealing with delays in court proceedings

People most often sought help in the following areas:



A judge's nervousness is not a reason preventing video recording of the hearing

A judge banned a party to proceedings from making a video recording of the court hearing, noting he was nervous when filmed. The party lodged a complaint with the president of the court against the judge's inappropriate conduct. The complaint was, however, dismissed as unfounded. We concluded that the fact the judge was "nervous" when filmed was not a legitimate reason for not giving consent to recording. Judges should be professionals with high standards of conduct who serve to increase public confidence in the judiciary. We believed the president of the court should have accepted the complaint as justified. Additionally, the complainant also objected to the composition of the chamber of judges of which the president of the court had originally been a member. The president should thus have excluded herself from this part of the complaint since she actually was the subject of the complaint. The president of the court eventually admitted her misconduct and discussed the problem with the judge in question. She also informed the other judges and the court management about our conclusions.

Defender's Report and Opinion: File No. 6194/2016/VOP

There should be no delays in court decisions involving children

A mother of a 10-year-old girl requested restriction of contact between her daughter and the father, and especially his wife. When, even after six months had elapsed, the judge failed to order a hearing, witness testimonies or expert reports, the mother filed a complaint against delays in proceedings with the president of the court. The president considered the complaint unfounded but promised to watch the course of the custody proceedings to ensure expeditious resolution. When, even after another half year, the proceedings had not moved forward, the mother approached us. We contacted the president of the court with a question about the state of the custody proceedings, asking whether the principle of urgency was being adhered to and whether the proceedings were going smoothly and were taking proportionately long. The president of the court admitted that the overall length of the proceedings was excessive, taking into account the fact the proceedings concerned a minor child. This was, among other reasons, a result of long-term unfitness to work on the part of the responsible judge and the fact that the court had long been unable to find an expert to draw up an expert report. One by one, four court-appointed experts asked to be relieved of the duty to draw up the report. After our intervention, the president of the court promised to watch the proceedings

closely and regularly and push for the fastest possible hearing and decision in the case. During the responsible judge's unfitness to work, he ensured that the file would be sent to an expert to finalise the expert report in order to prevent further delays.

Press release of 3 May 2018

Proportional costs of collection of minor debts

A municipality used an official enforcement officer to collect a fine in the amount of CZK 1,000 from our complainant. The total costs of the enforcement procedure reached nearly CZK 4,600. We came to the conclusion that the municipality had proceeded incorrectly. It is bound by law to select such a manner of debt collection where the costs are not obviously disproportionate to the owed amount. The municipality has already ceased to collect debts under CZK 10,000 using an official enforcement officer. The complainant successfully defended himself in court against having to pay the costs of debt collection.

Defender's Report: File No. 8208/2016/VOP

Press release of 31 August 2018

A waste collection debt cannot be "sold"

A municipal authority entered into an agreement on assignment of receivables comprising a debt on municipal waste collection fees. The municipal authority assigned the receivables to a natural person. A municipal authority (as a tax administrator) is in a superior position vis-à-vis the debtor, i.e. they are not parties on equal footing (as would be the case if the creditor were a natural person). This entails the duty to carry out tax proceedings and ensure proper payment of fees. No law binding on the municipal authority in administration of fees enables the assignment (selling) of a receivable comprising owed waste collection fees. Moreover,

by discussing such assignment with a third party alone, officials expose themselves to a potential breach of confidentiality. The municipal authority promised not to enter into contracts on assignment of public-law receivables to natural persons in future.

Defender's Report: File No. 1321/2017/VOP

Can an authority collect fees for a dead dog?

The Defender was approached by a woman who had been charged a dog fee by the local city hall for the years 2009 to 2015, despite the fact her dog had been put to sleep in 2013. However, the complainant had failed to report this fact, had not appealed against the delivered payment orders and had started dealing with the situation only when enforcement proceedings had been launched against her. Given the time delays involved, it was only possible to help the complainant with the fee for 2015. We came to the conclusion that the city hall had committed maladministration as it had not opened review proceedings when, in 2017, the complainant had sent to the city hall a certificate that the dog had been put to sleep. Following our intervention, the city hall cancelled the payment order and discontinued further proceedings.

Defender's Report: File No. 5489/2017/VOP

Press release of 8 November 2018

Additional payment of salary must also be protected

A complainant won a court dispute with his former employer and the employer was ordered to additionally pay the complainant for overtime work. However, the complainant never received the payment because a tax authority subjected the entire claim granted to the complainant to a tax enforcement procedure. The complainant unsuccessfully requested its discontinuation on the ground that payment of outstanding salary cannot be affected by such attachment of a claim. He noted that this form of enforcement does not adhere to protection typical for deductions from salary. Based on our inquiry, the tax authority discontinued the tax enforcement procedure and awarded the complainant interest for its unlawful procedure. However, the complainant again did not receive attached salary or interest because the tax authority had set off these amounts against the complainant's owed income taxes. In the following year, we will therefore inquire into the matter of whether a tax administrator can keep money obtained on the basis of an unlawful enforcement procedure.

Defender's Report: File No. 3003/2017/VOP

Asylum seekers from China

Between summer 2015 and summer 2016, there were 78 applications for international protection filed by Christians from China where no decision was rendered even after the expiry of the statutory deadline. In October 2017, we thus initiated an inquiry ex officio where we examined the procedure of the Department for Asylum and Migration Policy of the Ministry of the Interior, while looking for potential delays. We found that there were unjustified delays in all the examined cases. During February 2018, the Ministry then decided on all the applications. Asylum was granted only to eight of the applicants, the others received no form of international protection. Given this outcome, we have initiated a new inquiry which is still pending. Currently, the individual cases are being heard by administrative courts.

Defender's Report and Opinion: File No. 6741/2017/VOP

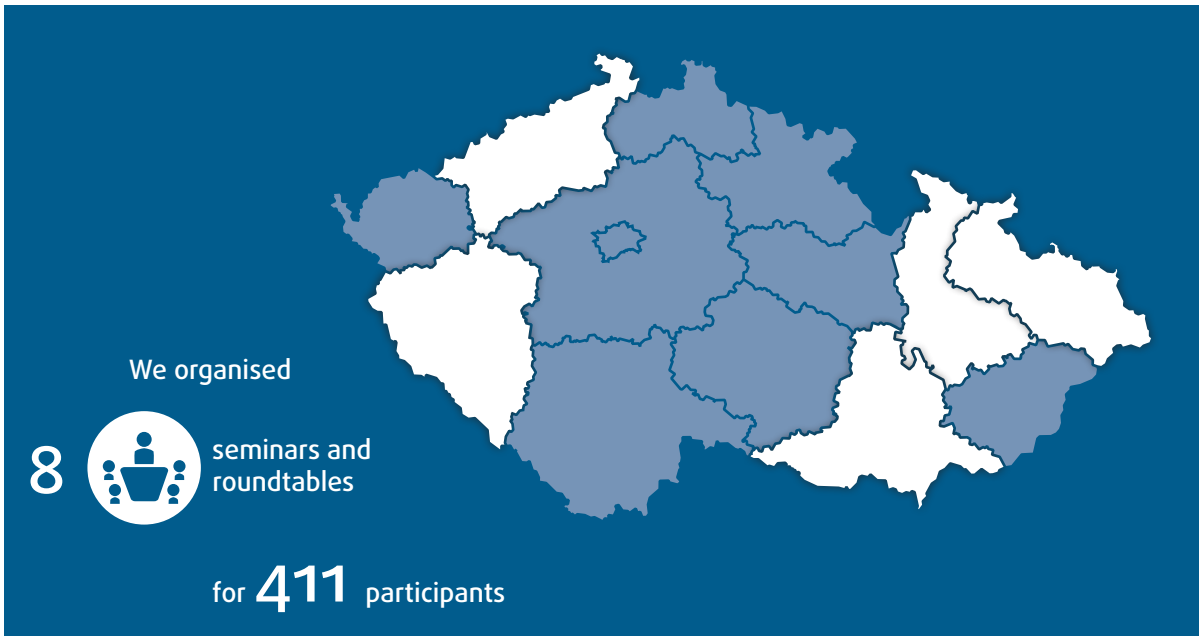
»»»» We communicate

We help municipal authorities get oriented in the administration of local fees

In 2018, we organised a total of 3 seminars on the topic of administration of local fees. Our experience shows that municipal authorities often commit maladministration, for example, in decision-making on waiving a fee, (not) issuing payment orders and enforcing minor debts. We showcased the common cases of maladministration, as well as examples of good practice of municipal authorities, at a conference of the Union of Towns and Municipalities of the Czech Republic. We trained over two hundred municipal officers.

Entrepreneurs should receive fast compensation for an unlawful retention order

We organised a roundtable titled: Consequences of an incorrect procedure of tax administrators – what about interest? We believe it is essential for entrepreneurs who have been unlawfully subjected to a retention order (i.e. in cases where the retention order was eventually annulled by court) to quickly receive compensation.. This is the purpose of interest charged in case of an unauthorised procedure of tax administrators. An expert discussion at the conference helped clarify whether such interest could also be paid in cases of unlawful retention orders. If



the damage caused exceeds the amount of interest, the entrepreneurs can claim compensation from the Ministry of Finance. However, this procedure, too, is problematic in practice. For this reason, in 2019 we will organise a follow-up conference in co-operation with the Chamber of Tax Advisers of the Czech Republic on the topic of the State's liability for damage in tax administration matters.

Administration of public health insurance premiums

As in the case of enforcement of judicial receivables, we also encountered inconsistent practice on the part of health insurance companies in the administration of public health insurance premiums. We thus mapped the practices of all health insurance companies. We discussed the result of the survey with representatives of the insurance companies and the Ministry of Health at a roundtable meeting. We were unable to reach agreement on whether health insurance companies were obliged to adhere to the Tax Code in collecting health insurance premiums and, if so, to what extent. We will continue dealing with these systemic issues in the next year as well.

We are interested in current affairs (not only) of judicial administration

We were able to take ;part in a series of roundtables organised by the Ministry of Justice on the selection and assessment of judges and on other strategic issues that should culminate in an amendment to the Courts and Judges Act. We welcomed the fact that the Ministry would introduce, in the amendment, a ban on repeated appointment of presidents and vice-presidents of courts. We already emphasised this problem in 2016.

The Defender commented on the issue of selecting judges at the Union of Judges conference in Tábor, where she also drew attention to the continuing deficiencies in the publishing of court decisions in a database administered by the Ministry of Justice. This topic, too, was already mentioned in the Annual Report for 2016. The situation has not improved over the past two years. A half of all regional courts have not added a single decision to the database; the other half of regional and superior courts published merely a few dozen decisions. In February 2019, we will organise a roundtable to discuss the situation in the publishing of court decisions and the current plans of the Ministry; we will share experience with administrators of electronic case law databases of the supreme courts in the Czech Republic as well as with experts from Slovakia, where court decisions have already been published since 2012.

Press release of 12 October 2018

Traditional seminars on foreigner and asylum law

In September 2018, we organised our traditional seminar on asylum and foreigners law. The seminar contributions are included in the 2017 Yearbook of Asylum and Foreigner Law. In March 2018, we visited the Judicial Academy and, together with the Supreme Administrative Court, informed the judges of our findings especially with regard to issues of the European common asylum system.

Yearbook of Asylum and Foreigner Law: http://bit.ly/rocenka-cizinci-2017

How to deal with unaccompanied foreign minors and how to spot them

Last year, our colleague Linda Janků, a member of the international expert group formed by the Committee on the Rights of the Child of the Council of Europe, participated in the creation of international standards on determining the age of unaccompanied minor foreigners and establishing guardianship for them. Both topics are very important to improve the protection of the rights of migrant children – an aim followed by the Council of Europe's Member States. Unaccompanied minors often arrive in Europe without documents certifying their exact age (whether because their home countries never issued such documents or they have lost them due to war or difficulties on the road). In these cases, it may become necessary to determine their age by means of qualified expert assessment, in order to ensure that all children receive protection and treatment they are entitled to and to prevent adults from abusing these rights. It is also of paramount importance to appoint, as soon as possible, qualified guardians for all unaccompanied minor foreigners to protect their best interests, taking into account the specific situation and vulnerability of migrant children, and the need to look for permanent solutions to their predicament. The expert group completed both materials on determination of age and guardianship in 2018, and they will be submitted to the Committee on the Rights of the Child for approval.

7 SUPERVISION OVER RESTRICTIONS OF PERSONAL FREEDOM

We visit places where persons restricted in their freedom are or may be present, and deal with complaints concerning prisons and psychiatric hospitals. We also supervise the performance of expulsions and transfers of foreign nationals.

This year, we:

visited **27** facilities

monitored **54** expulsions and transfers of foreign nationals

dealt with **603** complaints raised by social services clients, patients and inmates

trained **111** professionals from facilities for long-term and psychiatric care, and regional authorities' employees received training in the area of preventing ill-treatment

We received and analysed

7,397 administrative decisions on an expulsion

819 administrative decisions on detention and decisions on continued detention.

You can find more information on supervision over restrictions of personal freedom in the Annual Report of the NPM for 2018

http://bit.ly/VZ_NPM

We help change the rules

Facilities visited in 2018

Liberec – **B**

Bohnice – **C**

Javorník – **G**

Cheb – **A**

Mnichov u Mariánských Lázní – **E**

Zvíkovec – **D**

Plzeň – **C**

Merklín u Přeštic – **E**

Psáry – **D**

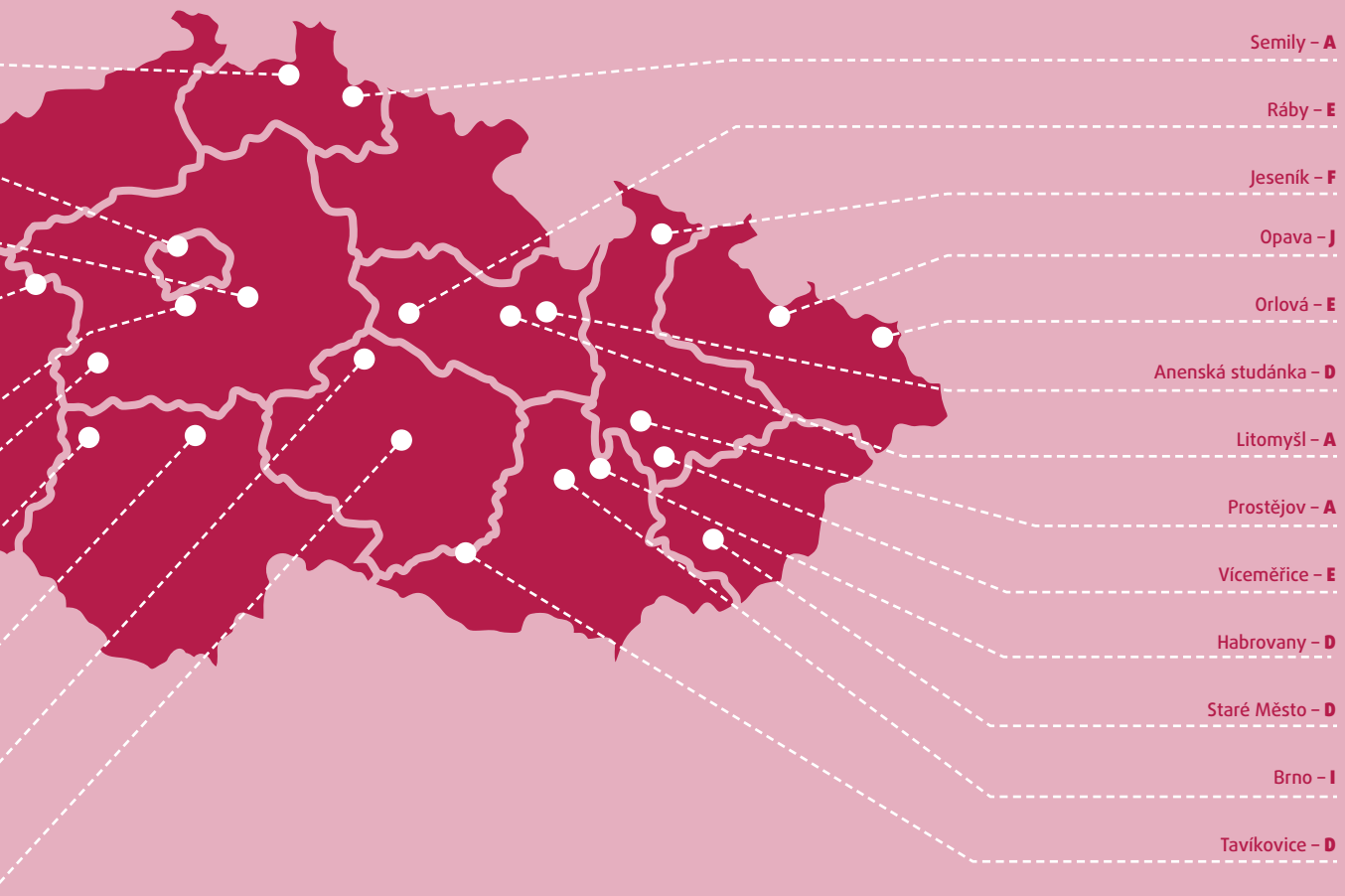
Příbram – **A**

Osek u Strakonic – **E**

Opařany – **C**

Zboží – **D**

Jihlava – **A**



A Police cells
B Remand Prison
C Psychiatric facilities
D Systematic visits focusing on the exercise of the right to vote
E Facilities for people with disabilities
F Treatment facilities for long-term patient
G Retirement homes
I Facility for children requiring immediate assistance
J Prison and Secure Preventive Detention Institution

In 2018, we have been focusing on homes for people with disabilities

Treatment of clients

We inquired about potential ill-treatment of clients in the facilities. We focused on the clients' autonomy, free movement, assessment of risks to the clients, working with clients with behavioural disorders, education and employment, and matters of clients' intimacy and sexuality. We already began performing such visits in 2017 and have visited a total of 9 facilities. We will present the findings in a separate summary report.

Right to vote

In connection with the municipal elections, we performed a series of 7 systematic visits focusing on the exercise of the right to vote of people with disabilities, especially those with restricted legal capacity. We co-operated in this area with colleagues from the Department for Protection of Rights of People with Disabilities. The visits aimed to establish whether the facilities provided adequate support to their clients in the exercise of their right to vote in elections and find what obstacles currently prevented these people from casting their votes. We will present the findings in a separate summary report.

Remuneration for working convicts were increased

We noted the insufficient remuneration of working convicts in our summary report on visits to prisons (http://bit.ly/zprava-veznice) and the Defender personally discussed this issue with the Minister of Justice. In April 2018, remuneration for working convicts was increased. The Government is considering another increase effective from 1 July 2019, where the amount of remuneration will be linked to the minimum salary. If the proposal is adopted, the minimum monthly remuneration will correspond to 50% of the minimum salary. Convict labour is getting increasingly attractive for private employers and increased remuneration will help convicts repay their debts already during the service of their term in prison. Debts are one of the main reasons why people begin committing crime after their release from prison.

Detention in social services

In co-operation with the Ministry of Labour and Social Affairs, we worked on an update to the recommended procedure in cases of detention in social services facilities. The aim of the recommended procedure is to inform the providers of the social services, employees of authorities of municipalities with extended competence, and guardians about issues related to a client's serious objection to provision of residential social services and the duties associated with such an act.

The recommended procedure also covers court procedure within proceedings on inadmissibility of detention in social services facilities (http://bit.ly/MPSV-detence).

A cage bed in a psychiatric facility

During a visit to a psychiatric facility, we found that some patients were being placed in a cage bed. Cage beds are not indicated in the (exhaustive) list of means of restraint under Section 39 (1) of the Healthcare Services Act. Their use restricts people's freedom in a way that is unlawful. Immediately after our visit, we therefore recommended to the facility to stop using the cage bed and the facility complied.

Secure Preventive Detention

We visited facilities for secure preventive detention which combine features of a prison and

a psychiatric hospital. We encountered a common practice of locking the inmates up in their cells for most of the day and performing therapeutic work and examinations through metal bars. We highlighted the inappropriate similarity between secure preventive detention and a prison sentence. We also carried out an analysis of the decisions imposing secure preventive detention, which revealed that there was an increasing number of cases where forensic treatment was changed into secure preventive detention. Our findings are included in a summary report. We are also preparing a roundtable with experts on preventive detention, which will take place in February 2019.

http://eso.ochrance.cz/Nalezene/Edit/6656

Determination of medical fitness of foreign nationals for expulsion

Based on our recommendation, the Healthcare Facility of the Ministry of the Interior adopted measures related to the assessment of medical fitness of foreign nationals for expulsion. A physician must in each case assess the foreign national's fitness to be expelled, having regard of the chosen mode of expulsion (e.g. by plane flight taking several hours), and inform the responsible police officers of the results.

Preparing publications to change practice

We were preparing publications for release in 2019; the publications summarise our findings and recommendations and help prevent ill-treatment. They include a collection of the Defender's opinions concerning prisons, a summary report on visits to facility for children requiring immediate assistance, and a summary report on visits to secure preventive detention institutions. We are also preparing a summary report on visits to homes for people with disabilities. We completed this series of visits in 2018.

Children in facilities for the performance of institutional education

Based on the information obtained during visits to school facilities for the performance of institutional or protective education, we started focusing on the manner of assessment of the children placed in such facilities (especially the "points system"). We also addressed the matter of body searches of children, e.g. after returning from a time spent outside. In the case of one of the visited facilities, we pointed out insufficient legal basis for body searches and recommended to discontinue the "points system" within one year. We will continue pursuing this and other topics in the area of institutional and protective education.

We are here to help

100 complaints in the area of social services

Most complaints concerned the quality of social services and the activities of the social services inspectorate of the Ministry of Labour and Social Affairs. In some cases, we were approached directly by the facilities with questions on how to perform their duties or with complaints against the registering authorities.

We lack the mandate to deal with the individual complaints of people against the quality of care, but we always try to help. For example, we can check how the complaints against care were handled by the social services inspectorate.

We have repeatedly called attention to the fact that there is no independent authority to review complaints raised by clients of social services (see Evaluation of recommendations for 2016 and 2017, p. 15). By the end of 2018, we finally started working with the Ministry of Labour and Social Affairs on an amendment to the Social Services Act introducing an independent complaints mechanism in the area of social services.

39 complaints against facilities providing psychiatric care

Patients most often complain about the conditions of the stay and treatment in psychiatric hospitals. We can only directly address the complaints which are related to the performance of forensic treatment ordered by a court within criminal proceedings. Our request to introduce monitoring by the Public Prosecutor's Office to ensure compliance with the law in forensic institutional treatment has still not been accepted (see Evaluation of recommendations for 2016 and 2017, p. 15).

456 complaints were received from accused, convicted and institutionalised persons

We most often dealt with complaints raised by convicts regarding the fact they were not placed in facilities close to where their families lived. They also often contacted us about their dissatisfaction with the state of prison healthcare and they way the Prison Service handled their money kept within the prison. The number of complaints from prisoners keeps increasing each year. In 2018, the number grew by 12 percent year-on-year.

Smoking in prisons

We were approached by several convicted non-smokers from the Bělušice Prison. They complained that the non-smoking compartment had been removed. Although they were placed in a non-smoking accommodation area, the common areas were still constantly full of cigarette smoke and the same was true in the staircase area where the convicts stand in queue for meals. We concluded that the Bělušice Prison had committed malpractice when it had allowed non-smokers to be regularly exposed to the negative effects of passive smoking and we proposed several solutions to this undesirable state of affairs to the warden. After we issued the inquiry report, the Prison created a separate non-smoking compartment for all non-smokers who requested separate accommodations.

Defender's Report: File No. 477/2018/VOP

Body searches of people with disabilities when entering a court building

We were approached by a complainant who objected to the procedure of the judicial guard (which is a part of the Prison Service of the Czech Republic) who had searched the complainant when she was entering a court building. The judicial guard officers conducting the search put her hearing aid into an X-ray scanner, which destroyed the device.

Based on our inquiry report, the Ministry of Justice informed us that it had recommended to the Prison Service to instruct the judicial guard to treat people with medical aids sensitively upon entry to court and other secure buildings and to take account of their specific needs. We considered this to be a sufficient remedial measure.

The complainant informed us that the Ostrava Remand Prison, which was responsible for the members of the relevant judicial guards, paid her a compensation in the amount of CZK 8,547 for the destroyed device.

Defender's Report: File No. 6263/2016/VOP

Conditions in escort cells in court buildings

We were approached by a complainant who objected to inappropriate conditions in court escort cells. We advised the president of the court that her duty was to ensure that the material conditions in the cells complied with the basic requirements for dignified stay of persons placed there and that their rights were interfered with as little as possible. A stay in an unsatisfactory environment can especially negatively affect the detainees shortly before a key court hearing in their case. After receiving the report, the president of the court promised to remedy the conditions.

Defender's Report: File No. 7497/2017/VOP

12 complaints from foreigners' facilities

We are the only independent body supervising the conditions and treatment of people in facilities for detention of foreigners, reception and accommodation centres.

Access of a detained foreign national to legal advice

We concluded an inquiry ex officio where we had found malpractice on the part of the Directorate of the Immigration Police. The malpractice was that a foreigner was not allowed to access legal advice while being placed in a strict-regime unit of a facility for detention of foreigners.

The Directorate of the Immigration Police had originally referred to Section 144 (4) of the Foreigners' Residence Act and claimed that a meeting with a lawyer would have had to be monitored by police officers. The aforementioned provision enables such an interpretation, but this is hardly in line with the lawmaker's intention, and comparison with other legal provisions on restriction of personal freedom as well as the case law of the Constitutional Court indicate that meetings with legal counsel must always take place in private, without the presence of third parties. The police have accepted this interpretation, but the aforementioned provision should be amended to remove ambiguities.

Defender's Report: File No. 3728/2017/VOP

We communicate

Prevention of ill-treatment also requires proper awareness of the issue. To raise such awareness, we hold lectures on standards of treatment, our findings, recommendations and results of our work at various seminars, conferences and teaching activities at law schools, etc. We regularly publish articles in the Sociální služby (Social Services) monthly journal where we try to respond to questions frequently raised by social services workers concerning the conditions of provision of social services. We also contribute to other scholarly journals such as České vězeňství (Czech Prisons), Listy sociální práce (Social Work News) and others.

Round table with heads of facilities for people with disabilities

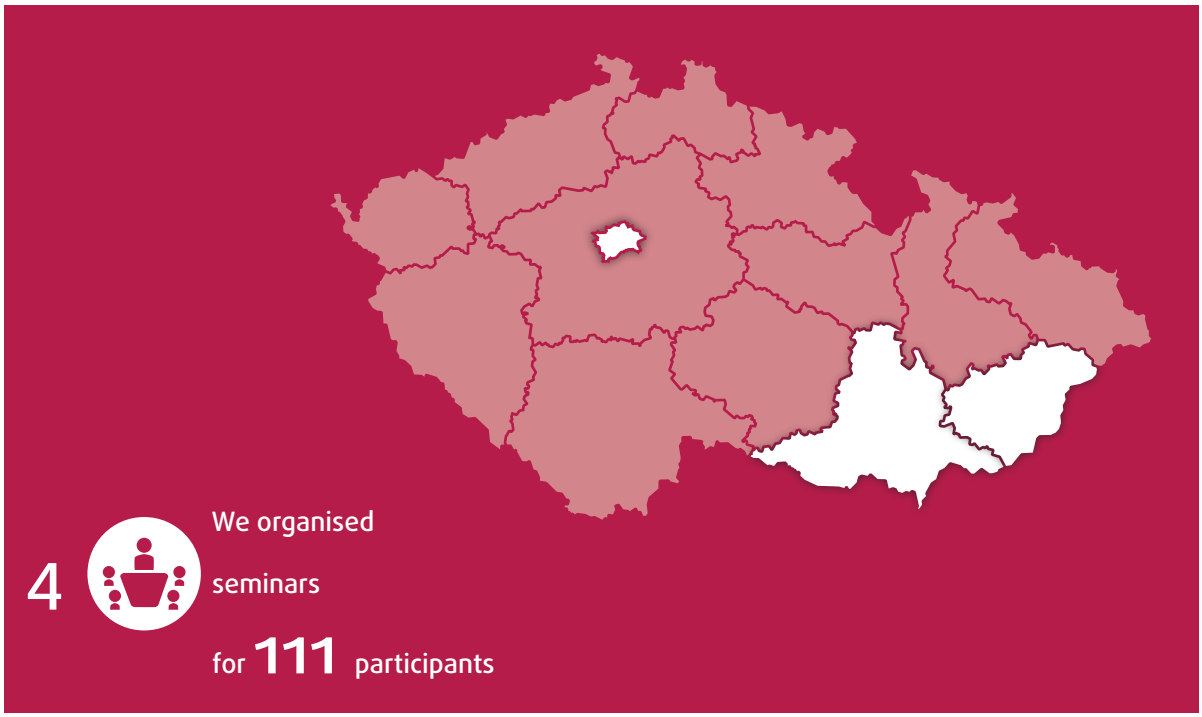
After a series of 9 visits to facilities for people with disabilities, we organised a round table discussion with the directors of the visited facilities, where we discussed our findings and practical recommendations. In particular, we discussed the fact that care offered by these facilities had to be focused on developing the clients' self-sufficiency. We also discussed the insufficient number of physicians providing care to clients directly in the facilities, and other issues related to decreasing capacity of facilities.

Training of workers in social services

We organised training for social services workers taking care for people with dementia. We were joined by a guest lecturer, an expert in nursing who specialises in care for this kind of clients. The purpose of the training was not only to inform them about our findings from systematic visits to residential social services facilities with a view to preventively strengthening the protection of clients dependent on care of others, but to also support the specialists in performing their duties.

Training of staff in treatment facilities for long-term patients

We prepared a seminar for health services workers in Central Bohemian Region, especially those who take care of patients in treatment facilities for long-term patients. The training had similar aims as the training of social services workers, i.e. to share our findings from systematic visits to treatment facilities for long-term patients (see the Summary report on visits to treatment facilities for long-term patients in 2017, http://bit.ly/zprava-LDN) and provide examples of good practice. The series of training courses will also continue in the other regions.



Further prevention and awareness raising activities

As part of prevention and awareness raising activities, we regularly participate in the teaching of "the Legal Clinic of Social Rights" at the Faculty of Law of Palacký University Olomouc and "Human Rights Live" course at the Faculty of Law of Masaryk University. The courses are not aimed only at theoretical questions – the students try solving specific complaints typical of the given areas. We share our experience not only with students but other parties as well, for example as part of the "Prisons" and "Human Rights" summer schools in Prague and Brno, respectively. Occasionally, we participate in the "Methodology Days" event for officials of the administrative regions and municipalities with extended competence. We presented a contribution at Prague Gerontology Conference titled "Life of Patients with Dementia in Treatment Facilities for Long-term Patients". We also participated in a methodology seminar for Prison Service employees dealing with topics of preparing foreign nationals for expulsion, counselling for foreigners serving prison sentences, voluntary returns and pitfalls of implementing expulsions.

Hearing before the UN Committee Against Torture

At a hearing of the UN Committee Against Torture in Geneva, a lawyer from our department responded to committee members' questions related to our Statement on the 6th periodic report of the Czech Republic (http://bit.ly/vyjadreni-periodicka-zprava) on the performance of commitments following from under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (No. 143/1988 Coll.). In the statement, we contributed to the Government report by sharing our experience obtained during systematic visits (treatment in police cells, prisons and psychiatric facilities and safeguards against ill-treatment) and talks with administrative authorities (e.g. in the area of protecting children threatened by domestic violence, inclusive education, detention and expulsion of foreign nationals).

Hearing before the UN Subcommittee on Prevention of Torture

The head of the Department of Supervision over Restrictions of Personal Freedom reported to the Subcommittee on Prevention of Torture on the activities of the Czech National Preventive Mechanism.

Representatives of the Subcommittee asked mainly about the Defender's independence and the current challenges in combatting ill-treatment. They praised the manner of conducting systematic visits as well as the individual and systemic topics we pay attention to during the visits.

Co-operation in the area of monitoring of forced returns of foreign nationals

The FRONTEX agency and the International Centre for Migration Policy Development are entities with which we co-operate in the area of monitoring of forced returns of foreign nationals to their home countries. The co-operation consists especially in training provided by our lawyers to persons tasked with monitoring of expulsions in other countries or monitoring return operations. In this way, we help to make return operations more effective in returning illegally staying foreigners back to their countries of origin.

In March, we co-operated with several partners to organise a seminar at Václav Havel Airport in Prague for representatives of EU countries active in monitoring of forced returns of foreign nationals to their countries of origin. Our lawyers and other persons concerned trained their colleagues in expulsion monitoring, from the preparation stage to the departure to the target country and transfer of the foreign national to the other country's authorities.

Other international activities

We have worked as the national preventive mechanism for over 13 years and are among the longest operating NPMs in Europe. We have accumulated experience we are happy to share with others, but are also eager to learn new things. For this reason, we continued meeting with our foreign colleagues and deepening our co-operation with the Austrian national preventive mechanism. Our Austrian colleagues visited the Brno Remand Prison and learnt about the local conditions of imprisonment, remand in custody and secure preventive detention in the Czech Republic, and we also discussed the ways of conducting an inquiry. We then visited the Korneuburg Prison in Austria in preparation for systematic visits of remand prisons.

Translations of CPT standards

We were involved in translating further standards and factsheets issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), comprising excerpts from the general and individual committee reports. Czech versions of CPT documents are available on the website at (http://bit.ly/standardy-CPT). The list of standards newly includes standards concerning immigration detention, minors in criminal detention, remand detention, solitary confinement and use of means of restraint in psychiatric facilities for adults.

8 EQUAL TREATMENT AND DISCRIMINATION

The key topics of 2018 included protection against discrimination, standards of equal treatment at the workplace and obstacles faced by faced by people with disabilities in access to dental care. In the area of education, we dealt with the issue of inclusive education of Roma and non-Roma children, problems faced by children with a first language other than Czech and the fairness of reviews of State maturita examinations.

We received a total of

342 complaints against discrimination,

which is **42** less than in 2017.

We found discrimination in **30** cases,

- **16** cases involved direct discrimination.

of which

- **9** cases involved indirect discrimination
- **5** cases involved retaliation (victimisation), harassment, instruction to discriminate, or incitement to discrimination.

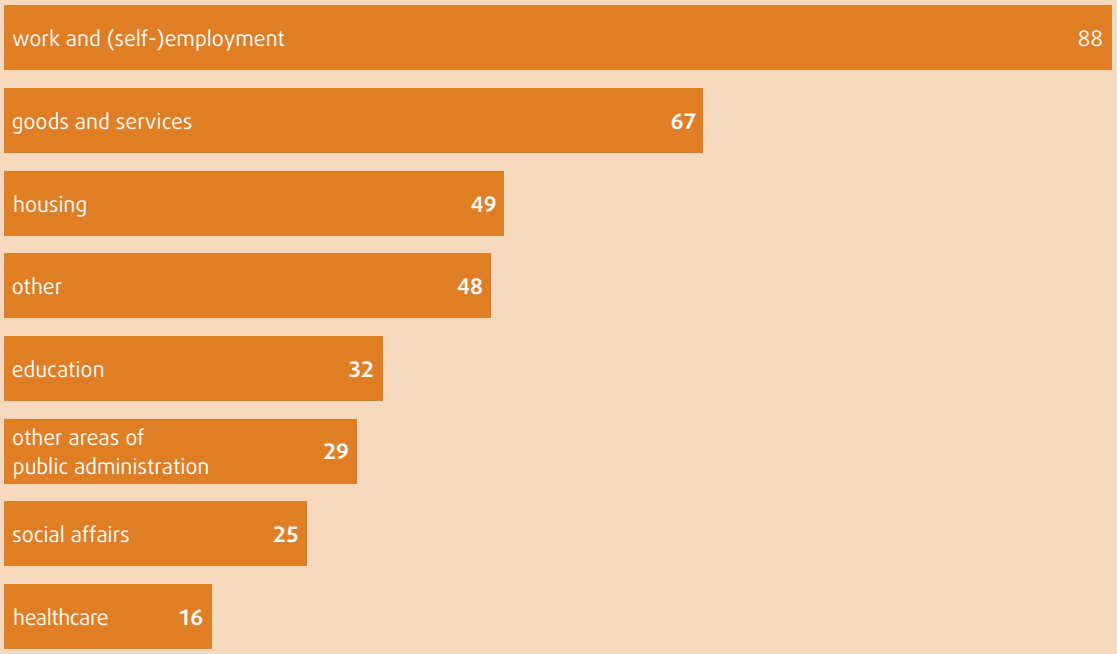
In **59** cases, the suspicion of discrimination could be neither proved nor disproved.

More details are provided in the Annual Report on Protection against Discrimination in 2018

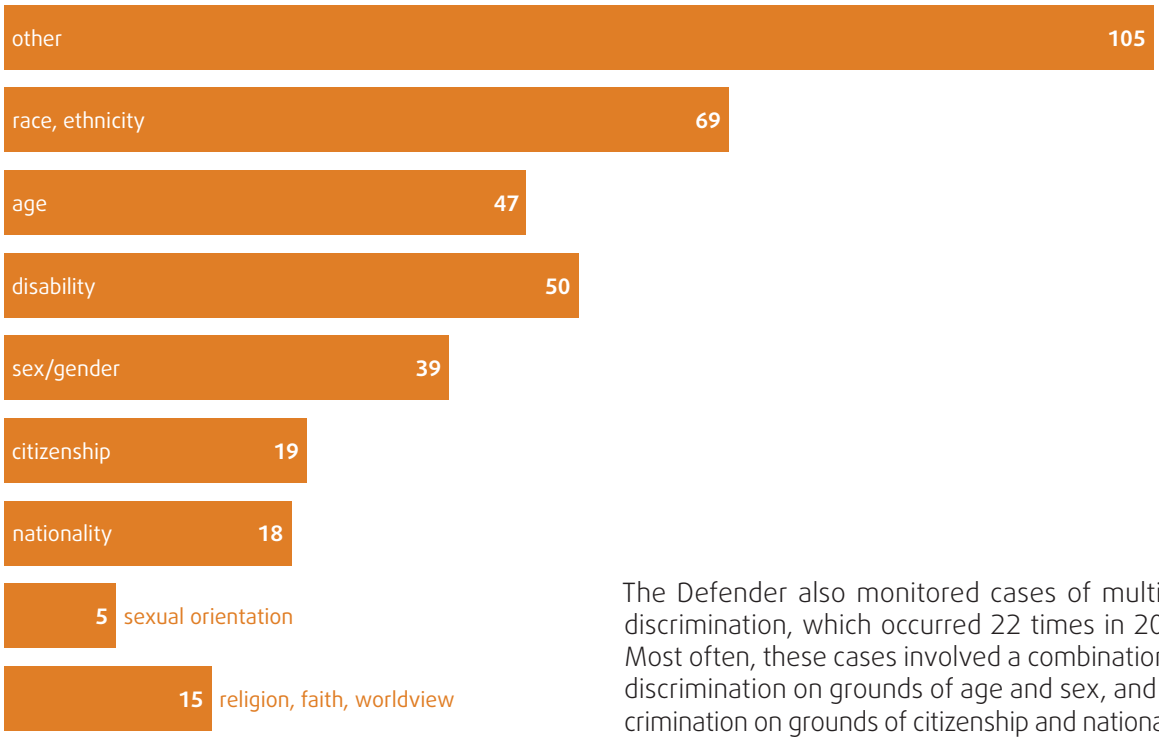
http://bit.ly/VZ_dis

Complaints in focus

Areas in which people felt discriminated against in 2018



Why people felt discriminated against in 2018



The Defender also monitored cases of multiple discrimination, which occurred 22 times in 2018. Most often, these cases involved a combination of discrimination on grounds of age and sex, and discrimination on grounds of citizenship and nationality.

We help change the rules

Standards of equal treatment at the workplace

Our repeated inquiries show that there are certain types of malpractice that labour inspectorates often commit in inspecting equal treatment of employees. Therefore, we prepared a standard for the authorities to follow. The State Labour Inspectorate promised to issue a new methodological guideline in 2019 to improve general practice.

Defender's Opinion: File No. 5112/2014/VOP

Dental care is often inaccessible to people with disabilities

Our survey revealed that people with mental disabilities and autism spectrum disorder often have to wait very long (about 4 months) to receive conservation dental care in general anaesthesia. There are no standardised criteria for this kind of treatment and dental facilities also often proceed inconsistently with regard to reimbursement. We recommend to address these problems.

Defender's Report: File No. 51/2017/VOP

University diplomas for transgender persons

The practice of universities in issuing diplomas to transgender people is inconsistent. We contacted the Ministry of Education, Youth and Sports with a request for a methodological guideline. The Ministry accepted our recommendation and sent a letter to universities emphasising the need for sensitive approach to transgender graduates.

Defender's Recommendation: File No. 4/2018/SZD

Reserved parking in Brno finally respects equal treatment

The individual city wards of the city of Brno were inconsistent in creating reserved parking, basing their procedure on a problematic methodological guideline issued by Brno City Hall. We issued several recommendations concerning fair rules for granting the road owner's consent. Brno City Hall accepted the recommendation and repealed the problematic methodological guideline, which had been causing problems to the citizens.

Defender's Recommendation: File No. 14/2017/SZD

People asking for municipal flats are not always employed

A city asked us for advice on the planned change of its internal regulation on assignment of municipal flats. We found that the requirement that the applicants for municipal flats be "economically active" (i.e. employed) indirectly disadvantages certain groups of people (e.g. older people or the disabled). This contentious proposal was eventually not enacted.

Defender's Opinion: File No. 16/2018/DIS

Recommendations for inclusive education of Roma and non-Roma children

There are 136 schools in the Czech Republic where Roma make up a significant fraction of the students. This happens despite the fact segregation is unlawful. Based on interviews with several headteachers, we formulated 10 key recommendations to improve the situation. These include quality preschool education, good training of teachers for working with diverse classes, creating better opportunities for the children's parents to meet, and desegregation bussing. We sent these recommendations especially to the Ministry, the Czech Schools Inspectorate and the individual municipalities as founders of schools.

Defender's Recommendation: File No. 86/2017/DIS

Can people with a hearing impairment get a pedagogical degree?

Yes, they can. However, we had to advise pedagogical faculties of universities that requesting a ertificate that a person does not have a speech defect was not always justified. We formulated a recommendation on how to adjust suspect selection criteria. Some universities heeded our recommendations and deal with hearing-impaired students on a case-by-case basis.

Defender's Report: File No. 3180/2016/VOP

Children with a mother tongue different from Czech also need support

Based on our inquiry, the Ministry of Education confirmed that insufficient proficiency in the language of instruction constitutes a special educational need and that pupils with different first languages are thus entitled to appropriate support. We also requested that the Ministry issue a clear uniform methodology for the school counselling centres to ensure that they knew the correct procedure with regard to pupils with different first languages. The Ministry promised to issue such methodology by the end of Q1 2019.

Defender's Report and Opinion: File No. 1345/2017/VOP

Reviews of State maturita exams will be more fair

For several years, we have been pointing out the shortcomings in the Ministry of Education's procedures. We are happy to report that the maturita decree has been amended and the Ministry promised to provide more detailed reasoning in the review decisions (especially with regard to math problems). The Ministry also promised to provide better advice forms to inform about students' rights and prepare a results portal by 2020 to ensure that students have remote access to the materials used for decision-making.

Defender's press release of 24 October 2018

Criminal complaint is not always the right solution

We criticised the procedure of the Prague public health station, which had filed criminal complaints in respect of 31 HIV-positive men without conducting an epidemiological inquiry required by the Public Health Act. The ineffectiveness of its procedure was documented by the fact that the Police had to set all the criminal complaints aside. The Ministry of Health agreed with our conclusions and the chief public health officer issued written information about the inappropriate conduct to all public health stations in the country.

Defender's Report and Opinion: File No. 844/2016/VOP

We are here to help

Discrimination victims achieve justice with our help They need not always go to the court. Often, legal advice or a warning that certain types of conduct could be discriminatory will be sufficient.

We helped

three Roma girls from a children's home to enrol in a non-segregated primary school

Defender's Report: File No 1613/2018/VOP

a disabled child who had been denied assistance due to a missing recommendation

a woman who was able to agree on a more favourable severance package following return from parental leave

a boy to be allowed to bring in and eat vegetarian food in a kindergarten

a mayor who found housing for a man with a mental condition

In 2018, we focused on age discrimination at work. We helped

an older woman who was able to get financial compensation from her employer for unlawful dismissal

Defender's Report: File No. 3560/2016/VOP

Press release of 5 December 2018

an older teacher who was being prevented from taking a study leave

Press release of 13 September 2018

an employee whose employer refused to pay him a contribution towards supplementary pension insurance

Defender's Report: File No. 1966/2016/VOP

Press release of 17 May 2018

an employee receiving a retirement pension who was excluded by a collective bargaining agreement from receiving shares of profits on the basis of attaining campaign goals

Anti-discrimination actions before Czech courts

From among the ones we were involved in, we would like to mention the following:

The Supreme Court confirmed that survivors of a victim may lodge an anti-discrimination action

Defender's Report: File No. 61/2015/VOP

Judgment of the Supreme Court of the Czech Republic of 13 December 2017, File No. 30 Cdo 2260/2017

An employer had to apologise to a former employee for bullying because of her age. The employer also had to pay compensation in the amount of CZK 50,000.

Defender's Report: File No. 134/2013/VOP

Judgment of the District Court in Ostrava of 8 March 2018, File No. 85 C 20/2016

Parents co-paying the salary of a teaching assistant are being discriminated against. The State is obliged to compensate the parents for these costs.

Defender's Report: File No. 189/2012/DIS

Judgment of the Municipal Court in Prague of 15 March 2018, File No. 29 Co 466/2017

The following people filed a court action based on our methodological help in 2018

A teacher with a visual impairment who was bullied because of her disability by her employer, who tried to fire her.

Defender's Report: File No. 3381/2017/VOP

Defender's press release of 20 September 2018

An employee fired by her employer during the trial period after she notified her pregnancy

Defender's press release of 30 January 2019

A man with an autism spectrum disorder who was unsuccessfully looking for a suitable social service corresponding to the nature of his disability for three years.

Defender's Report: File No. 851/2018/VOP

A topic deserving special attention

In 2018, we issued three important opinions on hiring practices. We sent these to the labour inspectorates so that they could incorporate them into their inspection procedures.

The opinions explain that

job advertisements in languages other than Czech are not necessarily discriminatory

Defender's Opinion: File No. 1/2015/DIS

the identity of entities placing discriminatory job ads online must be verified in co-operation with the operators of advertising portals

Defender's Report: File No. 1896/2017/VOP

rejecting applicants who request payment of salary in cash can be qualified as discrimination on grounds of property

Defender's Opinion: File No. 39/2018/DIS

We communicate

Work-life balance promotes effective public offices

We issued a recommendation that directly follows up on the 2017 survey on work-life balance in civil service at most Czech Ministries. The Recommendation is meant for the various Ministries, especially the Ministry of the Interior (Section for Civil Service) and the Department of Gender Equality of the Office of the Government. A total of 67 civil service offices responded to the recommendations. Their responses showed that differences still persist among the offices as to whether and which of our recommendations should be implemented. Therefore, we will stay in touch with the Deputy Minister of the Interior responsible for the civil service and ask him to co-ordinate specific steps in the area of work-life balance in the civil service.

Defender's Recommendation: File No. 32/2018/DIS http://bit.ly/vyzkum-sladovani

Defender's press release of 4 October 2018

Topic of the year: age discrimination

We discussed age discrimination in collective bargaining agreements with the State Labour Inspectorate and the Bohemian-Moravian Confederation of Trade Unions.

Defender's press release of 4 May 2018

We organised three seminars on age discrimination for the courts, attorneys-at-law, Ministries, inspectorates, non-profit organisations and the academia.

Practical legal seminar "Age Discrimination" http://bit.ly/vekova-diskriminace

We organised another benefit concert. The proceeds went to the Hurá na výlet ("Let's go on a trip!") association, which organises trips and cultural events for the elderly to fill their spare time.

We screened the Swedish documentary "Life Begins at 100". The film's main protagonist helps bust the stereotype of old people who do not understand modern technology, are slow and lonely, and the documentary shows that life can be fun even after turning 100.

A year of important meetings

We discussed discrimination and equal opportunities especially with

- Minister of Labour and Social Affairs
- Minister of Education, Youth and Sports
- Deputy Minister of the Interior for the Civil Service
- Chief Public Health Officer of the Czech Republic

— Inspector General of the State Labour Inspectorate

— Chief Schools Inspector

— Director General of the Czech Trade Inspection Authority

We also organised two top-level meetings:

Hate speech on the Internet

We talked with the European Commissioner for Justice, Consumers and Gender Equality, Minister of the Interior, Police President, Supreme Public Prosecutor and the Government Commissioner for Human Rights.

EU citizens and members of their families

We met with ambassadors or the EU and the European Economic Area to inform them about our new competences and to set up mechanisms for mutual exchange of information. The meeting was hosted by the French ambassador.

New publications

On the issue of age discrimination, we issued

— Discrimination on Grounds of Age

— Age Discrimination in the Case Law of the Court of Justice of the EU

— Age Discrimination in Employment – Case Law of Czech Courts

— Age Discrimination – Defender's Cases

The following publications were created as part of the "Bespoke Civil Service" project

Leaflet: Civil service or a family? Let's have both!

Leaflet: Work or family? Let's have both!

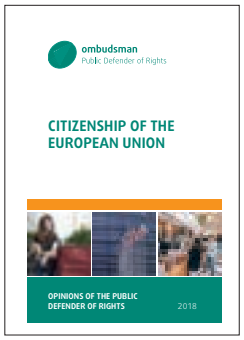
International Conference Proceedings: Work-life Balance (2018)

Material: Work-life balance stories in the Defender's Office


DANA
KOVAŘÍKOVÁ
EK
VĚRA
JOUROVÁ
EK

In 2017, we commissioned an English translation of our collection titled "Citizenship of the European Union"

https://www.ochrance.cz/fileadmin/user_upload/Obcanstvi_EU/2018_Citizenship-EU_EN.pdf



We updated the recommendation on equal access to preschool education

Defender's Recommendation: File No. 25/2017/DIS http://bit.ly/doporuceni-predskolni-vzdelavani

Public administration

We organised the traditional "Together against discrimination" roundtable for inspection and central administrative authorities. We trained several tens of employees of the Ministry of Finance, Tax Administration and the Ministry of Defence in matters concerning equal treatment in employment. We also educated regional co-ordinators for Roma affairs, liaison officers of the Police of the Czech Republic for minorities, and field social workers.

Roundtable titled "Together against discrimination!" https://bit.ly/2Gbf8ZC

Attorneys-at-law

In 2018, we continued focusing on educating attorneys-at-law providing free legal advice to victims of discrimination as part of our long-term partnership with the Pro Bono Alliance. We hosted a total of four seminars focusing on the following topics:

— Basics of anti-discrimination law

— Harassment at work

— Equal pay: How to win a court case?

— Discrimination in the provision of goods and services

Non-profit organisations

We organised a roundtable to discuss important topics with representatives of non-profit organisations, especially regarding issues related to hate speech in public space, discrimination of HIV-positive persons and less favourable treatment because of sex and gender in education.

We personally discussed some pressing issues related to discrimination with certain individual non-profit organisations. To name a few, we met with representatives of the following organisations: Rozkoš bez rizika, In lustitia, Nesehnutí, Romodrom, and META. We also had meetings with the Union of Towns and Municipalities of the Czech Republic. We hosted a lecture on discrimination at events organised by Tichý svět, Open Society Fund Prague, Museum of Romani Culture, and Leges Humanae.

Roundtable "The year 2017 in combatting discrimination" https://bit.ly/2rwZU7n.

Students

We consider educating future lawyers as a key piece in our awareness-raising strategy in the area of equal treatment. In 2018, we co-operated with the Faculty of Law of Masaryk University and Pro Bono Alliance on education projects such as "School of Human Rights" and "Human Rights Live".

We organised expert seminars, excursions, summer internships for students of the Faculty of Law and Faculty of Social Studies of Masaryk University and the Faculty of Law of Charles University, and also workshops for secondary school students.

9. PROTECTION OF RIGHTS OF PEOPLE WITH DISABILITIES

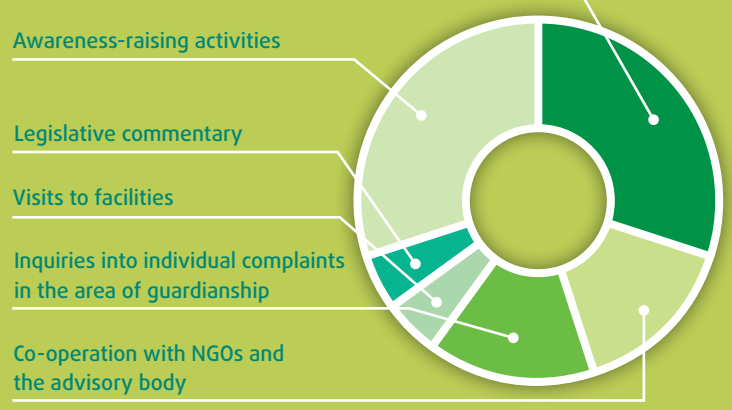
Since 2018, we have been monitoring the protection of rights under the Convention on the Rights of Persons with Disabilities. For this purpose, we conduct surveys and formulate recommendations. Through the advisory body or directly, we co-operate with people with disabilities and non-profit organisations. We inquire into the procedures of municipalities as public guardians and prepare various awareness-raising activities. We also provide information to the UN Committee on the Rights of Persons with Disabilities.

We received **80** complaints indicating systemic problems faced by people with disabilities.

We launched co-operation with **60** non-profit organisations.

We authored **5** awareness-raising video clips.

Our activities include



In 2018, we:

- Received **80** complaints indicating systemic problems faced by people with disabilities
- Received **78** complaints in the area of public guardianship and other supporting measures
- Contacted **398** non-profit organisations and launched co-operation with **60** of them
- Organised **1** conference on guardianship
- Conducted **3** surveys
- Organised **3** meetings of the advisory body
- Made **5** awareness-raising videos seen by **14,350** people
- Gave lectures to almost **500** public guardians, people with disabilities, elderly pensioners and students
- Organised **7** regional meetings where we informed **410** participants of our new competence
- Visited **7** social services facilities

→ continued raising awareness of the rights of people with disability in the form of lectures, seminars, videos, articles, also posted on social networks

We help change the rules

Social services to children and adults with autism spectrum disorders must be available

We conducted a survey mapping the availability of social services to children and adults with autism, especially those with significant behavioural problems. We contacted providers of social services, school facilities, psychiatric hospitals and also administrative regions and used the case studies to find out how they could provide support and what obstacles are preventing it. The survey revealed the following:

— availability of social services is different across individual administrative regions;

— at the time of the survey, some types of services were not available in certain regions at all;

— medium-term plans created by regions are often too abstract;

— availability of social services is in the hands of local and regional governments while the State has no instruments to comply with the duties under the Convention on the Rights of Persons with Disabilities;

— the situation of families is not addressed comprehensively.

For this reason, we recommended, inter alia:

— to create an instrument to enable the Ministry of Labour and Social Affairs to directly influence the availability of social services, which are currently handled by local and regional governments;

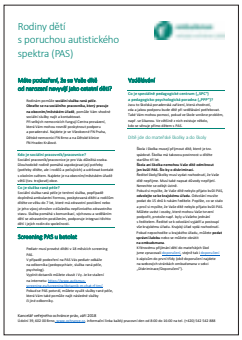
— to involve in the planning of social services all actors with information on current demand, especially the clients themselves and their families;

— have regard of the financial demands of specific social services in allocating subsidies;

— train social workers at municipal authorities to focus on addressing the comprehensive needs of families.

Defender's Survey and Recommendation: File No. 45/2018/ORZ

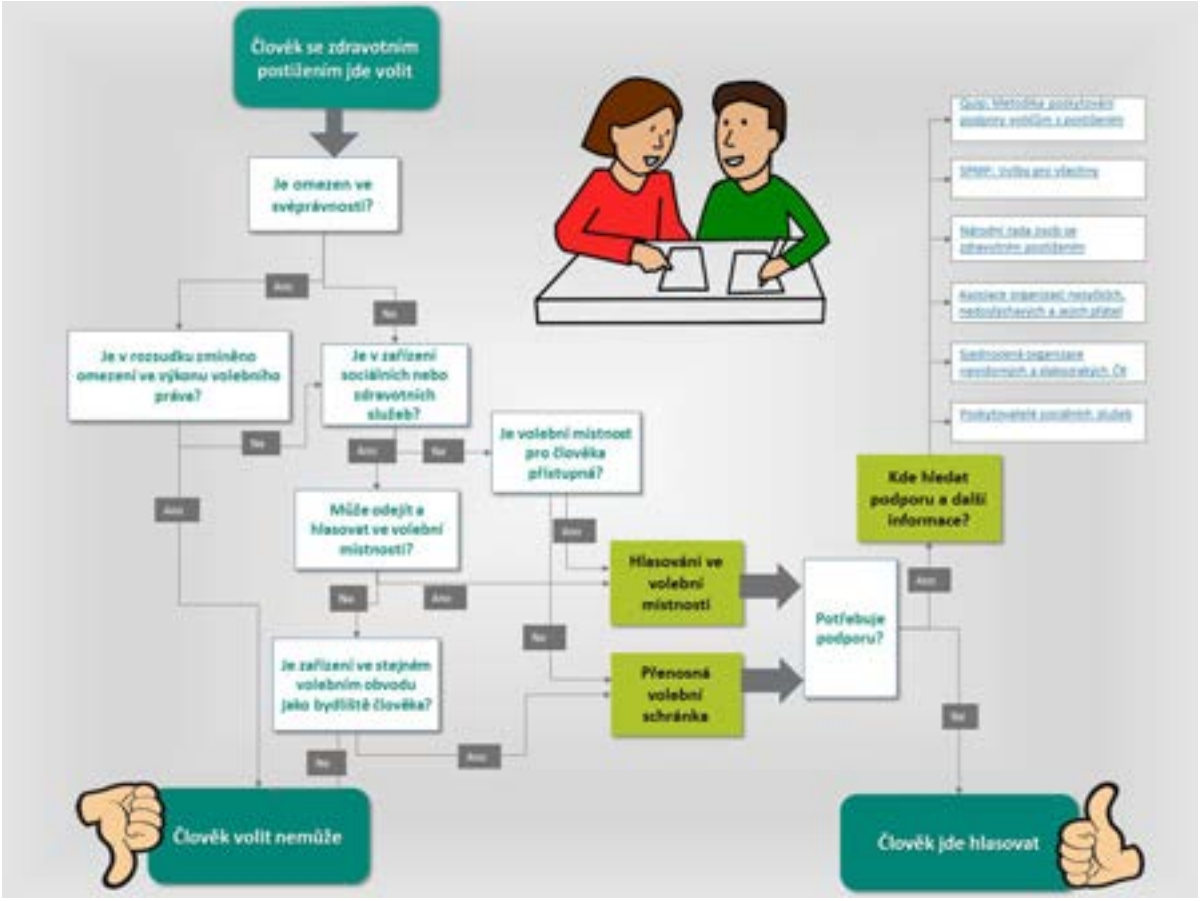
In relation to the survey, we issued an information leaflet summarising the various aspects of life of a family with a member with an autism spectrum disorder (diagnostics, education, allowance for care, looking for physicians, labour issues, etc.)


Rodiny dětí
s poruchou autistického
spektra (PAS)

Families of Children with ASD leaflet

People with restricted legal capacity are allowed to vote

In relation to the municipal elections, we inquired in October 2018 on whether clients of residential social services, especially those with restricted legal capacity, participated in the elections. Indeed, a restricted legal capacity does not automatically imply inability to vote. A restriction of the right to vote must be directly mentioned in the court decision whereby the legal capacity is being restricted. We visited 7 homes for people with disabilities and found that:



— some clients had not been enabled to vote even though their right to vote had not been restricted;

— some clients with restriction of the right to vote had actually voted;

— some facilities intentionally did not inform their clients about the elections;

— social workers often found it difficult to understand the court decisions on restriction of legal capacity;

— facilities lacked procedures and methodologies concerning the exercise of the right to vote;

— electoral rolls did not correspond to the current legislation and terminology concerning restrictions of legal capacity.

All findings, recommendations and methodological materials concerning the issue of voting rights will be released in a summary report in 2019.

We created an information material explaining how to enable people living in residential social services facilities to vote.

Inadequate availability of dental care for people with mental disabilities

We co-operated with the Equal Treatment Department on a survey focusing on provision of dental care to people with mental disabilities. We found that both adults and children with mental disabilities and autism spectrum disorder had to wait four months and longer (in certain regions) for dental treatment under general anaesthesia. Individual workplaces also apply different criteria and reimbursements for such treatment. More details on the survey, its findings and recommendations are available in the survey report.

Defender's Report: File No. 51/2017/DIS

Restriction of legal capacity must be a last-resort protection measure

We initiated a survey focusing on the quality of court decisions in the area of restrictions of legal capacity and other supporting measures.

In the first stage of the project, we analysed a total of 190 judgments concerning people living in a residential social services facility designated as "facility for people with disabilities". These judgments revealed that:

restriction of legal capacity is used far more often than other supporting measures (90.5% of cases) such as representation by a household member, assistance in decision-making, and declaration in anticipation of incapacity (9.5% of cases).

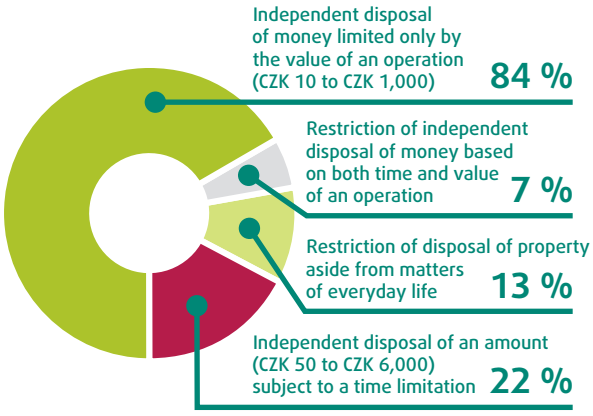
Restriction of legal capacity		172
No restriction of legal capacity		18
Of which:	Guardian appointed (no restriction of legal capacity)	17
	Representation by a household member	1
	Assistance in decision-making	0
Total		190

— Courts often impose a "general" restriction of legal capacity. An oft-used formulation stated "restrictions in all areas of life except for ordinary matters of daily life." Such judgments are at variance with the principle of recognition of individual capacities and unique nature of a person.

— In other cases, the courts decided to impose restrictions with regard to disposal of property (104 cases), drawing up last will and testament and disposal of inheritance (91 cases), entering into marriage (88 cases), and employment (86 cases); the right to vote was restricted in 62 cases, i.e. in almost a third of all examined judgements.

— The court practice differs in determination of the amount people can dispose of independently. These amounts ranged from CZK 10 per operation to CZK 50 per month, up to CZK 6,000 per month. In the cases of the lowest numbers of e.g. CZK 50 a month, it is doubtful that these amounts could be sufficient for a person to arrange "ordinary matters of daily life," even in situations where most needs of these persons are taken care of by social services.

Determination of an amount subject to independent disposal



In the next stage of the survey, we will analyse the judgments requested from district courts. The complete survey report will be issued in 2019.

We launched the following new surveys in 2018:

— survey regarding work rehabilitation and its effectiveness

— survey of availability of sheltered housing for people with disabilities

List of problems for the UN Committee

We co-operate with the UN Committee on the Rights of Persons with Disabilities.

One of our aims under the Convention on the Rights of Persons with Disabilities is to co-operate with the UN Committee on the Rights of Persons with Disabilities.

The Committee is authorised to receive and review reports from member states on measures adopted with a view to performing the commitments under the Convention. In order for the Committee to be able to operate properly, it needs information from entities monitoring the situation within the member states. The Defender is the responsible monitoring body in the Czech Republic.

Based on our findings and in co-operation with disability advocacy organisations, we created a list of problems which we sent to the Committee. The Committee can use it in compiling the List of Issues to be sent to the Czech Government in April 2019, asking questions about the implementation of the Convention and its specific steps.

We also participated in the preparation of a General Comment on Article 5 of the Convention – Equality and Discrimination. We sent comments on its draft wording to the Committee, all of which were accepted.

Participation in expert groups

We try to draw attention to issues faced by people with disabilities on an ongoing basis. We thus participate in regular working group meetings of the Government Committee for Persons with Disabilities, especially the ASD expert group and the groups on accessibility of public administration. Participation in the groups helps us present results of our work and be directly involved in the groups' activities by creating supporting materials and systemic recommendations; we also obtain information we can use in our further monitoring activities.

We are here to help

In monitoring of the Convention on the Rights of Persons with Disabilities, we deal mostly with the exercise of public guardianship and complaints pointing out systemic problems and shortcomings. Individual complaints raised by people with disabilities are addressed by other departments of the Office of the Public Defender of Rights.

We dealt with:

80 complaints indicating systemic problems faced by people with disabilities

78 complaints concerning public guardianship and other supporting measures

A person under guardianship is entitled to benefits derived from the lease of his or her real estate

We inquired into the procedure of a guardian in disposing of the property of woman who had owned a "theoretical half" of a flat and had not been using it in the long-term as she had lived in a facility for people with disabilities. The co-owner had used the flat for commercial purposes without the woman deriving any benefit from the lease. We criticised the guardian for insufficient protection of the woman's rights, especially since he had not ensured that the lease contract was concluded under lawful conditions with the woman's participation in the negotiation of the amount of rent. The guardian had also been insufficiently active in enforcing outstanding rent. He also had not complied with his duty to explain and advise as he had failed to discuss the matter with the woman and explain to her that as a co-owner of the flat, she should receive benefits from the lease of the real estate.

Defender's Report and Opinion: File No. 1959/2016/VOP

A guardian has a duty to help in seeking a new physician

We inquired into the procedure of a public guardian who had not sufficiently helped a woman in his care with finding a dentist and changing her psychiatrist. The complainant repeatedly asked her guardian for a registration with a dentist as her dental plate had been causing her problems for many months. However, the guardian arbitrarily decided that her existing dental plate was sufficient and did not respond to repeated complaints. He argued that the woman under guardianship was not registered with any dentist. Similarly, the guardian failed to respond to the woman's wish to change her psychiatrist and accepted the explanation provided by the residential social service that all its clients had to be treated by the same doctor. This disregarded the woman's complaints expressed to her guardian that the psychiatrist was not dealing with the side effects of her treatment. The procedure of the guardian in protecting the interests of the woman was insufficient and we requested a remedy. The guardian accepted our conclusions and took adequate steps.

Defender's Report and Opinion: File No. 373/2017/VOP

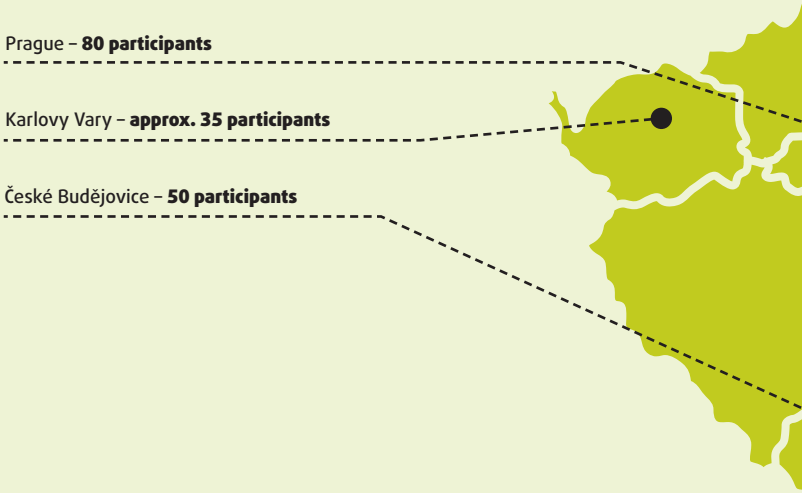
A guardian may not place a person under guardianship into a closed facility without the person's consent

We inquired into a case of man complaining against being placed in a residential social services facility without his consent. The guardian took no steps to return the complainant into normal environment with potential assistance of home or in-patient social services to enable him to live independently. This only happened after the case was removed from the previous public servant responsible for the performance of guardianship. Since the complainant had already long been released from residential social care, his potential claim for compensation for intangible damage by the State had already become time-barred. We thus requested that the authority at least apologise to the complainant for inappropriate conduct of guardianship and respect his interests and preferences concerning social services in the future.

Defender's Report: File No. 2539/2017/VOP

We communicate

Regional meetings in 2018:



Regional meetings

At the beginning of 2018, we co-operated with regional authorities to organise 7 regional meetings where we introduced our activities in the area of monitoring of rights of people with disabilities, gathered inspiration for further projects and discussed nominations for membership in our advisory body. All meetings were interpreted into the sign language.

Advisory body

The Convention on the Rights of Persons with Disabilities assumes that its implementation will also be monitored directly by people with disabilities. The Defender thus formed an 11-member advisory body composed of people with disabilities and disability advocates.

The main aims of the advisory body are as follows:

— receive suggestions for the Defender's activities from people with disabilities, their advocacy organisations and carers;

— set priorities and systemic topics to be addressed in the area of protection of rights of people with disabilities;

— participate in the Defender's commentary procedure in relation to legal regulations and release opinions concerning the Defender's strategic documents on the rights of people with disabilities;

— ensure that people with disabilities, their advocacy organisations and the broader public are informed about the Defender's activities in monitoring the implementation of the Convention.

In 2018, the advisory body dealt with matters of availability of social and health services and the issue of exercise of the right to vote. We started working together on matters related to public relations, media presentations and the use of proper terminology in relation to people with disabilities; we also opened the topic of health and employment of people with disabilities. The advisory body also participated in the preparation of the List of Issues for the UN Committee.

The advisory body has met 3 times.

Co-operation with disability advocacy organisations

We approached 358 organisations concerned with the rights of people with disabilities. Our aim was to find out which of these organisations met the criteria set by the UN Committee on the Rights of Persons with Disabilities for "disabled persons' organisations", i.e. organisations of people with disabilities that respect the Convention's principles, are led, managed or administered by disabled people and most of their members qualify as people with disabilities. Using a questionnaire, we were looking to learn which organisations wanted to actively or passively participate in our activities. A total of 60 organisations expressed their willingness to assist the Defender in her activities.

Awareness-raising activities

Over the course of the year, we organised a number of events aiming to draw attention to everyday problems faced by people with disabilities, inform the public about their rights and empower them to defend and exercise their rights.

— In March 2018, we focused on the topic of life with Down syndrome. With the Aldente theatre, we organised a performance titled "Who fears the Down" and made a series of photographs in colourful socks which symbolise Down syndrome.

— In April, we participated in the Light it up blue! campaign as part of the World Autism Awareness Day. The building of the Office of the Public Defender of Rights was lit up in the colour blue, which symbolises communication disrupted to varying degrees by the autism spectrum disorder.

— We participated in the Měsíc bláznovství (Lunacy month) event organised in co-operation with the Práh association and the Psychobraní project by holding a public screening of the Canadian film "Out of Mind, Out of Sight" and a follow-up debate on the lives of perpetrators of serious crimes who suffer from mental illnesses.

— As the first organisation in the Czech Republic, we took part in the European Independent Living Day marked on 5 May. Independent living means the possibility to control one's life, make decisions about oneself, study, work, have a family and social life, i.e. all the things most people consider normal. However, people with disabilities often require assistance of others and further supporting services to live independently. We created a video explaining why

independent living was so important for people with disabilities. We involved people with various kinds of disabilities as well as non-disabled people, all of whom spoke about what independent living meant for them. The video was seen 5,300 times on Facebook. We also made a video report on the topic which was seen by over 2,000 people on social networks.

Video report (http://bit.ly/nezavisly-zivot)

— During August, which is the international Spinal Muscular Atrophy (SMA) Awareness Month, we launched our own campaign on this illness. We encouraged people to set a challenge for themselves, take a photo of themselves while overcoming it and send us the photo with a greeting or comment to support people with SMA. An exhibition of the photographs took place in the Polárka theatre in Brno and attracted about 3,000 visitors.

— The International Day of Sign Languages took place in September. As part of educational and entertainment events organised by the Czech Association of People with Hearing Impairments and their Friends (ASNEP), we introduced the Defender's activities and made a short video greeting in the sign language.

Video greeting (http://bit.ly/znakovy-pozdrav)

Conferences

— We co-operated with the Faculty of Law of Charles University and organised a two-day conference titled "Practical Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities". The conference was attended by judges, scholars, representatives of the relevant Ministries, public guardians working for regional authorities and people working for organisations trying to use the new legislative instruments for support and protection. The SKOK do života organisation showcased the work of a professional supporter and the Svěřenské fondy a trusty organisation showed how one can use trusts to help people with disabilities. The participants also discussed the decisions of courts, especially the Constitutional Court, in cases concerning the permissibility of appointing a guardian for people without a restriction of legal capacity.

— We prepared a debate on the topic of the rights of people with a mental illness for the international collaborative and dialogue symposium Horizonty. According to the motto of the event – "Tension that (dis)unites us" – we discussed with representatives of psychiatry and patients the potential conflicts between human rights and the views of medical science concerning involuntary hospitalisation and treatment, looking for boundaries between protection and autonomy, and ways which a harmony of the two approaches could help improve care.

— We participated in the international conference titled "Employment of people with mental disabilities" in Olomouc, where we talked about the need to improve possibilities for employing people with disabilities on the open labour market and the necessity of linkage between preparation for work and commencing the employment itself.

— At a conference titled "Let's set clear rules and conditions for care of people with ASD", we summarised our findings and recommendations following from the Defender's survey on the availability of social services for this target group.

— As the only representatives from the Czech Republic, we participated in an international conference "Social economy as an effective model for social inclusion" held in Varna, Bulgaria. During the whole conference, the participants discussed the effects of social economy on the quality of life and employment rates of people

with disabilities. We also obtained useful information during various workshops.

— We participated in the meeting of European ombudspersons responsible for monitoring the rights of people with disabilities, where we drew on the experience with employment of disabled people; we talked about the situation in the Czech Republic and the potential barriers faced by disabled people.

We are her to educate, lecture, and train

We gave lectures

— to people with hearing impairments on two occasions where we worked with colleagues from the Equal Treatment Department to explain how the Defender could help. The lectures were interpreted into the sign language;

— to students of the Faculty of Social Studies of Masaryk University on monitoring of the rights of people with disabilities, specific examples and preliminary results of our surveys;

— to colleagues at the Office, for whom we prepared an interactive course on communication with people with disabilities and the things to be avoided;

— to elderly people participating in the Senior Academy of the Brno Municipal Police, to whom we presented our activities in co-operation with the Department of Supervision over Restrictions of Personal Freedom.

We provided training to public officials

on the legal regulations and commitments under the Convention on the Rights of Persons with Disabilities:

— in March, we prepared two courses in Prague and one in Olomouc for employees of the Labour Office as part of its methodology days;

— in April, we worked with the Department of Supervision over Restrictions of Personal Freedom to train employees of regional authorities on how to assess informed consents of patients in psychiatric hospitals;

— in June, we talked about the monitoring of rights of people with disabilities at an updating seminar of the Ministry of Labour and Social Affairs;

— in October, we participated in methodology days of the Ministry of Labour and Social Affairs for public guardians;

— in November, we organised a workshop for public guardians in the Olomouc Region.

Videos

We want information on the rights of people with disabilities to be available and comprehensible to all. For this reason, we made a series of short videos explaining the individual Articles of the Convention on the Rights of Persons with Disabilities. The videos gathered a total of 14,335 views on the Defender's website and Facebook. In 2019, we plan on making the whole Convention available in the sign language.

http://bit.ly/umluva

http://bit.ly/volny-pohyb

http://bit.ly/pracovni-podminky

http://bit.ly/zpusobilost

Social networks

We created a Facebook group called Rights of people with disabilities. We plan on using this group to gather suggestions and incentives concerning people with disabilities and to share information on our activities.

— Persons with disabilities and elections – 1,200 views

— International Day of Sign Languages – 2,600 views

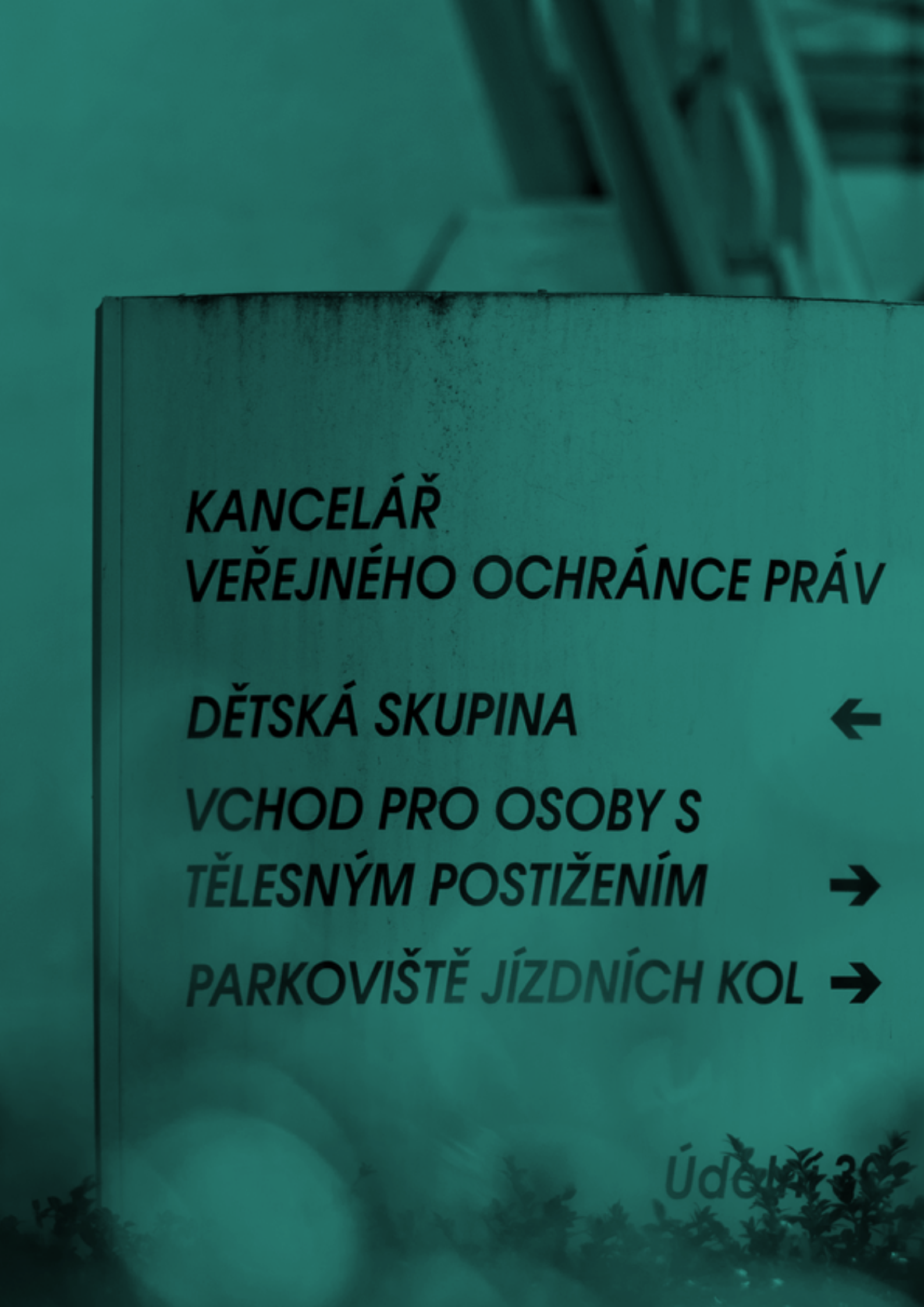
— Convention – Article 27: Work and employment – 835 views

— Convention – Article 9: Accessibility – 2,700 views

— European Independent Living Day – 5,300 views

— Regional meetings on monitoring of the rights of people with disabilities – 1,700 views

Videos on the CRPD have approx. 14,335 views on Facebook.


KANCELÁŘ
VEŘEJNÉHO OCHRÁNCE PRÁV
DĚTSKÁ SKUPINA
VCHOD PRO OSOBY S
TĚLESNÝM POSTIŽENÍM
PARKOVIŠTĚ JÍZDNÍCH KOL

10. OFFICE OF THE PUBLIC DEFENDER OF RIGHTS

Budget and its utilisation in 2018

Approved budget for 2018

138,037 thousand Czech crowns

During the year, the budget was increased to cover costs associated with the new activities of the Public Defender of Rights under the amendment to Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination (the Anti-Discrimination Act) – costs of salaries, insurance, transfers from the Cultural and Social Needs Fund and operational costs for seven employees (CZK 5,847 thousand), and further the costs of the Integrated Regional Operational Programme project Reg. No. CZ .06.3.05/0.0/0.0/16_028/0006683 titled "Digitalisation of the Office of the Public Defender of Rights" (CZK 14,980 thousand) and the Operational Programme Employment project Reg. No. CZ.03.1.51/0.0 /0.0/17_073/0008543 titled "Children's Group Motejlci" (CZK 720 thousand). After these adjustments, the budget totalled CZK 159,584 thousand.

In 2018, we also claimed non-utilised funds from the previous years in the amount of CZK 46,183 thousand. Of this amount:

— CZK 37,628 thousand was used for programme funding expenditures (expansion of the Office's HQ);

— CZK 1,819 thousand was used for expenses not provided for in the relevant chapter (incl. CZK 1,156 for salaries and other payments for work, incl. accessions; plus CZK 663 thousand for operational costs);

— CZK 6,736 thousand was used for projects co-financed by the EU (of which CZK 6,383 thousand was used to fund the "Cyber Security of the Office of the Public Defender of Rights" project; CZK 245 thousand for the "Children's Group Motejlci" and "Bespoke Civil Service" projects, and CZK 108 thousand for the "Support for the Effective Monitoring of Forced Returns" project).

The Office used the public funds to provide for the standard activities of the Office related to handling complaints and performing other duties of the Defender, in particular under Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination (activities of the national equality body), the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (national preventive mechanism), and Act No. 326/1999, on residence of foreign nationals in the Czech Republic, as amended (monitoring of expulsion of foreign nationals). We also used the funds for co-funding of the following projects: "Children's Group Motejlci", "Support for the Effective Monitoring of Forced Returns" and "Bespoke Civil Service".

Utilised budget for 2018

187,240 thousand Czech crowns

Amounting to 117.33% of the adjusted budget. Of which:

— CZK 969 thousand was used to fund the "Children's Group Motejlci" project;

— CZK 1,117 thousand was used to fund the "Bespoke Civil Service" project;

— CZK 483 thousand was used to fund the "Support for the Effective Monitoring of Forced Returns" project;

— CZK 6 383 thousand was used to fund the "Cyber Security of the Office of the Public Defender of Rights" project;

— CZK 385 thousand was used to fund the "Digitalisation of the Office of the Public Defender of Rights" project.

The budget overrun was covered by using claims from unutilised expenses. Claimed non-utilised funds were used for work related to the construction of a new building of the Office, which will be predominantly funded from claimed non-utilised funds, for salaries and accessions for four employees (permitted excess of the staff limit), other personnel costs (co-operation with external experts), increase in the salaries of the representatives due to a change in the pay base, operating costs (the operating costs were significantly reduced in the approved budget), and for funding project co-financed by the EU.

Detailed economic results of the Office are published on the website at http://bit.ly/VOP_hospodareni

Staff in 2018

156.25

The binding limit on the number of employees of the Office in 2018 was 156.25 staff members. During the year, the original limit of 149.25 was increased to 156.25 persons (of which 2.25 were employees participating in the implementation of projects co-financed by the EU).

157.39 employees

The actual average recalculated number of employees recorded in 2018.
The employee limit was exceeded by 1.14. The limit was exceeded with the prior consent of the Ministry of Finance of the Czech Republic and was covered by claimed non-utilised funds from previous years.

A total of 121

employees were directly dealing with complaints and performing other tasks within the Defender's mandate (activities of the national preventive mechanism; the national equality body for protection against discrimination; monitoring of the rights of migrant EU citizens and their family members; and monitoring of expulsions of foreign nationals).

We continued co-operating with experts who are not our regular employees, but can nevertheless provide valuable contributions to a comprehensive assessment of certain cases. We relied on their expertise during systematic visits in places of detention and in monitoring of the rights of people with disabilities and tasks in the area of equal treatment. We co-operated e.g. with physicians, psychiatrists, psychologists, nurses, special pedagogues, experts in the area of social services, etc.

Provision of information pursuant to Act No. 106/1999 Coll., on free access to information

We received **61** requests for information pursuant to the Free Access to Information Act. The requests were received through the post, e-mail or via the data box.

In **45** cases, the information was provided; the requests mostly comprised queries about generalised results of the Defender's inquiries and opinions in the various areas of responsibility (the army, police and prisons; detention; discrimination; transport and communications; personal data protection; social security; social and legal protection of children; planning and construction proceedings; use of buildings; environmental protection), requests for documents from the complainants' files, requests for provision of the "Prisons" and "Family and Children" collections, and information on the functioning, organisation and budget of the Office of the Public Defender of Rights.

In **14** cases, the Office refused to provide the requested information (or its part). In one case, the applicant filed an appeal against our decision not to provide information. The Office received 1 complaint against its procedure in handling a request for information.

	Total number of requests for provision of information	61
Section 18 (1)(a)	Number of decisions rejecting a request (or its part)	14
Section 18 (1)(b)	Number of appeals lodged against a decision	1
Section 18 (1)(c)	Copy of important parts of each court judgment	0
Section 18 (1)(d)	List of exclusive licences granted	0
Section 18 (1)(e)	Number of complaints lodged under Section 16a of the Act	1
Section 18 (1)(f)	Other information concerning the application of law	0

Media and public relations

Defender's topics receiving most coverage in the media

- commencement of monitoring of the rights of people with disabilities;
- recommendations to the Chamber of Deputies on amendment to certain laws;
- inaccessibility of social services for clients with autism;
- findings in the area of social and legal protection of children;
- the case of payment of CZK 1 million in owed disability pension;
- continuing issues related to restitutions.

The media were interested in the Defender's activities especially in connection with

- protection of the rights of children, removal of children from their parents due to unsuitable housing situation
- the rights of people with disabilities
- social security, especially disability pensions and allowance for care
- the topic of administrative expiry of vehicles and re-registration of vehicle owners in the Register of Road Vehicles
- the area of construction, changes in the Construction Code, and removal of structures

6
press conferences

96
press releases and dozens of further news

10
issues of electronic newsletter

6,494
subscribers of the electronic newsletter

4,607
printed and broadcasted news, interviews, articles and reports in the media, of which 180 on television; 154 on the radio; 1,163 in printed media; and 3,110 in online media.

> 360,000
visits to the Defender's website at www.ochrance.cz

6,921
followers on social networks

130
leaflets concerning various life situations

Website

> 360,000

visits, i.e. an average of 1,000 daily visits to the Defender's website

> 6,800

visits to the Defender's website for children at www.deti.ochrance.cz

14,000 ESO

searches in the database of the Defender's opinions (ESO)

Social networks

4,940 followers

1,783 followers

198 followers

TOP topics on the website:

- recommendation on the possibility of remote inspection of files
- workplace bullying, mobbing, bossing
- allowance for care
- noise nuisance
- rules concerning contact of both parents with their child

TOP topics on social networks:

- advice for parents caring for a child with autism spectrum disorder;
- overview of the rights of patients in treatment facilities for long-term patients;
- the Defender's comments on same-sex marriage;
- participation in the European Independent Living Day drawing attention to why independent living is so important for people with disabilities;
- survey of the availability of social services to clients with autism proving that social services in this area are practically non-existent.

The Defender was able to promote public awareness also by her regular columns in the Květy weekly magazine.

In co-operation with Czech Television, we produced 12 episodes of the Cases for the Defender programme, which should go on air in mid-2019.

130 leaflets

in Czech and 9 other languages (English, French, Russian, German, Romani, Polish, Vietnamese, Arabic and Persian) with instructions and solutions to frequent life situations:

bit.ly/letaky_zadosti

International relations

In 2018, the Office of the Public Defender of Rights especially maintained and deepened existing international bilateral and multilateral ties. We promoted contact with colleagues across European countries participating in the International Ombudsman Institute (IOI), European Network of Ombudsmen (ENO), and European Network of National Human Rights Institutions (ENNHRI). In the area of combating discrimination, we were active in the Equinet and our colleagues from the newly founded Department for Protection of Rights of People with Disabilities participated in a working group dealing with these topics at ENNHRI. The Department of Supervision over Restrictions of Personal Freedom actively co-operated in the past year with the UN Committee Against Torture and FRONTEX. In spring 2018, the Defender successfully presented her new competence (protection of the rights of EU citizens and their family members) to ambassadors of EU countries. We continued developing bilateral ties especially with ombudspersons from Visegrad Group countries and from Norway, Austria, Serbia and Armenia. Within competences conferred on the Defender by the law, we also provided assistance to bodies of international organisations responsible for monitoring human rights obligations of their member states (UN, OSCE, and the Council of Europe).

1/ Meeting of Visegrad Group ombudspersons in Gdańsk

The 2018 annual meeting of Visegrad Group ombudspersons took place in the Polish city of Gdańsk. The main topic was the growing populism in society associated with pressure against the independence of the ombudsman institutions. Visegrad Group's ombudspersons also talked about hate speech in the public space and the importance of educating children and young people about human rights.

2/ Multilateral international co-operation

In 2018, we participated in the annual conferences of IOI and ENNHRI. We also provided professional co-operation to several international institutions (bodies of international organisations) responsible for monitoring their member states' obligations in the area of human rights and freedoms. These include e.g. the European Union Agency for Fundamental Rights (FRA), IOI, and the Office of the United Nations High Commissioner for Human Rights (OHCHR). By the end of the year, we held at our HQ a very useful meeting with OSCE election observers who informed us about their findings concerning monitoring the 2017 election to the Chamber of Deputies of the Parliament of the Czech Republic. We discussed, in particular, the issue of the right to vote of people with disabilities.

3/ Bilateral international co-operation

In the past year, we continued our co-operation with the Austrian ombudsman in the area of family allowances with a cross-border element. In spring, we took part in a conference held on the occasion of the 25th anniversary of the Slovak National Centre for Human Rights and welcomed colleagues from Poland, Serbia, Armenia and Kosovo to share experience and best practices. We also maintain ties with other countries through meetings with their ambassadors in the Czech Republic. In 2018, ambassadors from Norway and Sweden visited the Office.

4/ International NPM co-operation

At a hearing of the UN Committee Against Torture in Geneva, a lawyer from the Department of Supervision over Restrictions of Personal Freedom representing the Office responded to Committee's questions related to the Defender's statement on the 6th periodic report of the Czech Government on the performance of commitments following from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The head of the Department of Supervision over Restrictions of Personal Freedom reported to the Subcommittee on Prevention of Torture on the activities of the Czech National Preventive Mechanism. Representatives of the Subcommittee asked mainly about the Defender's independence and the current challenges in combatting ill-treatment. We continued our co-operation with the FRONTEX agency, as part of which the Department's lawyers trained persons tasked with monitoring expulsions or return operations in other countries. In March 2018, we co-operated with several partners to organise a seminar at Václav Havel Airport in Prague for representatives of EU countries active in monitoring of forced returns of foreign nationals to their countries of origin.

5/ International activities of the Equal Treatment Department

Employees of the Equal Treatment Department actively participated in all permanent and temporary Equinet working groups (law, policy, communication, gender, migrant workers, data and research) and attended its conferences and seminars. They contributed to and participated in the preparation of several Equinet publications.

Starting from January 2018, a special section within the Department was created to deal with the protection of the rights of EU citizens and their family members. In spring 2018, the new competence was explained to numerous ambassadors and other diplomatic representatives of EU countries in the Czech Republic at the French embassy.

6/ International co-operation of the Department for Protection of Rights of People with Disabilities

Starting from January 2018, the new Department also began engaging with international partners. We became members of an ENNHRI working group concerned with the Convention on the Rights of Persons with Disabilities and actively participated in its meeting in the Latvian capital city of Riga. At the beginning of the past year, an employee of the Department also participated in ENNHRI's online course on monitoring of human rights obligations of States by national human rights institutions and subsequent reporting to international institutions.

Selected international activities in 2018

- **Meeting of UN Subcommittee on Prevention of Torture, European regional section** (Geneva, Switzerland, 12–13 February). Topic: presentation of the activities of the Czech NPM, its position within the ombudsman institution and its working strategy; introduction of the main NPM activities in the past year.
- **Hearing before the UN Committee Against Torture** (Geneva, Switzerland, 1–2 May). Topic: the Defender's opinion on the 6th periodic report of the Czech Government on the performance of commitments following from under the UN Convention against Torture.
- **Symposium titled "The multiplication criteria. Challenges, effects and prospects"** (Paris, France, 18–19 January). Topic: multiplication criteria in the area of discrimination (the Defender participated in person).
- **German Congress on Crime Prevention** (Dresden, Germany, 11 June). Topic: prevention of crime; violence and radicalism as current challenges for prevention.
- **Annual conference of Visegrad Group's ombudspersons** (Gdańsk, Poland, 17–18 September). Topic: the role of ombudsman in implementation of international obligation of States (especially in the area of human rights), human rights education and combating hate speech.
- **IOI Annual Conference** (Brussels, Belgium, 1–3 October). Topic: ombudspersons and access to information, transparency of ombudsman institutions, ombudspersons as a catalyst in civic society's participation, and the role of ombudspersons as guarantors of the State's human rights obligations.
- **Meeting of an ENNHRI working group concerned with the Convention on the Rights of Persons with Disabilities** (Riga, Latvia, 1–4 October). Topic: participation of independent monitoring mechanisms in the activities of the UN Committee on the Rights of Persons with Disabilities, participation of disability advocacy organisations in monitoring at a national level.
- **Meeting of European ombudspersons for the rights of people with disabilities** (Vienna, Austria, 14–16 November). Topic: employment of people with disabilities
- **ENNHRI General Assembly Meeting and Annual Conference** (Athens, Greece, 24–25 October). Topic: pressure against human rights institutions and ombudspersons threatening their independence; challenges and threats to democracy, election of the new ENNHRI Board Chair.
- **Seminar for employees of the Slovak Public Defender of Rights** (Bratislava, Slovakia, 7–9 November). Topic: sharing know-how with employees of the Slovak ombudsperson in the area of visits to facilities providing care to elderly people with dementia.
- **Meeting of the Platform on social and economic rights** (Strasbourg, France, 28. November). Topic: implementation of the European Social Charter, links between the European Social Charter and the European Pillar of Social Rights, protecting of the right to housing.
- **Stepping into a Digitalised Future: Integrating eHealth into Public Healthcare Systems conference** (Brussels, Belgium, 27 February to 1 March). Topics: current trends in the area of healthcare legislation.
- **IOI workshop for NPMs titled "Strengthening the follow-up to NPM recommendations"** (Copenhagen, Denmark, 7–9 November). Topic: methodology for preparing and conducting visits to facilities, drafting recommendations and monitoring the follow-up changes, international context and partnerships of national preventive mechanisms.

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