



Information on activities for the 2nd quarter of 2018

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

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A. Number of complaints, inquiries

A total of **2160** complaints were received in the second quarter of 2018, which is 169 more than in the same period last year. I was approached by 1482 persons in matters falling within my competence under the law, which is 107 more than in the second quarter of the past year. The proportion of complaints falling within the Defender's mandate corresponds to the yearly average of **68%**. Most complaints were related to social security (469 complaints); many complaints (161) concerned the area of construction proceedings and spatial planning, and also the prison system, the police and the army (135).

In a total of 63 of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints directed against discrimination within the meaning of the Anti-Discrimination Act reached **56**. In 12 cases, we also provided discrimination-related information and analyses to international entities and national bodies.

In the second quarter, we performed **9** systematic visits to facilities where persons restricted in their freedom are or may be present. Regarding the area of monitoring detention of foreign nationals and performance of administrative expulsion, we monitored **2139** decisions.

The following figure illustrates the numbers of complaints.





B. Defender's activities

B.1 Public administration

B.1.1 Incorrectly assessed disability pension (File No. 4344/2017/VOP)

I was approached by a severely ill man who complained about his low disability pension. He had been severely physically and mentally ill since his childhood. In 2000, when he was 16 years old, he was first hospitalised in a psychiatric hospital and in 2003, his examining doctor concluded that recovery could not be expected. After several failed attempts to find employment and after repeated hospitalisations, he applied for a disability pension in 2007; as of that date, he was assessed a partial pension in the amount of CZK 2,500. When his medical condition further deteriorated in 2008, he was re-examined and found fully disabled, but his pension was assessed at CZK 2,900 (gradually increased to CZK 3,500 at present). The man believed the pension was not assessed in the correct amount and that he was being penalised for trying to find a job. He only applied for disability pension in 2007.

Given doubts about the date when disability arose (in formal terms), I initiated an inquiry. I found that it was unclear how the assessment doctor came to the conclusion in 2007 that the man had become partially disabled as of 2007. Neither she nor the other assessment doctor in 2008 addressed the possibility that his disability might have arisen prior to 2007; the records did not show that they had requested additional documents or examinations, despite medical reports indicating that he had already been undergoing psychiatric treatment since 2000.

The Czech Social Security Administration responded to my inquiry by ordering an extraordinary medical re-examination focused on the possibility of determining an earlier date of disability. The new medical report found that the man had already been partially disabled since 2000 and fully disabled from 2008.

Due to the fact that the date of partial disability moved back to when the man was only 16 years old, he met the requirement for awarding pension in extraordinary cases which is subject to a special method of assessing the amount of pension. According to the new Czech Social Security Administration's assessment, the man should have received a partial disability pension of CZK 3,150 from the year 2000 and full disability pension in the amount of CZK 9,500 since 2008. Taking adjustments into account, the man's disability pension was assessed in the amount of CZK 12,000 with an additional back payment of pension for the period since 1 January 2006 in the amount of CZK 1,030,000 (even though the man has been entitled to pension since the year 2000, the law only permits back payment for the period since 1 January 2006).

I welcomed that the Czech Social Security Administration had responded immediately after I contacted it and that a solution to the complainant's problem could have been found quickly.



B.1.2 Excessive length of proceedings on adjustment of a hunting district (File No. 4196/2015/VOP)

The Defender was approached by a hunting association (hereinafter the “complainant”) which requested inquiry into the procedure of the State hunting administration in administrative proceedings concerning a dispute about the demarcation of hunting district boundaries. It was a complicated issue with clashing interests of two competing hunting districts.

The complainant objected to unreasonable delays in proceedings and complained that even the superior authorities had not dealt with the inactivity effectively. The complainant further alleged official bias and requested that the case be transferred to another first-instance State hunting administration body.

My Deputy decided to inquire into the procedure of the relevant authorities. The inquiry revealed that the errors including administrative delays had indeed occurred and admonished the representatives of the responsible authorities. The errors consisted in exceeding deadlines for issuing decisions, insufficient justification of certain official procedures, incorrect resolution of certain submissions and ignoring legal opinions of superior bodies.

On the other hand, my Deputy concluded that the procedural remedies exercised by the parties to the proceedings (incl. complaints against inactivity) had, as a rule, been sufficiently addressed by the superior bodies (which had prevented further inactivity). He also welcomed the immediate extraordinary inspections of the relevant bodies by the Ministry. My Deputy acknowledged that the regional authority eventually delegated the proceedings to another first-instance State hunting administration body, which satisfied the complainant’s long-term wish.

However, the matter was extremely complicated and unique (involving a clash of interests of two competing hunting districts with no possibility of a compromise) and plagued by imperfect legislative regulation of the relevant area (e.g. multiple ambiguous legal terms in the Game Management Act). The “dispute about demarcation of hunting district boundaries” had gradually escalated into confusion and was marred by a large number of procedural remedies and appeals, complaints against alleged official bias and transfers of the case between authorities. Under such circumstances, my Deputy had to take into account that State administration in the case was made extraordinarily difficult by the extensive procedural activity of the parties (represented by their attorneys) and their unwillingness to reach a compromise.

Given the current stage of the proceedings (repeated first-instance procedure) and the complainant’s options to use all the available procedural remedies and appeals again, my Deputy closed the inquiry after admonishing the relevant authorities for their errors.

B.1.3 Smoking in prisons (File No. 477/2018/VOP)

A number of convicted non-smokers complained to me that a non-smoking area was no longer delimited in their prison. Even though they had been moved to 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. On-site inquiry confirmed the convicts' allegation, since the unit only contained a small smoking room (1.1 x 2.2 metres) for four convicts of a smaller stature; the unit housed 13 non-smokers and 52 smokers; the smoker convicts themselves confirmed that they also smoked in non-smoking common areas despite the prohibition because the smoking room did not meet their needs.

I concluded that the prison made an error when it allowed non-smokers to be regularly exposed to the negative effects of passive smoking. I proposed several solutions to this undesirable state of affairs to the prison director. I also noted that the prison had undoubtedly failed to punish convicts for violating the smoking ban, but the prison did not change its practice in this regard.

After I had issued my inquiry report, the prison established, based on my recommendation, a non-smoking unit for 25 convicts, to which all convicts who had requested non-smoking accommodations were moved pursuant to Section 23 (7) of Decree No. 345/1999 Coll., promulgating the imprisonment rules, as amended.

B.1.4 Judge's nervousness is not a sufficient reason to deny consent to video recording (File No. 6194/2016/VOP)

My Deputy inquired into the manner of resolution of a complaint against inappropriate conduct on the part of judicial persons by a judge of the Regional Court in Ostrava. The complaint was directed against, *inter alia*, the presiding judge of the appellate chamber, who had prohibited the complainant from making a video recording of the hearing because "he was nervous when filmed". The complainant also objected to the composition of the appellate chamber. The president of the court concluded that the complaint was substantively unfounded but noted that the complainant's submission expressed his disagreement with the procedure and decision of the appellate chamber and potential remedies could be sought by means specified by relevant procedural rules. She summarised that the complainant had incurred no harm to his rights in the relevant proceedings: he prevailed in the dispute, was present at the hearing and made an audio recording.

Nevertheless, my Deputy concluded that the president of the court had made an error in dealing with the complaint. Firstly, denying consent to video recording requires a relevant and legitimate reason, even though the law does not require that a reason be stated for denial of consent to video recording. If the judge denies consent to video recording, this has the same ultimate effect as if he forbade it, i.e. limited the publicity of the hearing.

My Deputy also concluded that the fact the judge is "nervous" when filmed is not a legitimate reason for not giving consent to recording. Judges are professionals and the high standards for their conduct serve to increase public confidence in the judiciary, which is a necessary prerequisite for its independence. The fact that the court ultimately decided in favour of the complainant is irrelevant in this regard.

The president of the court also made an error when she classified the submission as filed against the court's procedure. Conduct of a judge that jeopardises or even merely



undermines trust in the independence, impartiality and fairness of judicial decision-making or the independence, impartiality and dignity of the judicial office constitutes inappropriate conduct.

The president of the court admitted she had made an error in dealing with the complaint and made sufficient steps to remedy the situation.

B.1.5 Reimbursements for compulsory vaccination of children (File No. 11/2018/SZD)

I initiated inquiry into the disunited practice in the area of reimbursements of compulsory vaccinations of children from the public health insurance system in situations where parents postpone vaccination to protect their children.

A survey conducted last year by Rozalio, an association dealing with vaccination policy, called attention to disparate reimbursement practices on the part of public health insurance companies with regard to postponed vaccination. The opinion of the Ministry of Health presented on the association's website was rejected by multiple health insurance companies, including the General Health Insurance Company of the Czech Republic (*Všeobecná zdravotní pojišťovna České republiky*). The Ministry of Health noted that "as concerns the reimbursement of regular vaccination, the law does not associate it with meeting of any vaccination dates specified by the Decree. This interpretation is underscored by the fact that pursuant to the Public Health Act, the State pays for regular vaccination shots for those natural persons who are not insured under the Public Health Insurance Act. This, too, indicates that the purpose of reimbursing regular vaccinations from public health insurance is not to ensure that the insured persons meet deadlines according to the Decree and the vaccination calendar, but rather to achieve high vaccination rates in the population."

As part of my inquiry, I communicated with the Ministry of Health, which confirmed that not all insurance companies adhere to the Ministry's opinion. In the meantime, however, the Union of Health Insurance Companies issued a methodology based on the Ministry's opinion and unified their practice as of 1 June 2018. The insurance companies will now also reimburse vaccinations outside of the vaccination calendar. Since the disunited approach had been remedied, I closed the case.

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

Within the Defender's mandate to prevent ill-treatment and ensure supervision over restrictions of personal freedom, authorised employees of the Office of the Public Defender of Rights (hereinafter the "Office") performed a total of **9 systematic visits to facilities and monitored 14 instances of administrative and criminal expulsions, both by land and by air**, in the second quarter of 2018.

This involved visits to **four police departments** that contain police cells, specifically police departments in Cheb, Pířbram, Jihlava and Semily. Authorised employees of the Office also visited the **Bohnice Psychiatric Hospital** to inquire about the use of means of restraint. I concluded this series of visits with **four visits to homes for people with disabilities**. Specifically, I visited *Domov Radost pro osoby s postižením* in Merklín near Přeřtice, *Domov*



pro osoby se zdravotním postižením in Osek near Strakonice, *Domov Pramen* in Mnichov near Mariánské Lázně and *Domov Ambrosie* in Orlová.

B.2.1 Hearing before the UN Committee Against Torture

At a hearing of the UN Committee Against Torture in Strasbourg, a lawyer from the Department of Supervision over Restrictions of Personal Freedom responded to committee members' questions related to my [statement on the sixth periodic report of the Czech Republic](#) on measures implemented in order to perform its obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (No. 143/1988 Coll.). In the statement, I described specific 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).

B.2.2 Training of workers in social services

Employees of the Office prepared a seminar for social care specialists working with clients with dementia in Vsetín. The purpose of the training was not only to inform them about the Defender's 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.

B.2.3 Training of staff in treatment facilities for long-term patients

Employees of the Office 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 the Defender's 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](#)) and provide examples of good practice. The series of training courses will also continue in the other regions.

B.2.4 Training of members of the Prison Service of the Czech Republic

Employees of the Office also participated in a professional methodological seminar for coordinators responsible for treatment of imprisoned foreign nationals and other employees of the Prison Service, where they presented their findings and recommendations obtained during the monitoring of expulsions.

B.2.5 International 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 I 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 the employees of the Office to persons tasked with monitoring of expulsions in other



countries or monitoring return operations. In this way, I contribute to the protection of rights of the expellees.

B.2.6 Presentation of activities and awareness raising

Employees of the Department of Supervision over Restrictions of Personal Freedom presented our activities on various occasions. This included educating students as part of the “**Summer school of prison policy**” at the Faculty of Law of Charles University in Prague, “**Summer school of human rights**” at the Faculty of Law of Masaryk University in Brno and the workshop “**Life with prison: who gets imprisoned?**” organised by the Central Bohemian Centre for Community Work in co-operation with the town of Benešov.

B.3 Protection against discrimination

B.3.1 Equal treatment of people with hearing impairments in relation to their access to education at faculties of education of public universities (File No. [3180/2016/VOP](#))

As I had been informed of certain obstacles faced by applicants for study programmes in education with hearing impairments, I decided to approach eight public faculties of education with several enquiries. I then evaluated their answers from the perspective of legal regulations concerning equal treatment. I came to the following conclusions:

Accessibility of study programmes to students with hearing impairments differs at the individual faculties of education.

Assessment from the perspective of direct discrimination

I assessed the study programmes inaccessible to persons with hearing impairments because of their disability from the perspective of direct discrimination. At some faculties, this is the case of music-related study programmes due to the nature of the studies; at Masaryk University, this is the case of the study programme Teaching at Kindergartens and Teaching at Lower Primary Schools due to their emphasis on mainstream education.

I came to the following conclusions:

- Making the study programmes Music Education and Choral Conducting inaccessible to people with hearing impairments does not constitute direct discrimination. This is a proportionate and necessary measure to achieve the pursued aim, i.e. that graduates of these programmes acquire the skills required. Good hearing is a basic prerequisite for studying these programmes.
- General exclusion of people with hearing impairments from the programmes Teaching at Kindergartens and Teaching at Lower Primary Schools constitutes direct discrimination. Even though the measure pursues a legitimate objective in emphasising mainstream education, it is neither proportionate nor necessary. Education in the programmes Teaching at Kindergartens and Teaching at Lower Primary Schools can also be used at schools specialised in education of children with hearing impairments.

Assessment from the perspective of indirect discrimination



When applying for certain study programmes offered by the faculties (Teaching at Kindergartens and Teaching at Lower Primary Schools, Speech Therapy, and Teaching the General Subject of the Czech Language), the applicant must submit a certificate from a speech therapist proving the absence of a speech disorder (together with a certificate from phoniatric examination if applicable). The requirement to submit the certificate of absence of a speech disorder or certificate from a phoniatric examination (hereinafter also referred to as the “certificates”) affects applicants with hearing impairments more significantly than others. Most people with hearing impairments suffer from a speech disorder, since they do not have auditory control over their speech, or they have a lower degree of such control.

When the test of indirect discrimination was applied to the individual study programmes, I reached the following conclusions:

- The requirement of submitting the certificates for study programmes specialised in teaching at kindergartens or at lower primary schools follows a legitimate aim in that teachers of young children and pupils of young age should be good role models in respect of speaking skills. However, strict adherence to this requirement without any possibility of granting an exemption to applicants with hearing impairments is neither proportionate nor necessary to achieve the intended aim. Therefore, it constitutes indirect discrimination on grounds of hearing impairment.
- It is legitimate to require the certificates for study programmes focusing on speech therapy as the proper pronunciation is vital for such studies. To require the certificates in such cases is both proportionate and necessary and therefore does not constitute discrimination.
- The requirement that applicants for study programmes of Teaching the General Subject of the Czech Language submit the certificates without any possibility of individual exemptions for people with hearing impairments is a matter of indirect discrimination. Although this measure has a legitimate aim – making sure that teachers of Czech are role models for their pupils in respects of speaking skills, the strict requirement of a certificate from a speech therapist proving the absence of a speech disorder is neither proportionate nor necessary for achieving this aim.

Further development

I formulate specific recommendations to the individual faculties. The faculties subsequently promised to take remedial steps by incorporating my findings and recommendations to their admission procedures. I will additionally reach out to organisations associating people with hearing impairments with a request to inform me whether the promised changes have been implemented in practice.

B.3.2 Wheelchair user’s problems in public transport (File No. [6938/2015/VOP](#))

I was approached by a wheelchair user who brought to my attention the difficulties faced by wheelchair users in public transport. Public transport vehicles suitable for wheelchair users are only available on certain lines and arrive only about once per hour, while standard vehicles arrive roughly in 10-minute intervals. It is not unusual that the place for wheelchair



users is taken by a baby carriage or standing passengers (especially during morning and afternoon rush hours).

I thus inquired into the practice of a public transport company and the manner in which a complaint against it was resolved by the Czech Trade Inspection Authority. I found indirect discrimination of wheelchair users in public transport and recommended that the transport company change the terms and conditions of transport so as to give explicit priority to wheelchair users in terms of occupying the spaces designated for them. I found an error in the procedure of the Czech Trade Inspection Authority consisting in incorrectly handled potential indirect discrimination of people with disabilities.

The public transport company responded that it did not find any reasons to change the terms and conditions of transport. Nevertheless, the situation has been steadily improving since all newly purchased vehicles are low-floor and arrive more frequently. The complainant has not decided yet whether he will lodge a court action. Similar case was heard by courts in the United Kingdom, resulting in the last year's decision of the UK Supreme Court, which concluded that the situation of people with disabilities is not comparable to the circumstances of passengers with baby carriages and, consequently, the "first come first serve" rule regarding places for wheelchairs and baby carriages has no place in public transport.

The Czech Trade Inspection Authority did not adopt any remedial measures after I had issued my report, which is why I proceeded to issue my final statement. I recommended to carry out a new inspection of the transport company in which the inspectorate would take into account the legal evaluation of discrimination of people with disabilities as indicated in my report and the final statement. The Czech Trade Inspection Authority responded to my final statement by informing me of its intention to carry out a new inspection of the transport company. Consequently, I closed the case. However, I intend to monitor the activities of the Czech Trade Inspection Authority.

B.3.3 Opinions on issues relating to recruitment practices – discrimination on grounds of ethnicity (File No. [1/2015/DIS](#)) and property (File No. [39/2018/DIS](#))

I dealt with two specific situations which often appear in practice. The first involved a job advertisement in a foreign language and the second concerned unfavourable treatment of candidates because of an ongoing distraint procedure. I issued two opinions which I sent to the State Labour Inspectorate for them to be taken into account in future inspection activities.

Concerning job advertisements in a foreign language, such offers made by companies do not, in themselves, constitute discrimination on grounds of ethnicity. However, the need to speak certain languages to perform certain jobs should be reasonably and objectively justified. This clearly depends on the job in question. If the requirement to speak a specific language served to create a workforce homogenous in terms of ethnicity (nationality) or to exclude persons of a certain ethnicity (or nationality), this could constitute discrimination on grounds of ethnicity/nationality and an infraction with regard to the right to employment. The labour inspectorates are therefore obliged to examine the further stages



of recruitment procedures in specific companies and make sure that the conditions of equal access to employment are met.

Sending a salary to a bank account is a matter of agreement between the employee and the employer. Excluding candidates who do not wish to make such an agreement could lead to them being indirectly discriminated against on grounds of property. They might end up (albeit temporarily) without financial means and unable to e.g. pay the rent or child maintenance. For this reason, I recommended that employers do not avoid employing persons who wish to receive their salaries in cash – pursuant to the Labour Code, this is still the primary method of paying salaries and constitutes a form of protecting the employee as the weaker party. Only this can ensure that people subject to a distraint procedure are able to obtain a living and pay their debts. Labour inspectorates should remain vigilant, inform the employers of their illegal practices and order them to remedy the situation.

B.4 Monitoring of rights of people with disabilities

From January this year, I have acted as a monitoring body under the Convention on the Rights of Persons with Disabilities (hereinafter the “Convention”). I will monitor how and to what degree the Czech Republic performs its obligations under the Convention, call attention to potential systemic shortcomings and formulate my recommendations for improvements. With regard to my new mandate, I have put together a new Department for Protection of Rights of People with Disabilities in the first quarter of this year, which will be responsible for the monitoring. There **have also been seven regional meetings with people with disabilities and their advocacy organisations**. The purpose was to accumulate suggestions regarding the rights of people with disabilities and establish closer co-operation with NGOs, as well as to find nominees for an advisory body.

The main **instrument for the monitoring will consist of various forms of surveys**. In the second quarter, the Department for Protection of Rights of People with Disabilities worked to prepare indicators for the individual articles of the Convention. These indicators will serve to evaluate and review the existing situation in the individual areas regulated by the Convention.

B.4.1 Advisory body

For the purposes of monitoring, I appointed an advisory body pursuant to Section 25a of the Public Defender of Rights Act.

The main task of the advisory body is to **observe the implementation of the Convention in the country in co-operation with the Defender**. The advisory body will receive suggestions for further Defender’s activities from people with disabilities, their advocacy organisations and carers. Consequently, it sets priorities and systemic topics to be addressed in the area of protection of rights of people with disabilities. The advisory body also participates in the Defender’s commentary procedure in relation to legal regulations and releases opinions concerning the Defender’s strategic documents on the rights of people with disabilities. The advisory body ensures that people with disabilities, their advocacy organisations and the broader public are informed about the Defender’s monitoring activities.



The advisory body has 11 members. The advisory body is composed of persons with disabilities and persons defending their rights. In appointing the members of the advisory body, I took into account especially their professional qualifications and activities in the area of protection of rights of people with disabilities.

The first meeting of the advisory body on 22 May approved the following priorities for me to address this year. Availability of social services enabling life in a community, availability of out-of-school education for students with disabilities and the issues concerning conditions for employing people with disabilities. I will also deal with the issues of exercising voting rights by people with limited legal capacity. Finally, I will deal with availability of healthcare and the issues of accessibility.

I am currently conducting a survey regarding the issues of limiting legal capacity, use of the legal instrument of curatorship and other supporting measures. Also ongoing is a survey mapping the availability of social services to children and adults with autism, especially those with significant behavioural problems. I have also dealt with the issue of exempting disabled pupils and students from physical education, which may pose an obstacle to inclusive education. I will also focus on other systemic topics as they come up in my activities and received complaints.

B.4.2 Awareness raising

Aside from monitoring the rights of people with disability, I conduct various awareness-raising activities. Lawyers from the Department for Protection of Rights of People with Disabilities participated in an update seminar for Labour Office employees where they presented the main principles of the Convention as well as the activities of the new department. My new mandate was also presented at the conference titled *How to prepare people with hearing impairments for the future*. The Defender's monitoring mandate as well as the preliminary results of surveys were presented at the conference titled *Setting rules for care for people with autism* sponsored by Ingo. Radka Maxová, member of the Chamber of Deputies. We have also met with Self-advocates (*Sebeobhájci*) and students of Palacký University Olomouc to discuss the rights of people with mental disabilities.

On the occasion of the World Down Syndrome Day, I organised a performance titled *Who fears the Down* in co-operation with the Aldente theatre. The performance also included author reading by one of the actors who has the Down syndrome. I have let the building of the Office of the Public Defender of Rights be illuminated blue to join the global campaign of support for people with autism. As the first institution in the Czech Republic, the Office joined the global campaign supporting independent life with the goal of emphasising that each individual has the right to receive support to live in a normal environment outside of institutional care.

B.4.3 Accessibility of the Office of the Public Defender of Rights and its outputs

Improving accessibility of the Office is my long-term objective. For this reason, the staff have been trained in communication with people with various kinds of disability. Additionally, technical barriers to accessibility are gradually being removed. From this year on, people can raise a complaint in the Czech Sign Language and we have an interpreter available for



communication with people with a hearing impairment. Some of our information materials are being modified to enable people with mental disabilities to read them more easily.

The new mandate and the fundamental rights incorporated in the Convention are now introduced in the form of short [videos](#) created to boost accessibility with regard to information on the Defender's activities.

B.4.4 Equal Opportunity award

In June this year, the Office received the "Exemplary Employer" award in the Equal Opportunity competition. This project raises awareness of good practices of employers who employ and create good working conditions for people with various kinds and degrees of disability.

C. Legislative recommendations and special powers of the Defender

C.1 Statement of an enjoined party in the proceedings on application to cancel the CZK 10,000 fee for lodging a complaint with the Office for the Protection of Competition

The Public Procurement Act was adopted in 2016. Based on an **amending motion of a group of Deputies**, a provision has been included in the Act which has **made lodging a complaint with the Office for the Protection of Competition (hereinafter "OPC") subject to a fee in the amount of CZK 10,000**. This was explained as a necessary step to prevent abuse of the complaint mechanism. However, this justification ignores the interest of the citizens to exercise control over public contracts; the amount of the fee is prohibitive for low-income groups of people who are thus excluded from control over the use of public funds. The data collected by the Czech Statistical Office in 2017 show that 30.7% of households in the Czech Republic cannot afford an unexpected expense in the amount of CZK 10,200. At least a third of society is thus being denied the opportunity to lodge a complaint with the OPC and thus contribute to the improvement of the public procurement environment.

The fee, moreover, guarantees no additional rights to the complainant. Usually, administrative fees are a prerequisite for initiating proceedings, where the person who pays the fee becomes entitled to a certain administrative step or proceedings and to receive a decision in the given matter. However, in the case of the OPC, no such entitlements are associated with the fee; the paying complainant only has the right to be informed on how the complaint was handled, which is the standard procedure in all other inspection bodies where complaints are subject to a fee.

The purpose of a democratic State governed by rule of law is to serve its citizens. Part of the service is the citizen's right to approach public authorities in matters of public interest. This constitutionally-guaranteed right to petition is not limited just to the possibility to lodge a complaint with a public authority; it implicitly includes the obligation on the part of the public authority to deal with the complaint and inform the complainant of its decision in a comprehensible manner. In **the case of complaints to the OPC, one must conclude that only those with sufficient property can exercise their constitutionally guaranteed rights.**



For the above reasons, I decided to intervene in proceedings before the Constitutional Court as an enjoined party; I provided a statement in which I supported the application to cancel the relevant fee.

C.2 Commentary procedure on a bill amending the Code of Administrative Procedure

The objective of the bill is to address issues relating to the pleas of so-called **systemic bias**, i.e. bias on the part of all officials of an administrative authority tasked with certain administrative proceedings.

Although I am aware of the need to adopt the change (and the Defender has called attention to the problem in the past), I do not consider the solution proposed by the bill's sponsor to be a good one. In my suggestions, I **analysed in detail** why neither of the variants (which essentially have similar effects) of the proposed solution would **result in any significant improvement**.

Aside from other reasons, I also believe that the proposed limitation of the concept of exclusion from hearing and deciding a case would represent a barrier to using the plea of official bias in administrative proceedings, but not its examination in administrative court proceedings. Administrative courts would thus remain, despite the proposed wording of the bill, obliged to examine potential bias resulting from the very dependence of an official on a territorial self-governing unit or the State and to cancel their decisions as unlawful if potential bias was confirmed.

I believe it is completely unacceptable and contrary to the purpose and meaning of the relevant concept if the lawmaker seeks to erode this material approach and essentially negate the protective mechanisms guaranteeing the impartiality of public administration and the right to fair trial. For the above reasons, I consider the proposed bill to be at variance with the Constitution.

Consequently, I suggested during the commentary procedure that the submitted bill be withdrawn from the legislative procedure.

It should be noted that in the meantime, a different amendment to the Code of Administrative Procedure has been approved by the Chamber of Deputies (document No. 54) and the Senate (document No. 298).

In Brno, on 30 July 2018

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