



Report on activities for the 4th 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.

Table of Contents:

A. Number of complaints, inquiries	2
B. Defender's activities	3
B.1 Public administration	3
B.1.1 Refund for a patient's attendant in spa (File No. 3592/2018/VOP)	3
B.1.2 "Crooks" on the phone (File No. 6418/2016/VOP)	3
B.1.3 Body searches of people with disabilities when entering a court building (File No. 6263/2016/VOP)	4
B.1.4 Malodorous and dusty glass recycling, crushing and sorting of shards operation (File No. 7217/2016/VOP)	4
B.1.5 Filing an application for a new passport at a Czech diplomatic mission abroad (File No. 4606/2017/VOP)	5
B.2 Supervision over restrictions of personal freedom and expulsion monitoring	6
B.2.1 Round table with heads of facilities for people with disabilities	7
B.2.2 Detention in social services	7
B.2.3 Translation of CPT outputs into Czech	7
B.2.4 Debate on monitoring of forced returns of foreign nationals in Europe	7
B.2.5 International co-operation, seminars and internships	7
B.3 Protection against discrimination	8
B.3.1 Recommendations on inclusive education of Roma and non-Roma children (File No. 86/2017/DIS)	8
B.3.2 Age discrimination at work (File No. 898/2015/VOP)	9
B.4 Monitoring of rights of people with disabilities	10
B.4.1 Third meeting of the advisory body	10
B.4.2 Survey concerning monitoring of rights of people with disabilities	10
B.4.3 Co-operation with disability advocacy organisations	11
B.4.4 Awareness raising	12



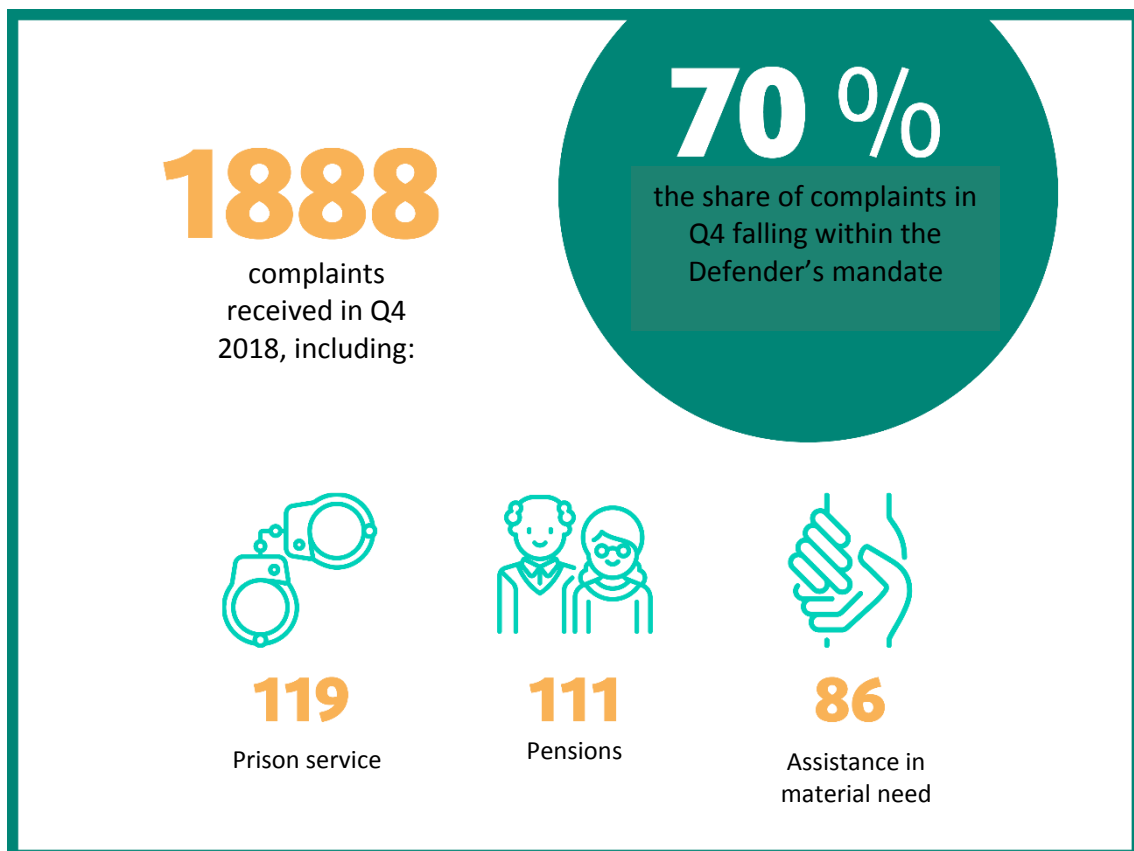
A. Number of complaints, inquiries

A total of **1,888** complaints were received in the 4th quarter of 2018, which is 103 fewer than in the same period of 2017. The proportion of complaints falling within the Defender's mandate increased to 70% (the figure for the previous year was 68%). While most complaints were related to prisons (119), many also concerned pensions (111) and assistance in material need (86).

In a total of **64** of the complaints received, the complainants claimed unequal treatment by public administration and private individuals. The number of complaints against discrimination within the meaning of the Anti-Discrimination Act reached **58**. In **9** cases, we also provided discrimination-related information and analyses to international entities and national bodies (e.g. the European network of Equality bodies (Equinet), the Netherlands Institute for Human Rights and the German Federal Anti-Discrimination Agency).

In the fourth quarter, we performed **12** 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 expulsions, we monitored **2,116** decisions.

The following figure illustrates the numbers of complaints.





B. Defender's activities

B.1 Public administration

B.1.1 Refund of payment for a patient's attendant in spa (File No. 3592/2018/VOP)

In 2017, the complainant suffered a stroke due to which his overall mobility is now impaired. His wife assists him in basic daily tasks. On physicians' recommendations, he contacted his health insurance company and applied for reimbursement of the costs of spa treatment from public health insurance. He also requested reimbursement of the stay of his wife as an attendant, which is possible provided that statutory conditions are met and a physician reviewer approves this.

The health insurance company, however, only agreed to reimburse the complainant's stay. Both he and his wife went to the spa nevertheless, and the wife paid for her stay with her own money.

Afterwards, the spouses asked me to review the health insurance company's procedure. They sought a refund of the costs of attendance. In my inquiry report, I noted that the health insurance company should have approved reimbursement of the attendant's stay as well. I also noted that the decision rendered did not have all the requisites required under the Code of Administrative Procedure.

Subsequently, based on the provided medical reports, the health insurance company decided to refund the costs of the attendant's stay.

B.1.2 "Crooks" on the phone (File No. 6418/2016/VOP)

I was approached by a complainant requesting inquiry into the procedure of the Czech Agriculture and Food Inspection Authority (hereinafter "CAFIA"). CAFIA was to review alleged unfair commercial practices of a company in telemarketing activities (conclusion of distance consumer contracts over the phone).

In 2016, the complainant was contacted by phone with an offer to purchase a food supplement according to his choice. He later found out that he allegedly entered into a purchase contract with the company over the phone (without being aware of it). Aside from the first package for free, he received by post further packages which he did not request and for which he was charged. The company requested payment for (allegedly) ordered and supplied packages of food supplements. The complainant later terminated the contract through his legal counsel and reported the company's practices to the Czech Trade Inspection Authority. The Czech Trade Inspection Authority then referred the case to the locally and substantively competent CAFIA branch.

CAFIA concluded that in its opinion, the case had not involved any unfair commercial practices. It advised the complainant on due caution in dealing with similar telemarketing companies.



My Deputy requested explanation concerning the case from CAFIA. Through detailed analysis of the available recordings of talks available to CAFIA, he subsequently determined that the company likely used prohibited unfair commercial practices. He thus requested a personal meeting to discuss the case in order to ensure a more effective approach to punishing unfair commercial practices.

Already during the course of the inquiry, CAFIA initiated a thorough investigation of other complaints received against the company's practices and, as result, the company was found guilty of using unfair commercial practices pursuant to the Consumer Protection Act. CAFIA ordered the company to adopt remedial measures consisting in a modification of the information provided during the phone calls, in written documents and on its website in order to avoid violations of the Consumer Protection Act. The company adopted the measures. CAFIA also opened penalty proceedings with the company to impose a fine for the violation of the Act. As the authority had adopted sufficient remedial measures, my Deputy closed the case.

B.1.3 Body searches of people with disabilities when entering a court building (File No. 6263/2016/VOP)

I was approached by a complainant who objected to the procedure of the judicial guard who searched the complainant when she was entering a court building. The complainant has a hearing impairment and uses a hearing aid.

The judicial guard officers conducting the search put the hearing aid into an X-ray scanner, which destroyed the device.

After receiving my inquiry report, the Deputy Minister of Justice sent a letter to the Prison Service of the Czech Republic (of which the judicial guard is part) where he recommended to approach people using medical aids sensitively in performing the judicial guard's duties related to entering courts and other guarded buildings, taking into account of the specific needs of users of assistive devices. I regarded this as a sufficient remedial measure and closed the case.

The complainant later informed me of further developments in her case, where she received a compensation for the costs of the destroyed hearing aid in the amount of CZK 8,547.

B.1.4 Malodorous and dusty glass recycling, crushing and sorting of shards operation (File No. 7217/2016/VOP)

I was approached by a complainant with a request to inquire into the procedure of the construction authority, the regional authority and the Czech Environmental Inspectorate; the complainant claimed to be bothered by bad smell and dust coming from a trial operation of a business within the project titled "Construction modifications and addition of a glass recycling plant developed by a specific company".

The relevant glass recycling, crushing and shard sorting line had already been operated in previous years without any major impact on its surroundings, as evidenced by the lack of previous complaints. A change in the requirements of the main purchaser of the shards as



to the shards' properties led the developer to modify the recycling line's technology. The construction authority approved the modifications in combined planning and construction proceedings.

The line was equipped with separators for sorting individual components. To ensure proper functioning of the separators, a rotary dryer of glass shards had to be added. The construction authority approved a trial operation of the modified line for 9 months, beginning with the legal force of its decision. During the trial operation, authorised measurements of pollutants were to be conducted at the source. The regional authority subsequently issued a decision approving the operation of an air pollution source, under the project titled "Glass shard drier with a gas burner with a nominal thermal output of 2.0 MW". Even though the complainant and other citizens complained about the smell and dust coming from the trial operation, the construction authority extended the operation, citing the need to carry out further measurements and to verify functionality.

The Czech Environmental Inspectorate found that the company operated the recycling line at variance with the manufacturer's instructions. It informed my Deputy that the manufacturer changed the instructions after an inspection of the site. However, the Inspectorate did not mention what steps it had taken to address the offence. My Deputy found further errors in the procedure of the construction authority which had extended the trial operation without obtaining a new binding opinion of the affected authorities (especially the authority responsible for air quality).

After I issued my inquiry report, the complainant informed my Deputy that the mere initiation of the inquiry into the case had helped to resolve the situation. The company had shown willingness to deal with the problem and the situation had improved. For this reason, my Deputy closed the inquiry.

B.1.5 Filing an application for a new passport at a Czech diplomatic mission abroad (File No. 4606/2017/VOP)

A man with dual citizenship of the Czech Republic and the UK living in Thailand did not agree with an official requirement to submit a certificate of citizenship of the Czech Republic with his application for a new passport, because he had already submitted it with his first application 10 years before.

The complainant submitted a valid passport to a diplomatic mission in Bangkok; the passport had originally been issued by a Czech municipal authority and indicated a different surname. The complainant documented the change of the surname with a birth certificate and a marriage certificate with a note that he was using his current surname based on a decision of the municipal authority. For this reason, there should not have been any doubt concerning the accuracy of the details needed for the registration of the new passport.

The request to submit a citizenship certificate came from a phone call between a consular officer in Bangkok and a civil servant at the municipal authority; I argued that this constituted an incorrect official procedure (i.e. maladministration). Due to this erroneous official procedure, the complainant had to travel to Bangkok again, which represented a significant expense of time and money given the distances involved. Taking into account the



differing statements of the diplomatic mission and the municipal authority, it was impossible to determine whose share of responsibility for the incorrect procedure was bigger – the consular officer's or the civil servant's. It was therefore impossible to establish whether the harm occurred within the competence of the Ministry of Foreign Affairs or the Ministry of the Interior.

During my inquiry, the municipal authority retracted its requirement to submit a citizenship certificate. Nevertheless, the relevant regional authority had already issued it in the meantime. The Ministry of Foreign Affairs and the Ministry of the Interior, where the complainant filed his complaints in spring 2017, subsequently defended the authorities' procedure.

The Consular Department of the Ministry of Foreign Affairs accepted the proposed remedial measures and amended its methodology with a clarification stating that the "first passport does not mean the first passport after a change of surname." I subsequently 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 performed a total of **12 systematic visits to facilities and monitored 12 instances of administrative and criminal expulsions, both by land and by air, in the fourth quarter of 2018.**

In connection with the municipal elections, I devoted seven systematic visits to the **exercise of the right to vote of people with disabilities**, especially those with restricted legal capacity. Authorised employees of the Department of Supervision over Restrictions of Personal Freedom, in co-operation with the Department for Protection of Rights of People with Disabilities, inspected whether the visited facilities were offering adequate support for exercising the right to vote and identified obstacles preventing people with disabilities from voting. I will present the findings in a separate summary report. I also state further related information below in chapter B.4.2. The following facilities for people with disabilities were visited: Habrovanský zámek u Rousínova, Domov Laguna Psáry, Domov ve Zboží, Domov u lesa Tavíkovice, Domov pro osoby se zdravotním postižením Staré město u Uherského Hradiště, Domov Zvíkovecká kytička ve Zvíkovci u Rokycan, and Domov u studánky Lanškrouna.

My visit in **Liberec Remand Prison** opened a series of visits where I will focus on treatment of accused persons held in remand detention.

Employees of the supervision department also visited 2 police departments with **police cells** situated in Prostějov and Litomyšl, respectively. One visit was performed in "Chovánek", a **facility for children requiring immediate assistance** in Brno, and in **Children's Psychiatric Hospital in Opařany.**



B.2.1 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 talked about our findings and practical recommendations**. In particular, we discussed the fact that care offered by these facilities must be focused on developing the clients' self-sufficiency. We also discussed the insufficient number of physicians providing care to clients directly in the facilities. Last but not least, we mentioned problems associated with the reduction of capacity of these facilities.

B.2.2 Detention in social services

An authorised employee of the supervision department also significantly contributed to updating the **guidelines of the Ministry of Labour and Social Affairs on detention in social services facilities**. The aim of the guidelines is to inform the providers of the social services, employees of authorities of municipalities with extended competence, and curators about issues related to a client's serious objection to continued stay in a facility and the duties associated with such an act. The guidelines also explain court procedure within proceedings on inadmissibility of detention in social services facilities.

B.2.3 Translation of CPT outputs into Czech

We were involved in translating the standards and factsheets issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Czech versions of CPT documents are available on the Committee's website [here](#). The list of standards newly includes standards concerning immigration detention, minors in criminal detention, remand detention, solitary confinement, living space per inmate in prison facilities, and use of means of restraint in psychiatric facilities for adults.

B.2.4 Debate on monitoring of forced returns of foreign nationals in Europe

An authorised employee of the supervision department participated in a working meeting on the functioning of the European mechanism for expulsion monitoring. The Council of Europe, in co-operation with the Greek ombudsman, organised a meeting and invited us as well as our colleagues from other EU member states' national preventive mechanisms. The meeting concerned the **participation of national monitoring institutions in return operations co-ordinated by the European Border and Coast Guard Agency (FRONTEX)**. The European mechanism already started functioning in January 2017, but still has certain systemic shortcomings. A meeting of persons participating in the system enabled to identify the most pressing issues that need to be addressed.

B.2.5 International co-operation, seminars and internships

Head of the supervision department showcased the **working methods of the Czech national preventive mechanism**, its findings, and recommendations based on systematic visits to facilities to our colleagues from the Slovak Office of the Public Defender of Rights. Slovakia



is the only Visegrad Group country and one of only a handful in Europe not to have established a national preventive mechanism yet.

Employees of the supervision department taught classes at Palacký University Olomouc. As part of the Legal Clinic on Social Rights taught at the Faculty of Law, they lectured about the **right of institutionalised children to private and family life**. For students of social pedagogy at the Sts Cyril and Methodius Faculty of Theology, we prepared a lecture on **best practices in facilities** where these students will work in future.

The employees of the supervision department also helped to practise practical skills during internships in **facilities for institutional and protective education** (Children's Diagnostic Institution in Bohumín, Educational Institution in Moravský Krumlov) and in **social services facilities** (Sue Ryder Home in Prague).

B.3 Protection against discrimination

B.3.1 Recommendations on inclusive education of Roma and non-Roma children (File No. 86/2017/DIS)

There are approximately 4,000 primary schools in the Czech Republic. In 136 of these, Roma make up a third or more of pupils (approx. 16,000 pupils in total). In 12 schools, more than 90% of pupils are Roma (approx. 2,500 pupils). In 2018, I thus carried out a survey of **inclusive education of Roma and non-Roma children**.

Based on the survey, I **prepared the Recommendations on Inclusive Education of Roma and Non-Roma Children** – a guideline which describes the consequences of educational segregation, assesses it in terms of law, lists desegregation measures and examples of best practice and examples of practical experience (obtained through semi-structured interviews with headteachers from ten primary schools in the Czech Republic) and proposes a desegregation plan for the founders of elementary schools who face the phenomenon of segregation in their educational system. The Recommendations are addressed to the Ministry of Education, Youth and Sports, Ministry of Labour and Social Affairs, Czech Schools Inspectorate, higher education institutions, administrative regions, municipalities, and independent schools.

Roma segregation in education carries economic, educational, pedagogical and social costs which affect not only individuals, but the entire society as well. For more details, see the text of the Recommendations, which you can find on the Defender's website or by clicking the above link. The **most important individual recommendations** include the following:

I. Headteachers must not assign pupils into schools/classes or set up school districts based on the pupils' ethnicity as doing so would constitute direct discrimination (Section 2 (3) of the Anti-Discrimination Act). By itself, separating Roma children from other pupils constitutes less favourable treatment; no further disadvantages need to be applied (e.g. worse teaching standards or school/class equipment).

II. If a seemingly neutral criterion or practice leads to a formation of a class or school with a higher share of Roma pupils, this could constitute indirect discrimination (Section 3 (1) of



the Anti-Discrimination Act). For this reason, it is necessary to study whether the criterion or practice follows a legitimate objective and the means of achieving it are proportionate and necessary. A legitimate objective may consist in an effort to overcome the initial disadvantage of some pupils and help them integrate in a normal class. This, however, can only apply in exceptional situations as this objective can also be achieved by teaching a pupil in a normal class using claimable supporting measures.

III. Headteachers and municipalities can take the pupil's ethnicity into account in order to ensure that Roma and non-Roma children are inclusively educated together. This would constitute affirmative action pursuant to Section 7 (2) of the Anti-Discrimination Act.

B.3.2 Age discrimination at work (File No. 898/2015/VOP)

I inquired into a complaint where the complainant alleged that his employer was discriminating against employees because of their age. Allegedly, employees over 65 years of age were being offered less favourable contracts as concerned their term, number of working hours and sources of funding. The complainant filed a complaint against unequal treatment at the District Labour Inspectorate. Shortly after the employer learnt about this fact, it informed the complainant that his contract would not be extended. The Inspectorate carried out an inspection and found a violation of the prohibition of discrimination, but did not initiate administrative proceedings. After one year had passed, the employer's liability for an administrative offence expired.

My inquiry into the case confirmed that the employer had committed discrimination on grounds of age. The employer applied rules according to which employees over 65 years of age were mainly offered fixed-term contracts and their salaries were paid from an institutional (i.e. certainly available) budget only up to 50% of their working hours; the remuneration for the remaining working hours depended on limited grant money. These rules meant that the numbers of hours worked by employees over 65 were often reduced. Younger employees were offered indefinite-term full-time contracts and their salaries were largely paid from the institutional budget. This conduct was not justified by objective reasons based on the nature of their work (they were research workers).

As concerns the Inspectorate's activities, I concluded that it had made an error as it had disclosed the identity of the complainant to the employer, which potentially infringed on the complainant's legitimate interests beyond the scope necessary to conduct an inspection; it had also failed to deal with the complainant's complaint without delay, and despite having identified a justified suspicion that an offence had been committed, it had failed to initiate administrative proceedings.

I did not consider the authority's subsequent measures sufficient and so I issued a final statement where I suggested additional remedial measures, *inter alia* that the Inspectorate ensured that inspectors in future inspections would not disclose the complainant's identity unless the statutory conditions were met (i.e. that the complainant consents to the disclosure of his or her identity and such procedure is necessary to ensure proper finding of facts).



The inspectorate adopted the proposed remedial measures and promised that all inspectors would comply with my recommendations and observe the described lawful procedure. I subsequently closed the case.

B.4 Monitoring of rights of people with disabilities

B.4.1 Third meeting of the advisory body

In November, the 3rd meeting of the advisory body took place, focusing on the topic of **exercising the right to vote by people with disabilities**, especially those with restricted legal capacity. At the meeting, I presented the advisory body with the results of my survey conducted with respect to recent municipal elections. I will describe the survey in more detail below.

The advisory body also raised the matter of communication and use of **proper terminology in relation to people with disabilities**. Members of the advisory body agreed that a public debate and education on this issue had to be strengthened, also because language shapes reality and affects the way disabled people and their place in society are perceived. The advisory body agreed that an information material should be drawn up to summarise the basic principles of communication and dealing with people with disabilities.

The main topic of the meeting was the preparation of the **List of Issues for the UN Committee on the Rights of Persons with Disabilities**. The Convention on the Rights of Persons with Disabilities (hereinafter the “Convention”) requires that the Czech Republic submit regular progress reports to the Committee on the Rights of Persons with Disabilities (hereinafter the “Committee”). The Committee sends a List of Issues to be responded to by the member states in their reports. As a monitoring body, I decided to inform the Committee of my findings and comments related to monitoring to assist the Committee in formulating its recommendations to the Czech Republic. The List of Issues will be sent to the Committee in February and I will inform about its contents in my following quarterly report.

B.4.2 Survey concerning monitoring of rights of people with disabilities

Exercising voting rights by people with limited legal capacity

In the immediate aftermath of municipal elections, my colleagues carried out **7 systematic visits to homes for people with disabilities** (hereinafter the “facilities”). The purpose of the visits was to find out whether the clients of these facilities had the option to exercise their right as Czech citizens to vote, i.e. express their social autonomy by exercising their right to participate in politics and public affairs.

During the systematic visits, I determined that some people in the facilities had not even been informed of the fact that elections were being held and that some clients who could vote were not enabled to do so. I found that these errors were caused by the fact that the judgments restricting a person’s legal capacity are often difficult to understand for the employees of the facilities and that the electoral rolls (registers) contained errors concerning information on the restriction of voting rights. None of the facilities visited had a methodology or guidelines on elections. In municipal elections – where citizens cannot



vote outside their district – a specific problem consisted in the **limited accessibility of polling stations**.

Survey of court decision quality in the area of legal capacity and supporting measures

In the previous quarter, I completed the 1st stage of a survey focusing on **court decision-making on restriction of legal capacity and other supporting measures**. The qualitative survey was conducted by the Department for Protection of Rights of People with Disabilities by analysing 190 judgments concerning people living in residential social services facilities, specifically in homes for people with disabilities. The survey revealed the following:

The courts disproportionately restricted legal capacity of persons (90.5% of cases) in comparison to applying other supporting measures (9.5% of cases). This could be a result of the fact that the legal capacity of the vast majority of the clients had already been restricted in the past and the survey studied review decisions, not decision in new cases.

So-called general restriction of legal capacity is still commonly used – the oft-used formulation reads “restrictions in all areas of life except for ordinary matters of daily life.” However, 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.

I also focused on the manner of determining the amounts of money which the person facing restrictions could independently operate with. These amounts ranged from CZK 10 per operation to CZK 50 per month to CZK 6,000 per month. I was alarmed especially by the lowest numbers of e.g. CZK 50 a month as it is doubtful that these amounts could be sufficient for a person to arrange “ordinary matters of daily life,” even in situation where most needs of these persons are taken care of by social services. In the next stage of the survey, we will analyse the judgments requested from district courts.

B.4.3 Co-operation with disability advocacy organisations

The Convention anticipates that the monitoring body will actively co-operate with organisations of persons with disabilities. For this reason, I contacted a total of 358 non-profit organisations and asked them for co-operation in the preparation of the above-mentioned List of Issues. The organisations had an opportunity to directly point out the perceived shortcomings in implementation of the Convention’s rights.

I simultaneously inquired which of these organisations met the requirements of the Committee and qualified as Disabled Persons’ Organizations (DPO). According to the Committee, such an organisation must respect the Convention’s principles, be led, managed or administered by disabled people and most of its members must qualify as people with disabilities. Of the non-profit organisations contacted, these conditions were met by a total of 60 organisations.



B.4.4 Awareness raising

At the end of last year, I co-operated with the Faculty of Law of Charles University to organise a two-day conference titled “Practical Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities”, where judges of a district court and of the Constitutional Court, as well as curators, social services workers and disabled people, presented contributions on restrictions of legal capacity. The conference was attended by 140 people and was streamed online.

Authorised lawyers of the Office presented the Defender’s competence and current activities in the area of monitoring of the rights of people with disabilities and the issues of employment at a conference titled “Employment of People with Mental Disabilities” organised by the Sts Cyril and Methodius Faculty of Theology of Palacký University Olomouc. They also presented a contribution summarising the past and current activities of the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the Czech Government’s Council.

At the Forum 2000 conference, we presented a contribution on topics related to the rights of people with mental illnesses, especially matters related to the conditions of hospitalisations and the need for changes in psychiatric care. At a conference titled “Social Services as a Tool for Helping People with Autism in the Olomouc Region”, employees of the Office summarised the results of the survey of availability of social services to people with autism, as well as my recommendations formulated based on the survey results for the benefit of central governmental authorities. We also presented the Defender’s competence in the area of people with disabilities to students of “Senior Academy” organised by the Brno municipal police.

In Brno, on 30 January 2019

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